

# Good practice in making council appointments

Principles, guidance and the scrutiny process for regulators making appointments which are subject to section 25C scrutiny

July 2022

## About the Professional Standards Authority

The Professional Standards Authority for Health and Social Care 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 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 regulation.<sup>1</sup> 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, which are paid for by the commissioners, 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](http://www.professionalstandards.org.uk)

---

<sup>1</sup> Professional Standards Authority (2015). *Right-touch regulation revised*. Available at [www.professionalstandards.org.uk/policy-and-research/right-touch-regulation](http://www.professionalstandards.org.uk/policy-and-research/right-touch-regulation)

# Contents

1. Introduction .....	1
2. The required standard.....	2
3. Standards for council members and chairs .....	3
4. Roles and responsibilities .....	4
5. Types of appointment.....	5
6. The Authority's role .....	7
7. Scrutiny approach – open competition .....	8
8. Reappointments .....	13
9. Extensions and emergency appointments .....	15
10. Scrutiny considerations .....	17
11. Selection criteria and competencies.....	20
12. Selection panel.....	22
13. Advertising and publicity .....	25
14. Applications and the selection process .....	28
15. Conflicts of interest.....	33
16. Due diligence .....	35
17. Complaints .....	37
18. Freedom of Information Act and Data Protection Act.....	39
19. Evidence assessment .....	40
20. Our advice to Privy Council.....	43
21. Good practice in induction for council members and chairs .....	44
22. Further reading.....	45

# 1. Introduction

1.1 This document:

- Sets out the process that the Authority has adopted to enable itself to provide robust advice to the Privy Council about recommendations made by the regulators for appointments to their councils.
- Provides advice to the regulators on the information that the Authority will require in order to satisfy itself as to the integrity of their processes.
- Provides general advice on good practice in making appointments.

## **Purpose of this document**

1.2 In this guide, we outline the four principles which regulators need to demonstrate to meet the standard required. We also provide good practice guidance on how regulators can adhere to those principles, as well as detailing the scrutiny process, we use to advise the Privy Council.

1.3 While the main purpose is to guide the process for recruiting council members, much of the guidance is relevant to other types of appointments , for example, the appointment of committee members..

1.4 This guide does not cover every aspect of an appointments process and the Authority encourages the regulators to discuss issues that arise during their appointments processes with us.

1.5 The nature of the assistance the Authority will provide to the Privy Council is detailed in a Memorandum of Understanding (MoU) between the Privy Council and the Authority. This MoU agrees that the Authority will provide advice to the Privy Council about the processes the regulators use to identify candidates to recommend for appointment to their councils.

1.6 This guide has been developed taking account of feedback from the regulators, the Privy Council Office, and health departments across the UK, as well as comments and suggestions from the Office of the Commissioner for Public Appointments, and the Centre for Public Appointments at the Cabinet Office. The first version of this guidance was developed with support from the Appointments Commission. We are grateful to all those who have contributed. We will continue to identify areas where the guidance could be improved and update it when necessary. This update draws on further learning from the regulators' processes and our appointments seminar.

## **Status of this guidance**

1.7 It is for each regulator to develop an approach to council appointments that suits its own needs; the Authority will not prescribe an approach that the regulators must use. As long as regulators can demonstrate to the Authority that their approach meets the required standard, and that it is in accordance with relevant legislation we will advise the Privy Council that it can have confidence in the process.

## 2. The required standard

2.1 All appointments processes must adhere to the four principles, as outlined in the box below.

### **Principles of a good appointments process**

#### ***Merit***

All selection decisions must be based on evidence of candidates' merit. This means appointing and reappointing individuals whose skills and experience have been judged to best meet the needs of the regulator and, where appropriate, recommending the removal or suspension of individuals where there is a strong case for doing so.

#### ***Fairness***

Processes used in appointments must be objective, impartial and applied consistently. Processes must promote equality and be free from discrimination, harassment and victimisation.

#### ***Transparency and openness***

Public appointments must be advertised in a way that is designed to attract a strong and diverse field of suitable candidates. Information about posts and appointment processes must be publicly available. The reasons for any recommendations made to the Privy Council arising from these processes must be clear.

#### ***Inspiring confidence***

The regulator's processes and systems must inspire confidence that it regulates in the public interest and take into account external perspectives. All processes must meet the requirements of the regulator's legislative framework.

## 3. Standards for council members and chairs

- 3.1 It is vital that all council members and chairs understand and demonstrate high standards of corporate and personal conduct. Usually, members are asked to subscribe to a relevant code of conduct and confirm that they understand the standards of probity required by public appointees outlined in the 'Seven Principles of Public Life' (see table below).
- 3.2 Codes should clearly differentiate between personal and collective liability and the implications of failure to observe the relevant Code of Conduct. It is also important to ensure that these values and standards are embedded in the daily life of the council. All council members are responsible for upholding these values and should challenge any actions or behaviour by other council members which do not reflect these principles.

### **The seven principles of public life**

#### ***Selflessness***

Holders of public office should act solely in terms of the public interest.

#### ***Integrity***

Holders of public office should not place themselves under any obligation to people or organisations that might try inappropriately to influence them in their work. They should not act or take decisions in order to gain financial or other material benefits for themselves, their family, or their friends. They must declare and resolve any interests and relationships.

#### ***Objectivity***

Holders of public office must act and take decisions impartially, fairly and on merit, using the best evidence and without discrimination or bias.

#### ***Accountability***

Holders of public office are accountable to the public for their decisions and actions and must submit themselves to the scrutiny necessary to ensure this.

#### ***Openness***

Holders of public office should act and take decisions in an open and transparent manner. Information should not be withheld from the public unless there are clear and lawful reasons for so doing.

#### ***Honesty***

Holders of public office should be truthful.

#### ***Leadership***

Holders of public office should exhibit these principles in their own behaviour. They should actively promote and robustly support the principles and be willing to challenge poor behaviour wherever it occurs.

## 4. Roles and responsibilities

### Privy Council – power to appoint

- 4.1 The power to make appointments to the regulators' councils rests with the Privy Council. In making appointments, the Privy Council must act in accordance with legislation setting out, amongst other things, who may and may not be appointed to each regulator's council and for how long they may serve. Legislation also sets out the circumstances in which the Privy Council may suspend or remove council members or chairs.
- 4.2 In most cases, the Privy Council's decision about whether to make appointments will be informed by advice from the Authority. The Privy Council is not bound to follow the Authority's advice and will consider it alongside other factors.

### Regulators – managing the process

- 4.3 The regulators' role is to assist the Privy Council to make the appointments. Regulators are responsible for managing the processes to identify suitable candidates and recommending these candidates to the Privy Council for appointment. This includes recommending the Privy Council reappoint or extend the term of existing council members, as well as to suspend or remove them when necessary.
- 4.4 The recommendations must comply with legislative requirements, such as regulators' Constitution Orders including the requirement for membership from individuals living or working in each of the UK nations. We acknowledge that sometimes these are difficult to manage and welcome regulators considering these issues in advance of each individual recruitment.
- 4.5 Unless a regulator's council has formally agreed (and documented) alternative arrangements, the Chief Executive is deemed to be responsible for ensuring that the need to plan and initiate an appointments process, capable of meeting the Authority's principles and encouraging a diverse field of candidates, is brought to the council's attention in good time. The council is deemed to be responsible for ensuring that the process is undertaken appropriately and in a timely manner, and for allocating sufficient resources.

### The Authority – advising the Privy Council about the process

- 4.6 The Authority's role is to advise the Privy Council on the processes the regulators have used to select the candidates they recommend for appointment. It is important for the Privy Council to have confidence in the process used by the regulators to make these recommendations before it makes its decision. We will scrutinise each appointments process and then advise the Privy Council whether it can have confidence in that process.
- 4.7 The Authority is not a decision-maker and we look solely at the process undertaken by a regulator to make a recommendation.

## 5. Types of appointment

5.1 There are five types of appointments process covered by these arrangements. These are:

### Open competition

5.2 An open competition is when candidates are appointed to chair or member posts following a publicly-advertised competitive selection process. We expect all new members to be appointed under open competition other than in an emergency. Some regulators will require existing members who wish to be re-appointed at the end of their term to apply through an open competition.

5.3 Under the Authority's Memorandum of Understanding (MoU) with the Privy Council, we will provide advice to the Privy Council about all open competitions.

### Reappointment

5.4 Reappointments occur when sitting council members or chairs are appointed for a further consecutive term, following a formal process to assess whether their skills and expertise continue to meet the needs of the council but without having to go through a further open competition. Reappointments should not be automatic but can be an alternative to running an open competition if individuals' performance during their first term has been satisfactory and their skills and experience continue to meet the council's needs. Individuals may be reappointed only if they continue to meet the eligibility and term-length criteria specified in Constitution Orders or other relevant legislation.

5.5 The regulator should not recommend some members for reappointment while others who are eligible for reappointment are required to go through an open competition. If an open competition is run, all those sitting members who desire (and are eligible for) a further term must go through the open competition.

5.6 We will provide advice to the Privy Council about all reappointment processes under the terms of our MoU with the Privy Council.

### Extension

5.7 The term of a sitting council member or chair can be extended if there are particular circumstances justifying it. Such extensions would usually be for a short period (normally less than 12 months). It might be appropriate, for example, when a merger or reconstitution of the council is anticipated within a period which would make it impractical or disproportionate to run an open competition or reappointment process. Extensions are subject to normal limitations on length of service and eligibility criteria (as specified in Constitution Orders or other relevant legislation) and should not normally be considered if the member was not originally appointed via open competition.

5.8 It is for the Privy Council to decide whether an extension is appropriate. Regulators should seek the Privy Council's in-principle approval for an



extension in sufficient time to enable an open competition to be run, should the Privy Council decide that an extension is not appropriate.

- 5.9 The Privy Council does not have to seek our advice about extensions (under the MoU) but can do so if it chooses.

### **Suspension and removal**

- 5.10 Constitution Orders set out details of how each regulator can remove a council member or chair or suspend them pending an investigation into whether there are grounds for removal.

- 5.11 If a regulator asks the Privy Council to suspend or remove a member, the Privy Council may ask the Authority to advise on the process used by the regulator. Similarly, the Privy Council may ask us to advise if the suspension or removal is contested. However, it does not have to do so.

### **Emergency appointment**

- 5.12 Sometimes situations may arise when it may be appropriate to consider making an appointment urgently without conducting a normal competitive selection process, for example, because there is an unexpected vacancy which needs to be filled quickly.

- 5.13 Emergency appointments should only be considered where there is an obvious and urgent need to fill an unexpected vacancy. They will normally only be made for a maximum of 12 months, or for the minimum period required for the regulator to run an open competition. An emergency appointment should not be followed by an extension.

- 5.14 The Privy Council is not required to ask us for advice about emergency appointments but can do so if it chooses.

## 6. The Authority's role

### Advice on process

- 6.1 We will scrutinise every recommendation each regulator makes to the Privy Council following an open competition or reappointment process. Where a recommendation may cover several individual vacancies, for example, where a regulator advertises concurrently for a chair and one or more council members but then undertakes separate selection processes for each of the roles, we will treat each of these recommendations as distinct for scrutiny purposes.
- 6.2 The Authority's advice to the Privy Council relates exclusively to the process a regulator has used to select candidates. We take no view on the suitability of the individuals recommended. We usually conduct our scrutiny work without any knowledge of the candidates' identities. We base our advice on how well the regulator's appointments process adhered to the principles of a good appointments process (see paragraph 2.1).
- 6.3 There will be occasions where a question of conflict of interest or similar issue arises which will mean that we are able to identify individuals. In such cases, we will only consider how the regulator proposes to manage the conflict of interest and will not take a formal view on the individual's suitability.
- 6.4 The Authority will try to assist the regulators by offering its views on issues that arise during its process. The regulators are not obliged to follow the Authority's advice, but, where there is a significant divergence of opinion the Authority may feel that it is appropriate to inform the Privy Council of its view and, in some cases, that this casts doubt on the integrity of the exercise.

## 7. Scrutiny approach – open competition

7.1 This section sets out our more detailed advice and guidance on the different stages of the competition process.

### Four phases

7.2 Each open competition process conducted under these arrangements can be considered to have four phases:

- Phase 1: Planning
- Phase 2: Advance Notice scrutiny
- Phase 3: Implementation
- Phase 4: Recommendation, scrutiny, and appointment.

7.3 We will scrutinise an open competition at two points: Phase 2, when the regulator submits their Advance Notice to the Authority; and Phase 4, when the regulator has recommended candidates for appointment and submitted their Notice of Recommendation to us.

### Phase 1: Planning

7.4 Each regulator needs to devise and implement a process which suits its own requirements, but which also adheres to the four principles of a good appointments process.

7.5 The regulator needs to identify in good time when vacancies on its council are likely to arise and develop a plan to fill them. This plan will need to include, among other things:

- a publicity/advertising strategy
- details of how candidates will be selected, against what criteria and by whom
- how equality and diversity considerations will be considered
- how the process will reflect that the regulator is a UK-wide (or GB-wide) body
- how oversight will be exercised
- how the panel will manage conflicts of interests
- the full range of due diligence activities to be undertaken.

7.6 When planning for a Chair appointment process, regulators whose Chair can be a lay or registrant appointment will need to plan in advance to ensure it has vacancies for both lay or registrant members. This is to ensure that

- regulators have the widest possible field of candidates to choose from,
- that their processes inspire the confidence of the public and their registrants,
- to ensure their processes are demonstrably fair.
- To ensure that the position of chair does not become inherited by only lay or registrant candidates in the future, because the previous candidate was lay or registrant.

While there may be exceptions due to emergencies, in most circumstances the Authority will not be able to express confidence in any process when eligible candidates have been unnecessarily prevented from applying.

- 7.7 The regulator should advise both the Authority and the Privy Council that it is planning an open competition process. This should be done as soon as possible. It is helpful for the regulator to provide us with a provisional timetable of processes planned during the year.
- 7.8 It is important that the regulator discusses the likely timing of its recommendation with the Privy Council. If the regulator does this while they are still developing the timetable, it should mean that they do not need to change the timetable at a later stage.
- 7.9 Enough time needs to be allowed to plan the process properly and agree policies and procedures. Experience has shown us that the more time invested in the planning stages, the less time will be required to answer the Authority's queries at a later stage.
- 7.10 Generally, open competition processes take approximately five months from the point at which the regulator submits its Advance Notice to the point where candidates are formally offered the appointment. A number of variables will affect this, including the length of the advertising period (a five-month timeframe allows four weeks of advertising), and the size of the process in terms of the number of vacancies and candidates. The selection phase of a large process may take longer than the four weeks allowed in this timeframe.
- 7.11 Regulators should also factor in the time needed to plan the process and get it internally approved, as well as for induction of new council members after their appointment has been confirmed but before they take office. This means that the whole process could take 10 months or longer from the initial plan to when new members take office.
- 7.12 The process may be longer if the regulator decides to advertise chair and member vacancies together, but then decides to complete the process for selecting the chair first, so the appointee can participate in the selection of council members..
- 7.13 Regulators should identify a senior staff member within their organisation who will be responsible for the process. All those involved in the appointments process, including contracted third parties such as recruitment agencies, should be clear about their tasks and deadlines for completion.
- 7.14 It is important that the regulator puts in place a means by which it can check the quality of work undertaken by others on its behalf, for example recruitment consultants. It is the regulator who will be accountable for adhering to the four principles, even if they have assigned certain aspects of the process to a third party. The regulator should make clear who will be responsible for delivering different phases of the process in its submission to the Authority.

### **Phase 2: Advance Notice scrutiny**

- 7.15 Once the planning is complete (or almost complete), the regulator should submit its Advance Notice to the Authority.
- 7.16 Advance notice scrutiny aims to reduce the risk of the Authority deciding to advise the Privy Council that it cannot have confidence in the regulators'

appointments process. Advance notice scrutiny allows us to identify areas of concern at the outset and means that the regulator has an opportunity to address them. Resolving problems at the Advance Notice stage usually means that the recommendation phase (Phase 4) is easier and less time-consuming.

- 7.17 The Advance Notice template provides guidance for ensuring that each area of the process is covered in the submission. The Advance Notice, supported by appropriate documentation, should give us a complete picture of the regulator's planned process. Additional documentation should be provided within the submission as annexes.
- 7.18 We realise there are likely to be aspects of the regulator's process which will remain the same from one process to the next. This provides significant opportunity for regulators to simplify their subsequent submissions. The regulator will not be required to submit further details of those areas of their process which are unchanged from previous submissions. The regulator should list at the end of the advance notice those areas which remain unchanged.
- 7.19 Once we have received the regulator's Advance Notice, we will assess whether it is likely to adhere to the four principles of a good appointments process. We will contact the regulator if we have any questions or concerns. We will make it clear if we consider that our concerns may mean we would be unable to advise the Privy Council that it can have confidence in the process. We will review our assessment if further information comes to light, or, if the regulator plans any changes to the process to address the points we have made.
- 7.20 Advance Notice stage scrutiny usually takes about three weeks, including time for the regulator to respond to our questions. We strongly recommend that the regulator submits their Advance Notice to us at least three weeks before the first advertising deadline.
- 7.21 At this stage, the Authority does not take a decision to 'approve' a planned process. However, we will inform the regulator if we have concerns about the process and, also, if we have no further questions arising from its Advance Notice.
- 7.22 The regulator may choose to go ahead with its process before we have completed our scrutiny of the Advance Notice. However, there is a risk that it may not be in a position to address any concerns which we raise subsequently and, therefore, may mean that we cannot advise the Privy Council that it can have confidence in the process when the process is complete.

### **Phase 3: Implementation**

- 7.23 When phases 1 and 2 are complete, the regulator is responsible for implementing its planned process – advertising the vacancy and selecting candidates to recommend for appointment.
- 7.24 We recognise that events may arise which require modifications to the process part-way through. We encourage regulators to discuss changes with us before they are implemented if this is practicable.

- 7.25 Such changes may include alterations and additions to the method of assessment such as presentations, changes to selection panel membership, significant changes to the timetable, and anything else which the regulator considers might affect our assessment of the process. This is particularly important in cases where the changes might result in some applicants being treated differently from others.
- 7.26 It is good practice for the regulator to consult us before any changes to the process are implemented or as the process evolves.

#### **Phase 4: Recommendation, scrutiny and appointment**

- 7.27 The regulator should notify both the Privy Council Office and the Authority once it has decided to recommend candidate(s). These notifications need to be made at the same time but need to be separate because they contain different information.

- 7.28 Details of the recommended candidates should be provided to the Privy Council Office (see the box opposite).

#### **What to give the Privy Council Office**

When making a recommendation, regulators should provide details below for each candidate:

- 7.29 The regulator should provide the information requested in the Notice of Recommendation template (which the Authority will provide), with supporting documentation as required to the Authority. The purpose of this information is to enable us to assess the extent to which the regulator's process has adhered to the four principles.

- Full name
- Address for correspondence
- Whether candidate is lay or registrant
- Precise term start and end dates
- Short biography or CV
- Any conditions (e.g. relinquishing other roles; living/working in a particular country).

- 7.30 The independent panel member's report should be submitted directly to us by that member (though we have no objection to it being shared with the regulator, after the regulator has sent the notice of recommendation to us).
- 7.31 The regulator is responsible for liaising with the independent panel member over the completion of their report; we will not be able to scrutinise the regulator's process properly until it has received both the independent panel member's report and the regulator's notice of recommendation.
- 7.32 The regulator must remove all candidates' names and other identifying details from everything it sends to us. If we require information for a particular purpose, which may lead us to identify candidates, we will discuss this with the regulator.

#### **Scrutiny at the recommendation stage**

- 7.33 The Authority will review all the evidence provided by the regulator and consider whether the regulator's process has adhered to each of the four principles. We will write to the regulator with any questions or concerns and review our assessment in light of the response. Once we are satisfied that we have enough information to make a robust assessment, we will decide whether we can advise the Privy Council that it can have confidence in the regulator's process.

- 7.34 This decision will be taken by a panel chaired by the Chief Executive or the Director of Scrutiny and Quality. Once the panel has made a decision, we will write to the Privy Council with our advice and will advise the regulator that we have done so.
- 7.35 Scrutiny at the recommendation stage is usually completed within three weeks, including time for the regulator to respond to any questions and concerns. We strongly recommend that regulator allow at least this time when planning the exercise.

## 8. Reappointments

- 8.1 Where there are council members or chairs whose terms are ending, and who are eligible to remain on the council, the regulator should decide whether reappointments without open competition will be considered in principle and ascertain which eligible members would like to seek reappointment. This should be done early enough to allow an open competition to be run if necessary, prior to the members' terms ending.
- 8.2 It should be made clear to new appointees, and those eligible for reappointment, that there is no automatic right for a further term. Decisions to recommend individuals for reappointment should be based on an assessment of whether they have performed satisfactorily, and whether their skills and expertise will continue to meet the council's future needs. Each case should be considered on merit following an assessment of the council's expected future needs and current skill set.

When considering whether to recommend a reappointment, the following should be considered,

- the total period in office and eligibility for a further term
  - whether individuals continue to be willing and able to commit the required amount of time to the role
  - whether both registrant and lay members continue to fulfil the necessary criteria and whether any fitness to practise concerns in respect of a registrant member have been raised
  - any conflicts of interest that have arisen or may arise
  - any complaints received about the individual and
  - their overall performance in the role.
- 8.3 The regulator will need to be able to demonstrate that the candidate for reappointment has been appraised and has demonstrated satisfactory performance. It is important during the process of reappointment that third party and key stakeholder feedback is sought, in particular from the Chief Executive and Registrar, or should this not be possible other members of the regulator's senior team.
- 8.4 While the process of considering a reappointment should be carried out in accordance with that Council's process, no member should be involved in any matter affecting their own reappointment.

### Reappointment of a chair

- 8.5 For the reappointment of a chair it is expected that the regulator will conduct a formal 360° appraisal process, conducted by an independent person or panel. The 360° appraisal process would seek the views of other stakeholders, and may include:
- related professional and service-user organisations
  - the professional and policy leads in government health departments
  - the Chief Executive and Registrar and the wider executive team
  - other council members.



- 8.6 The council may identify a lead member or members to manage the chair reappointment process and collate and assess the evidence. It is important to ensure that whoever fulfils this role, especially if he or she is a current council member, has the appropriate skills and experience, is impartial and independent, and is perceived to be so.

### **Scrutiny approach for reappointments**

- 8.7 When scrutinising a reappointments process, we will focus on assessing how well the decision-makers have assured themselves, in accordance with the process, that those recommended for reappointment continue to meet the council's requirements and are likely to continue to do so during their next term.

### **When to contact the Authority**

- 8.8 When the regulator has decided that it will seek to reappoint members, rather than run an open competition, it should consult the Privy Council regarding the planned timing of the reappointment recommendation. This should not normally be more than six months before the members' current terms end. It should then advise us as soon as possible.
- 8.9 We do not ask regulators to submit a formal Advance Notice for reappointments processes but are happy to discuss the regulator's proposed course of action while the process is being planned.

### **Making a reappointment recommendation**

- 8.10 Once a regulator decides to recommend candidates for reappointment, the Authority's scrutiny process, and the Privy Council's appointment process, are the same as for an open competition other than we do not require a report from an independent panel member.
- 8.11 We have provided a Notice of Reappointment Recommendation template which regulators may use. It includes guidance on the information regulators could provide to us in relation to reappointments processes.
- 8.12 As with other types of process, the regulator must remove all candidates' names and other identifying details from everything it sends to us in the first instance.
- 8.13 Regulators should allow at least three weeks for us to scrutinise their Notice of Reappointment Recommendation, and at least two weeks for the Privy Council to consider and make the reappointment.

## 9. Extensions and emergency appointments

9.1 We have not produced comprehensive guidance on extensions and 'emergency' appointment processes as they rarely happen and can differ significantly. However, the key points outlined below may be helpful for regulators thinking about running an extension or emergency process.

### Extensions

9.2 Extensions are temporary measures. They must not be seen as a means of circumventing the need to follow a robust, merit-based appointments process (open competition or assessed reappointment). In addition, individuals must continue to meet the eligibility and term-length criteria specified in relevant legislation.

9.3 The Privy Council can act without seeking the Authority's advice in relation to extensions. However, we would advise following some of these basic principles. Extensions should:

- not take place if the term of appointment has already expired
- not normally exceed 12 months
- not be followed by a reappointment (or a further extension) without an open competition process taking place
- only be considered when the incumbent has been appointed following an open competition which met our standard
- be in line with the regulator's own constitution orders
- be publicised once they have been approved.

9.4 We would, in addition, expect that the regulator would have satisfied itself, though appraisals that the individual's performance was satisfactory and that the extension was justified for strong operational reasons, having regard to the regulator's future work.

### Emergency appointments

9.5 Emergency appointments should only be used when there is an urgent need to fill an unexpected vacancy and there is insufficient time to run an open competition. We expect them to be extremely rare and should not be used because of the regulator's failure to take action early enough to fill a known upcoming vacancy. Individuals must meet the eligibility and term-length criteria specified in Constitution Orders or other relevant legislation.

9.6 The Privy Council can act without seeking the Authority's advice in relation to emergency appointments. However, we would advise following these basic principles. Emergency appointments should:

- not exceed 12 months
- not be followed by an extension or reappointment without an open competition
- be publicised once they have been approved.

9.7 In addition, we consider that it is important that the regulator should have gone through an appropriate process for identifying the criteria by which the candidate should be judged and for choosing suitable candidates. We would expect this process should be led by the council and that, unless there are compelling reasons, the council should consider more than one credible candidate for the appointment.

## 10. Scrutiny considerations

10.1 The regulator should consider the following when seeking to meet the required standard.

### Anonymisation of evidence

10.2 The names of candidates or any other information by which a candidate could be identified should be removed from all documentation sent to the Authority.

10.3 Wherever practical, candidates should be identified only as, for example, Candidate 1, 2, 3, etc. (or similar). This allows us to track candidates through the process and gives us a better understanding of how selection decisions have been made.

### Equality and diversity

10.4 In scrutinising any type of appointments process, we will specifically consider the actions the regulator has undertaken to meet its obligations under the Equality Act 2010 to have due regard to the Public Sector Equality Duty (PSED) in its appointments processes. The PSED requires public authorities and organisations fulfilling public functions to have due regard to the need to:

- eliminate unlawful discrimination, harassment, and victimisation and other conduct prohibited by the Equality Act 2010
- advance equality of opportunity between people who share a protected characteristic and people who do not
- foster good relations between people who share a relevant protected characteristic and those who do not.

10.5 This document does not provide detailed guidance around meeting obligations under the Equality Act 2010 and the PSED, which is available from other sources such as the Equality and Human Rights Commission in its Statutory Code of Practice on Employment and other guidance documents.<sup>2</sup>

10.6 Regulators will need to demonstrate that they had due regard for their equality obligations through both the planning and implementation of an appointment process.

10.7 Keeping accurate records of decisions and actions taken throughout the process will be essential to help demonstrate that the standards of a good process have been met.

10.8 We will look for evidence that the regulators have met these obligations when we advise the Privy Council. Equality duties cannot be delegated and it is important that regulators are aware of this and ensure that any work undertaken on their behalf by third parties, such as recruitment agencies complies with them.

10.9 Equality impact assessments are only meaningful if their findings are used to help achieve the aims of the PSED. The findings of the assessments should

---

<sup>2</sup> Equality and Human Rights Commission (2011). [Employment Statutory Code of Practice](#); see in particular paragraphs 11.33-11.51.

therefore be used to inform development of other aspects of the appointments process.

### **Unconscious bias**

The Authority recognises that there is a significant body of research indicating that the unconscious biases of individuals may influence decisions about candidates within a selection process. The effect of these biases may be greatly reduced if those undertaking selections are aware of their own biases and if the process seeks to eliminate the possibility of bias, wherever possible, for example through the anonymisation of candidate identities.

The Authority considers it good practice for all panel members to have received training in the awareness of unconscious bias or to have had their awareness raised to the possibility of bias inadvertently influencing the panel's decisions.

### **Accommodating individual candidates' needs**

- 10.10 We expect regulators to make appointments processes accessible. Regulators should offer to make reasonable adjustments to accommodate the individual needs of candidates with disabilities. They should also offer to make the application form, information pack, and associated documents available in alternative formats such as Braille, audio, and large print. These offers should be made prominently in the documents available to candidates, and it is good practice to remind candidates of the offer of reasonable adjustments at various points throughout the process.

### **Diversity monitoring**

- 10.11 It is good practice to collect data about the diversity of applicants at each stage of the process. As a minimum, monitoring should cover the protected characteristics. It is a good idea to collect a wider range of data to help improve future assessments as this will enable regulators to assess more robustly the likely impact on individuals who share particular characteristics.
- 10.12 When devising monitoring questionnaires, we encourage regulators to consider guidance published by the Office of National Statistics and the Civil Service.<sup>3</sup> This guidance should help regulators structure questionnaires in a way that maximises the response rate, increases accuracy, and makes it easier to compare the responses with other datasets. It is good practice to include a 'prefer not to answer' option for each question.
- 10.13 Diversity monitoring data must be kept separately from the applicant's main application form to ensure that it is not used in the selection process. The data should be collected anonymously and the regulator's system should allow for the diversity of candidates to be monitored at each stage of the process. Applicants should be made aware of why the regulator is collecting

<sup>3</sup> Office of National Statistics (2013). [A-Z Quick Reference Guide to Harmonised Concepts and Questions for Government Social Surveys](#); Civil Service(2012). [Best practice guidance on monitoring equality and diversity in employment](#)

this information and how it will be used (including destruction and collective reporting). Regulators should make it clear that monitoring information will not be used in the selection process. It should also be made clear that completion of the diversity monitoring information form is optional.

## 11. Selection criteria and competencies

- 11.1 The selection criteria and competencies used to select chairs and council members should reflect the current and expected future needs of the council. As these needs are likely to change over time, it is good practice to review them regularly, for example by conducting an assessment of the future needs of the council and taking into account stakeholders' views. Regulators should think about regularly reviewing the person specification, especially if they need to fill several vacancies or when the regulator is undergoing significant change.
- 11.2 It is good practice when reviewing criteria and competencies ahead of an appointments process to consider the council's current mix of skills and expertise, with a view to filling any gaps. Essential criteria should be common to all council members, while skills that are not essential for them all may be included as 'desirable' criteria.
- 11.3 Regulators should also consider the diversity of the current council at this point and decide whether it may be desirable actively to seek applications from particular under-represented groups. While positive discrimination, whereby an individual is chosen purely because they fall within a particular group, is illegal, positive action is now permitted under the Equality Act 2010. This process applies in a situation where two or more candidates are regarded as being of equal merit and enables the appointing body to appoint the candidate who has a protected characteristic that is under-represented.
- 11.4 It should be stressed that regulators are under no obligation to apply positive action and the Authority has taken no view on whether it is desirable or not. If a regulator does decide to take this action, then it needs to decide to do so in the planning stages and ensure that this is stated in the documentation.
- 11.5 When developing selection criteria, it is important to bear in mind that council members are not 'representatives' of any organisation, or profession, or viewpoint. As we have stated elsewhere, councils need to be credible through their performance and the mix of background, knowledge and skills of their members, not because members individually are representatives of particular interests or constituencies.<sup>4</sup>
- 11.6 It is important that the difference between essential and desirable criteria is clear, as well as how each will be assessed. Making criteria, especially essential criteria, too wide can lead to a high volume of applicants and make it difficult to distinguish between them. Alternatively, restricting the criteria unnecessarily (such as specifying a qualification which may not be essential) may unhelpfully restrict the number of applications or cause otherwise suitable individuals to be ruled out. Setting too many criteria is likely to make assessment difficult and may put candidates off.
- 11.7 Criteria must not directly or indirectly discriminate against, or deter applications from, any group in society. For example, requiring 10 years' experience would discriminate against those who are not old enough to have worked for 10 years, as would using language which would imply a bias, for example, 'chairman' (gender) or 'mature' (age).

---

<sup>4</sup> Professional Standards Authority (2013). [Fit and Proper?: Governance in the public interest](#), p6.

---

11.8 Once published, criteria must remain unchanged throughout the process.



## 12. Selection panel

- 12.1 Panel members should normally participate in all stages of the selection process and their availability to do so should be checked when they are being appointed. Regulators should consider beforehand what they would do in the event a panel member became unavailable during the process.
- 12.2 The selection panel's main task is to assess candidates against the published criteria, in accordance with the published process, and decide who to recommend for appointment.
- 12.3 The panel must not allow selection decisions to be influenced by unwritten or 'assumed' criteria (for example that it must appoint candidates belonging to particular registrant professions) and it must not add to or amend the agreed criteria. Evidence of such changes will almost certainly cause the Authority to question whether the process meets the required standard.
- 12.4 In cases where a recruitment agency conducts part of the selection process on behalf of the panel, the selection panel should assure itself that the agency's decisions are correct, for example by sampling the forms of those who were not recommended.

### Membership of the selection panel

- 12.5 Selection panels should consist of at least three and usually no more than five members and should be credible to inspire confidence in the integrity of the process.
- 12.6 Panels are required to make recommendations about appointments in the public interest. In order to do so and to be seen to do so members should not consider themselves or be treated as representatives of any particular group or organisation in particular registrant membership bodies. Achieving this credibility is likely to involve appointing panels whose members:
- Are individually competent to undertake the tasks for which the panel is responsible, with most panel members having experience in public appointments or significant transferrable skills and experience in the recruitment of leaders.
  - Are from a range of different backgrounds, both professionally and personally, bringing different perspectives and inspiring the confidence of different groups. When regulators are seeking to appoint members with certain skills or to ensure participation of individuals living or working in all UK nations, or are seeking to increase the diversity of the council, they should consider including panel members who can bring relevant perspectives.
- 12.7 Panels should not be constituted to have a registrant majority and should have at least one member who has no connection with healthcare regulation i.e. is not a current or recent registrant of any health and care regulator nor currently works in the health and care field.
- 12.8 Panels must also include at least one member who is independent of the regulator (the *Independent Panel Member*), who can bring a credible impartial perspective. This means that the individual is not a registrant and does not have any connection with the regulator that might suggest that his or her ability to provide independent advice was compromised.

- 12.9 As the regulators are independent of government, we do not consider it good practice to allow government to participate in the selection process, either through membership of the selection panel or otherwise.
- 12.10 Selection panels should not include members of the regulator's executive staff.
- 12.11 It is normally appropriate, though not required, for the chair of the regulator to sit on selection panels for council members.
- 12.12 If a regulator wishes to have a current council member on the selection panel for a chair appointment, the member concerned should normally not be eligible for reappointment, and ideally should be near the end of their tenure on the council. This is to avoid the perception that the member's views might be influenced by personal considerations arising from the fact that candidates who are appointed will report to, and be appraised by, the person they select. It is also to avoid the perception that the new member may be beholden to the council member who was party to the decision to recommend them for appointment.

### **Role of the Independent Panel Member (IPM)**

- 12.13 The independent panel member's role is to bring a credible, impartial perspective to selection decisions, and provide their own assessment to the Authority about how well the appointments process adhered to the four principles. Regulators are responsible for finding suitable individuals to act as independent panel members.
- 12.14 The independent panel member should not be, nor have ever been, a professional of a profession registered by the regulator and should always have substantial experience in public appointments.
- 12.15 If a regulator proposes to use an independent panel member who has served previously, it should take into account the individual's previous performance in the role. It should also assess whether the extent of previous involvement is sufficiently great that the individual would no longer be considered independent of the regulator. In practice, we recommend that IPMs are used in no more than three separate processes for the same regulator.
- 12.16 The regulator should make the independent panel member aware of their role and responsibilities when appointing them to the panel. Regulators should provide us with contact details for the independent panel member when they submit their Advance Notice. We will contact the independent panel member at that point to explain what we expect them to report on, and to provide guidance and assistance as required.
- 12.17 We do not provide independent panel members with a report template and strongly recommend that the regulators do not provide one either. This is to ensure that the report reflects the individual process and is not influenced or restricted by a template. However, we would ask that the [IPM] describes the following in their report:
- how well the regulator's process met the four principles
  - any disagreements within the panel about the process and how these were resolved
  - how any unforeseen matters were dealt with

- the quality of panel chairing (for this reason we consider that the independent panel member should not act as panel chair)
- the quality of administration throughout the process
- the consistency of the panel and any absences or changes
- how well equality and diversity issues were addressed in the process
- how any conflicts of interest were dealt with
- any complaints and how they were responded to
- any learning to be gained from the process and how it could be improved
- if they are happy to recommend the process to the Authority as fair and if not the nature of any concerns.

12.18 We also discourage independent panel members from copying sections of previously submitted reports. We accept that some repetition is likely to be unavoidable but cutting and pasting comments from previous reports does not provide confidence in the integrity of the report.

## 13. Advertising and publicity

- 13.1 All vacancies filled through open competition must be publicly advertised. Vacancies should be widely publicised to attract diverse and suitable applicants.
- 13.2 Regulators need to think about where and when they advertise given the nature of the post and the skills and experience sought, the outcome of equality impact assessments, and the need to encourage participation by members of under-represented groups.

### Duration of advertising

- 13.3 We expect vacancies to be advertised and open for applications for at least four weeks, to give potential candidates sufficient opportunity to see the advert and apply for the vacancy. In cases where the regulator is seeking to encourage applications from individuals with particular skills, from Northern Ireland, Scotland, and/or Wales, or from under-represented groups, a longer advertising period could help increase the likelihood that appointable candidates will apply.
- 13.4 If possible, regulators should avoid advertising over holiday periods (which vary between UK countries), and, if they do, should consider changing the advertising period or extending the deadline for applications.
- 13.5 If a regulator proposes to advertise for less than four weeks, which it should do only in exceptional circumstances, it will need to demonstrate that sufficient steps are taken to offset the impact of a shorter advertising period. Such steps could include an increase in the breadth and intensity of the publicity campaign, as well as 'pre-publicity' to raise awareness of the vacancy before the formal advertising begins.
- 13.6 The regulator should select a suitable closing date, time for applications, and make this clear in the advertisement. In our experience a 09:00 deadline on a Monday leads to a greater number of applications received than if the deadline is at 17:00 on a Friday.

### Advertising and publicity methods

- 13.7 Although advertising in traditional national media will usually yield the largest proportion of applications, other media should be used to try to reach particular groups. 'Groups' in this context could mean registrants, members of particular professions where applicable, those with specific desirable skills, potential candidates in Northern Ireland, Scotland, and/or Wales, those who share particular protected characteristics, or any other target group.
- 13.8 Decisions about where and how to advertise should be informed by the success or otherwise of methods used in previous campaigns.
- 13.9 Experience suggests that tailoring publicity campaigns to the recruitment markets in Northern Ireland, Scotland, and Wales will yield a larger number of applications from those countries than a single UK-wide campaign would. Regulators should also have regard to the Welsh language Measure.
- 13.10 Regulators should consider how to make good use of their own established communications channels with registrants and other stakeholders to help

publicise the vacancy and encourage applications. Direct email, newsletters, social media, professional and trade publications, and websites (including the regulator's own website) are channels that should be considered, and which have yielded good results.

### **A good advertisement**

- 13.11 Whether online or on paper, good advertisements are clear and should include:
- brief description of the role of the regulator, and location
  - overview of the requirements of the post to be filled
  - headline criteria required, including key eligibility/disqualification criteria
  - encouragement for members of under-represented groups to apply, and/or for applications from Northern Ireland, Scotland, and/or Wales
  - expected time commitment
  - remuneration
  - tenure of office and commencement date
  - details of how to apply (including reference to alternative formats and other reasonable adjustments)
  - closing date for applications and interview/assessment dates.

### **Stakeholder engagement**

- 13.12 Regulators should consider how best to obtain and incorporate stakeholders' views when developing their approach to council appointments, though stakeholders must not directly influence selection decisions.
- 13.13 When deciding whose views to seek, regulators should think about likely individuals, groups, and organisations interested in their work and leadership. Patients, service users and the public, professional bodies, unions, governments across the UK, patient and other interest groups, are among those who may have an interest.
- 13.14 Engagement activities should be undertaken early enough to allow the views to be taken into account during the planning phase of an appointments process.

### **Recruitment agency or third-party involvement in assessing applications**

- 13.15 Regulators may choose to appoint a recruitment agency to assist with the selection process. The regulator/selection panel should ensure that the agency understands the assessment criteria and that the people conducting the selection and any interviews have appropriate experience to ensure that the process is credible. We expect the regulator/selection panel to check that any decisions the agency makes on their behalf align with what the panel itself would decide. As with all selection decisions, recruitment agency decisions should be fully documented and detailed enough to convey how decisions were reached.

### **Direct contact**

It is worth considering asking influential contacts to distribute details of the vacancy to their own networks. Any individuals recommended or contacted directly should apply using the agreed application process. It is important that they and any other candidates approached, for example by search consultants, are made aware that selection is made on merit only within a fully competitive process.

## 14. Applications and the selection process

- 14.1 It is up to the regulators to choose the most appropriate method for candidates to demonstrate their suitability. In most cases, this will be through an application form, CV and/or supporting statement.
- 14.2 Application forms should be straightforward, tailored to suit the vacancy, and designed to gather only the information needed. Forms should make it easier for the selection panel to focus on relevant information and undertake consistent assessments.
- 14.3 CVs are used widely but are less likely to be consistent and may include irrelevant information. Panels need to be aware that they should not take such information into account.
- 14.4 The application process should be the same for all candidates; there should be no optional elements. Where CVs are required as well as competency-based application forms, it should be clear when and how the information submitted in each will be used.
- 14.5 Regulators should aim to make it as easy as possible for anyone to apply, including candidates with disabilities. Therefore, it is good practice to ensure that forms are available in different formats and that applications can be submitted electronically or on paper.

### Assessing applications

- 14.6 Selection decisions must be made solely on merit. All applications must be assessed against the published criteria. Those responsible for assessing applications should not only impartially consider how the application meets the criteria, but also document it. Only those candidates assessed as meeting the relevant criteria should progress to the next stage.
- 14.7 It is not appropriate for executive staff to be involved in the assessment of council member applications. In some circumstances (usually when a recruitment agency or other independent third party is not involved), it may be acceptable for appropriate executive staff to conduct a limited initial sift of applications to identify incomplete applications or ineligible candidates, but this role must exclude any decision-making on candidates' merits.
- 14.8 We recommend that application packs are anonymised before they are given to the selection panel for initial grading with candidates' identities only revealed to the selection panel after the initial grading has been received by the regulator and the short/long list) compiled.

### The importance of anonymising candidate identities

We consider the anonymisation of candidate identities until the end of the shortlisting phase a key strategy to reduce the effect of unconscious bias. Ideally, identities will only be revealed when shortlisting is complete in order that references and other matters of due diligence may be considered by the panel.

The purpose of anonymisation is not to make it difficult for panellists to recognise individuals they know (which is likely to happen anyway); rather, it is to avoid panellists making conscious or sub-conscious assumptions about individuals they do not know based on their name.

Where panellists are aware of the identity of a candidate, having recognised them through the positions they have held, they should in all cases make the panel chair aware of their relationship. The chair may then take steps to ensure the panel's decision making is not unduly influenced, for example by excusing the panel member from discussion of the candidate or asking them to speak last (see also 14.5).

- 14.9 Candidates should not be eliminated from the selection process on the basis of actual, potential, or perceived conflicts of interest until they have an opportunity to explain how they would manage or eliminate the conflict – see guidance below. Where conflicts have been identified, the panel should continue to assess the candidate solely on how well they meet the criteria until any issues have been explored fully with the candidate(s) and a decision reached.
- 14.10 The selection panel should agree a scoring mechanism before starting the process. Scoring should be designed to enable consistency at each stage between panel members and across candidates. It will minimise the risk of one or two panel members' views becoming dominant.
- 14.11 Decisions about how well candidates meet the merit-based selection criteria should be made solely on the basis of evidence provided by candidates in their application and during the selection process. Selection decisions should be documented, clearly explaining why the panel considered how each candidate met the criteria, and which candidates were strongest.

### Interviews

- 14.12 Selection panels should agree a list of questions designed to test relevant areas of the criteria before the interviews. Candidates should be asked the same key questions to ensure fair treatment. Questions can be adjusted to reflect the candidate's application and follow up questions may be used where necessary.
- 14.13 At interview, the panel should re-confirm the individual's ability to meet the time commitment and also explore any potential conflicts of interest. Candidates should also be asked whether there is anything in their past that



would potentially embarrass the regulator or the Privy Council if they were to be appointed.

- 14.14 Panels should identify all the candidates who meet the threshold, as well as the best candidate for the post under consideration. The justification for deciding which candidates are appointable and which should be recommended for appointment should be documented.
- 14.15 If regulators wish to assess candidates by additional means (such as presentations), it should be clear what criteria these will address and how they will be included in the assessment. Subjects for presentations should be clearly relevant to the role of the council member.
- 14.16 Regulators should ensure that whether they are conducting interviews online, in person or a mixture of approaches within the same process, that candidates are supported to fully participate. No candidate should be disadvantaged by the method used and in particular, regulators should be mindful of the diverse needs of candidates.

### **Documenting selection decisions**

- 14.17 All decisions must be fully documented at each stage of the process so that there is a robust audit trail of the selection decisions. Documentation should be clear and contain sufficient explanation to convey how a decision was reached and should be approved formally by the selection panel. They should clearly be based on the assessment of the candidates against the published criteria.
- 14.18 Panel members should be reminded that candidates can ask for copies of all information held about themselves, including any documentation relating to the selection process, under the relevant Data Protection Legislation.

### **Reserve lists**

- 14.19 Regulators may wish to retain a list of the candidates considered appointable but not recommended in case an identical vacancy arises unexpectedly within the next six to 12 months. The needs of the Council should be reviewed at the time the vacancy arises and use of 'reserve list' of candidates is only appropriate where the person specification and criteria remain the same. The regulator should seek candidates' agreement prior to retaining them on a reserve list.

### **Candidate management**

- 14.20 Treating candidates with sensitivity and courtesy during the process will help reduce the likelihood of complaints about the process. Effective candidate management can help to retain good quality, diverse potential future appointees – or candidates for other roles – and helps ensure they are not alienated by the process.
- 14.21 The appointments process presents an opportunity to promote the regulator. For some applicants, it may be the first interaction with the organisation. It is important therefore to consider how applicants, successful or not, can be left with a positive impression of the regulator.
- 14.22 The timescales involved in these appointments processes may be longer than candidates are accustomed to, so it is important set out clearly in the

candidate information pack the steps in the process and how long they should take. This information should include a brief explanation of the Authority's role in the process. If there are significant alterations to expected timeframes during the process, candidates should be kept informed.

- 14.23 Where a recruitment agency is responsible for candidate management, particularly in relation to communicating with unsuccessful candidates, the regulator should assure itself that the agency's practices meet these requirements.
- 14.24 If a regulator offers potential candidates the opportunity to discuss the role before applying, it should agree a process for doing so and should ensure the same opportunity is offered to all candidates at the same stage of the process. There should be a designated contact who will field calls and correspondence and be made aware of what can and cannot be discussed. Each call, and what was discussed should be documented. Conflicts of interest should be managed and documented; for example, it would not be appropriate for sitting council members who are eligible to apply for the vacancy to undertake this role.

#### **Meetings with the Chief Executive/Chair**

- 14.25 If regulators offer candidates the opportunity to meet the Chief Executive and Registrar (CER) or current Chair of the council, the scope and purpose of the discussion should be clearly outlined to both the candidates and the CER/Chair and whether the discussion will form any part of the selection process.
- 14.26 If the Chair is on the selection panel, they should not meet separately with candidates. If the regulator decides that the CER/Chair's views will be taken into account by the panel, then the CER/Chair should meet all candidates at the relevant stage of the process and provide formal, documented feedback about each one. The panel should be clear about the impact of this feedback on the selection process and how it will be considered when assessing the candidates.

#### **Privy Council decision and offer of appointment**

- 14.27 The Privy Council requires at least two weeks to consider and make appointments, following the receipt of the Authority's advice. This timeframe will be longer if the recommendation coincides with a Parliamentary recess or other significant events. It is important that the regulator discusses proposed timings with the Privy Council Office early in the planning process.
- 14.28 Once the Privy Council has decided to make the appointment, it will write to the candidate to offer the appointment. The candidate will need to communicate directly with the Privy Council to accept the appointment, and the regulator will then need to follow up with the appointee regarding detailed terms of the appointment, induction arrangements, and so forth.
- 14.29 Regulators must not offer appointments to candidates. Regulators may, if they wish, inform candidates that they have been recommended for appointment, and in doing so should explain the next steps in the process. It should be made clear to candidates that the Privy Council will make the decision about whether to offer the appointment. For this reason, we

recommend that no induction activities are commenced until the Privy Council's decision is known.

## 15. Conflicts of interest

- 15.1 Those responsible for planning/implementing the appointments process need to bear in mind the potential for actual or perceived conflicts of interest to arise. Appropriate steps should be taken to avoid conflicts arising and properly managing those that do.

### **Ensuring appropriate separation of roles within the process**

- 15.2 Responsibility for different aspects of the appointments process should be apportioned in a way which does not allow or give the appearance of allowing, a small number of individuals to unduly influence the outcome of the process.
- 15.3 Care should be taken to ensure there is appropriate separation between oversight of the appointments process and selection decisions. Consideration should also be given to appropriate ways of limiting the involvement of council members who are eligible to apply for the vacancies.

### **Selection panel – prior knowledge of candidates**

- 15.4 There are likely to be instances where applicants are known to selection panel members, particularly in the case of registrant applicants. Regulators and selection panels should put in place appropriate measures to ensure the assessment of candidates remains objective, and demonstrably so. Panel members should have the opportunity to declare any prior knowledge at each stage of the selection process. This should also apply where panel members think that they know a candidate whose details have been anonymised, in which case it is appropriate simply to indicate that to the Chair of the panel without indicating who the candidate is. These declarations should be recorded.
- 15.5 Panels may deem it appropriate for members who have prior knowledge of candidates to contribute their assessment only after other panel members have done so. Where existing relationships between panel members and candidates are sufficiently close, it could be inappropriate for the panel member to participate in the assessment of those candidates; regulators should consider the circumstances in which this could be the case and provide guidance to selection panels. In extreme cases, this may mean that the panel member should withdraw from the whole process and be replaced by another.

### **Identifying candidates' conflicts of interest**

- 15.6 Regulators should take steps to identify as early as possible any actual, potential, or perceived conflicts of interest that would arise if candidates were appointed to council. This should include asking candidates to detail any possible conflicts in their application, exploring the conflicts of interest at interview, and conducting appropriate due diligence to identify conflicts which may not have been declared.
- 15.7 The selection panel should discuss any conflicts identified with the candidate to ensure that the candidate recognises the potential impact of conflicts of interest and how they could be managed.

## Assessing candidates' conflicts of interest

- 15.8 The selection panel is responsible for exploring potential conflicts with the applicant, and then agreeing the most appropriate course of action (and document it). Depending on the scale of the conflict, the panel has several options:
- the conflict is so great that it cannot be managed successfully and the candidate is therefore unsuitable for appointment
  - the conflict could only be managed by the candidate giving up involvement with the conflicting activity and appointment is made conditional upon this
  - the conflict can be managed, for example by the candidate not participating in certain discussions or being involved in particular decisions and this will not prejudice their effectiveness as a council member or the effectiveness of the council
  - the conflict is unlikely to affect the role and can be managed on an ad hoc basis or by a declaration of interests.
- 15.9 The regulator should ensure that panel members consider the significance of candidates' conflicts in accordance with its own policies and should provide specific guidance to the panel if necessary. It is good practice to include in the candidates' information pack guidance on what the regulator would consider a conflict.

### **The Authority's view on conflicts of interest**

Below are examples of what the Authority has previously considered a significant conflict of interest during our scrutiny of regulators' appointments processes:

- holding office on another health and care professional regulatory body
- holding office on a professional organisation whose role is relevant to the regulator's role or a non-departmental public body such as NHS England or Health Education England
- holding other appointments/positions of any sort which collectively mean the individual is unlikely to be able to commit the required time to the regulator
- having a financial interest in a business providing services to the regulator
- holding a current prominent position within a political party, in particular, but not exclusively with regard to health as collective responsibility will apply.

These types of conflicts are likely to require candidates to relinquish other roles as a condition of appointment to the regulator's council.

The regulator will also need to be mindful of historic conflicts of interest, particularly political and the possible perception of a remaining conflict of interest. In considering these issues the panel must consider whether these have the potential for undermining confidence in the regulator's independence and its ability to inspire confidence that it regulates in the public interest.

- 15.10 While we do not rule out that being a member of more than one Council may, in some instances, be manageable, we recognise that there will be the potential for significant conflicts of interest to arise if a council member has to

support different policy positions put forward by different councils. In the context of current and future regulatory reform, the prospect of an irreconcilable conflict emerging may become more acute. This may be more likely if the two regulators have similar fields of work, but could arise more widely. Regulators must try to assess the likelihood of these conflicts becoming unmanageable when considering such candidates.

- 15.11 We also consider that the conflict of interest is likely to be irreconcilable, if, the candidate for member appointment was the chair of another regulator.

## 16. Due diligence

- 16.1 Regulators need to make sure that their due diligence checks are sufficient to make sure that information provided by the candidates is accurate and complete. For example, following up references.
- 16.2 Due diligence should also aim to ensure that any conflicts of interest are identified and there is nothing in the candidates' past which would render them ineligible or unable to perform the role (and which could pose a risk to the regulator's or the Privy Council's reputation).
- 16.3 Following up references is important. However, it is good practice to conduct other checks, such as internet searches, as it is unlikely that candidates can have any influence over these results.
- 16.4 Checks should be conducted consistently, ensuring that they are fair to all candidates, and relevant to the role. Therefore, it is a good idea to agree in advance the type of information to be checked and how it will be gathered. Wherever possible, the same basic checks should be conducted for each candidate at the relevant stage of the process. However, it may be appropriate to investigate some candidates further if initial checks uncover information that could be a cause for concern.
- 16.5 In most cases (except in the case of references, for example), checks should be objective, and focus on verifying or identifying relevant information about the candidate. In all cases where information is obtained from third parties, but particularly when using internet searches, judgement should be exercised about the reliability of the source. Details of the due diligence checks that will be made should be published in the information pack.
- 16.6 If any information comes to light that might affect a candidate's suitability for appointment, candidates should be given an opportunity to discuss the information before a course of action is decided upon.

### Disqualification criteria

- 16.7 Each regulator's legislation sets out the criteria by which individuals would be disqualified from appointments to its council. Most of these are tightly prescribed. The legislation also gives the Privy Council broader discretion not to appoint (or in some cases to remove) individuals in certain circumstances where it is satisfied that the individual's membership of a council would be liable to undermine confidence in the regulation of the relevant professions.
- 16.8 The regulator should ensure that the selection panel is aware of all eligibility requirements and disqualification criteria, and the selection panel should

keep these in the front of its mind throughout the selection process. It should be clear early on whether individual candidates meet any of the specific criteria. However, the panel will need to use its judgement about factors relating to candidates and their past which could be relevant to broader criteria and might lead to the Privy Council exercising its discretion not to appoint someone if doing so would be likely to undermine confidence.

### **Candidates' fitness to practise history**

- 16.9 Even if specific disqualification criteria are not used, selection panels should pay attention to whether the appointment of registrant candidates with fitness to practise histories would be likely to undermine confidence.
- 16.10 It will always be inappropriate for candidates who are currently subject to proceedings or have current sanctions against them to be appointed. Panels should also bear in mind that recent exposure to fitness to practise procedures, even if no finding of impairment or misconduct was made, may well affect the registrant's approach to the regulator's role in respect of fitness to practise.
- 16.11 Although circumstances will be unique to each case, as well as findings of impairment and sanctions, panels should consider that:
- recent fitness to practise cases are likely to be of greater concern than historic ones
  - cases which proceeded to a full hearing are likely to be of greater concern than those closed at an early stage of the process
  - restrictive sanctions are likely to be of significantly greater concern than non-restrictive ones
  - cases which were publicly reported are likely to be of greater concern than those about which there has been no publicity.
- 16.12 The following is a list of due diligence activities that may be useful for regulators to consider as a checklist:
- Identity verification and right to work
  - Two references
  - Insolvency check/disqualified directors' check
  - Professional membership (where applicable)
  - Media risk analysis – review of social media twitter/google/LinkedIn
  - Registration status check/fitness to practise status check (including early stage)/fitness to practise history
  - Fitness to practise processes of other bodies
  - Disclosure Barring Service checks
  - Charity Commission or Office of the Scottish Charity Regulator for removed trustees
  - Roles with or associated to the regulator
  - Ministerial or NHS Board appointments
  - Convictions – self declaration including convictions abroad.

Note: Some checks will require applying to more than one authority, for example there are different arrangements for England and Wales, Northern Ireland and Scotland for registration of charity trustees.

## 17. Complaints

- 17.1 Regulators are responsible for handling complaints about their own appointments processes and should have a process in place to manage and record complaints about all aspects of the process.
- 17.2 Regulators should make all applicants aware of the complaints procedure and associated timeframes in the candidate information pack or ensure that it is made publicly available and reviewed regularly by the regulator. This process should be included as part of the submission to the Authority.
- 17.3 If a regulator delegates handling of initial complaints to a recruitment agency, the regulator needs to ensure that the agency's complaints handling process is appropriate and clarify how the agency's process will integrate with the regulator's own process. In addition to making sure the process is appropriate, the regulator should also assure itself that any complaints directed to the agency are dealt with thoroughly on the regulator's behalf.
- 17.4 The regulator should periodically review complaints and make any necessary improvements which they may suggest. Where complaints have arisen as a result of a recruitment agency's work on behalf of the regulator, the regulator should ensure that the agency's processes are amended to take account of this feedback.

### **Option to complain to the Privy Council**

- 17.5 Applicants who complain to the regulator but are not satisfied with the response can raise their concerns with the Privy Council. Regulators should clearly explain this as part of their complaints process.
- 17.6 However, before contacting the Privy Council with a complaint, complainants need to have first exhausted the regulator's own complaints process. They then have six months after the regulator's process has concluded in which to raise their concern with the Privy Council. Only in exceptional circumstances will the Privy Council consider complaints which do not meet these requirements.
- 17.7 The regulator may wish to provide full contact details for the Privy Council in the candidate information pack. We strongly recommend that the regulator does not provide direct contact details or personal information in relation to any specific individual working at the Privy Council.



### **Complaints received before a recommendation is made**

- 17.8 The regulator should include details of any resolved (or ongoing) complaints in the information it provides to both the Authority and to the Privy Council when it makes the recommendation.
- 17.9 For complaints which have been resolved to the complainant's satisfaction, this should include an anonymised summary of the complaint itself and the steps that were taken to resolve it. For complaints which have not been resolved at the point a recommendation is made, the regulator should send the Authority copies of all relevant documents. This includes the complaint itself, all correspondence between the regulator (and its agents) and the complainant, and any relevant internal documents. The regulator is responsible for ensuring that it complies with data protection law, and that it has the complainant's permission to share the complaint with the Authority.

### **Complaints received after a recommendation has been made**

- 17.10 The regulators are expected to inform the Privy Council if a complaint is raised about the process after a recommendation has been submitted to the Privy Council. This should be done with urgency if the Privy Council is in the process of considering a recommendation. The Privy Council will decide whether it requires additional advice from the Authority relating to the complaint before taking a decision to appoint.
- 17.11 If the Privy Council does ask the Authority for additional advice, we will probably need copies of all relevant documents as described above from the regulator.

### **Complaints – the Authority's role**

- 17.12 The Authority has no role in adjudicating complaints about the regulators' appointments processes. However, if a complaint made to the Privy Council about the regulator's process suggests a failure by the regulator to demonstrate the principles of a good appointments process, the Privy Council may seek our advice.
- 17.13 The extent to which we can assist the Privy Council will be determined by a number of factors, including the stage at which the complaint is made and the status of the appointments process, as well as the relevance of the complaint to the regulator's adherence to the four principles. Please see our separate complaints process document for greater detail on how we deal with these types of complaints.

## 18. Freedom of Information Act and Data Protection Act

- 18.1 In general, regulators should not send information to the Authority which would be considered personal data under Data Protection Legislation. Evidence which is pertinent to the Authority's scrutiny of the process, but which contains personal data should be fully anonymised before it is sent to us, and the regulator needs to adhere to its own data protection and other relevant policies.
- 18.2 There will occasionally be instances where information about individuals is pertinent to our scrutiny of the process. If regulators wish to send any personal data as part of their evidence, they should discuss this with us first.
- 18.3 We will manage all information received from the regulators in accordance with our own policies, which are available on our website.
- 18.4 The Authority is subject to requests made under the Freedom of Information Act 2000 (FOIA), and any information we hold may be requested, including information sent to us by others.
- 18.5 The regulators and the Privy Council are also subject to FOIA requests. Wherever possible, if we are required to disclose information provided by a regulator, we will inform and consider comments from the regulator prior to making the disclosure. However, we will make our own decisions about what information to disclose, including in relation to information sent to us by others.
- 18.6 It is important that the regulator includes in its own data protection statements (such as those included on application forms) the fact that it will share some information about the appointments process, including information provided by candidates, with the Authority and with the Privy Council.

### **Document retention**

- 18.7 Regulators should ensure that they retain all documentation in relation to an appointments process for a sufficient length of time to allow the Privy Council, with the Authority's assistance if requested, to investigate complaints about an appointments process within the specified timeframe, and subject to statutory and regulatory requirements.

## 19. Evidence assessment

- 19.1 It is the regulator’s responsibility to provide information to the Authority which demonstrates that its process adheres to each of the four principles. This section briefly explains what type of information the Authority needs in relation to an appointments process, and the type of useful information the regulator should provide.
- 19.2 Throughout our scrutiny, we reserve the right to ask for further information from the regulators if we feel there are gaps in the information on how their process has adhered (or will adhere) to the principles of a good appointments process.
- 19.3 We have provided templates to help with evidence submission for open competition and reappointment processes, though the regulator may choose to provide information in another form. This section should be read in conjunction with the templates, which are available on our website.

### What the Authority looks for in the regulator’s evidence

- 19.4 The table below sets out the types of questions we seek to answer in relation to an appointments process. It is not an exhaustive list and does not include everything we may want to know. However, it should help regulators understand how we approach our scrutiny role.

<p><b>Roles and responsibilities</b></p>	<ul style="list-style-type: none"> <li>• Who is responsible for each aspect of the appointments process?</li> <li>• Is it clear to all involved what they are and are not responsible for, and the circumstances in which their decisions must be approved (and by whom)?</li> <li>• Is the responsibility given to each individual or group appropriate?</li> <li>• Is the selection panel suitably qualified and credible, and is the independent panel member demonstrably independent from the regulator?</li> </ul>
<p><b>Criteria/competencies</b></p>	<ul style="list-style-type: none"> <li>• How have the criteria/competencies been developed and approved?</li> <li>• Is it clear to candidates, the selection panel, and relevant others which criteria are essential and which are desirable and how each will be assessed?</li> <li>• Are the criteria appropriately focused on the skills and expertise required for the role, and free from bias and discrimination?</li> <li>• Is the selection panel (and recruitment agency) clear that its role is to assess candidates only against the criteria as published (and has this in fact been done)?</li> </ul>

<p><b>Equality and diversity</b></p>	<ul style="list-style-type: none"> <li>• How has the regulator assessed the likely impact on individuals who share each protected characteristic, and considered factors such as the diversity of the current council?</li> <li>• On what evidence has the regulator based this assessment? How has the assessment influenced other aspects of the process?</li> <li>• How has the regulator made sure everyone feels welcome to apply, and that no one is disadvantaged as they move through the selection process (including through the offer of reasonable adjustments to accommodate individuals' needs)?</li> <li>• How has the regulator ensured that selection panel members, the recruitment agency, and relevant others are aware of the regulator's equality and diversity obligations and how these should be implemented during the process?</li> <li>• How will diversity data be captured and managed throughout the process?</li> </ul>
<p><b>Publicity and advertising</b></p>	<ul style="list-style-type: none"> <li>• In devising the publicity strategy and choosing media outlets, how has the regulator considered how to attract the best possible candidates, including from different stakeholder groups and from Northern Ireland, Scotland, and/or Wales and learned from the success of methods employed in previous campaigns?</li> <li>• Has sufficient time been allocated for vacancies to be advertised?</li> <li>• How has data, such as that collected during previous campaigns, influenced the regulator's choice of advertising?</li> </ul>
<p><b>Selection process</b></p>	<ul style="list-style-type: none"> <li>• How will each step in the selection process work (at the advance notice stage), or how has it operated (at the recommendation stage)?</li> <li>• Who will undertake each step of the selection process?</li> <li>• How will candidates be scored at each stage, and how will the regulator decide which candidates will be progressed and which are considered appointable?</li> <li>• How will the regulator validate work done on its behalf by recruitment agencies or other third parties?</li> <li>• How will requirements, such as the need to appoint a candidate from Northern Ireland, Scotland, and/or Wales, be considered within the selection process?</li> </ul>

<p><b>Due diligence</b></p>	<ul style="list-style-type: none"> <li>• What will due diligence consist of and who will it undertake it?</li> <li>• At what stage of the selection process will the selection panel have access to references and the results of due diligence checks?</li> <li>• How has the selection panel/regulator considered whether candidates' fitness to practise history will undermine confidence in the regulator if they were appointed?</li> <li>• How has the selection panel/regulator taken account of the disqualification criteria and other grounds in the regulator's constitution order on which the Privy Council may decide not to appoint individuals?</li> <li>• At the <i>Notice of Recommendation</i> stage, have all due diligence activities been completed?</li> </ul>
<p><b>Conflicts of interest</b></p>	<ul style="list-style-type: none"> <li>• In relation to candidates: how will the process ensure that conflicts or potential conflicts are identified, and that decisions about whether they are manageable or not are in line with the regulator's policies?</li> <li>• Is it clear to candidates what the regulator would consider to be a conflict?</li> <li>• In relation to others: how will the process ensure that actual or perceived conflicts of interest are identified and managed appropriately and in a timely manner?</li> </ul>

## 20. Our advice to the Privy Council

- 20.1 If we are satisfied that a process has adhered to all four principles, we will advise the Privy Council that it can have confidence in the process that the regulator has used to arrive at its recommendation. We will copy our advice to Privy Council to the regulator.
- 20.2 The Authority may decide to caveat its advice to the Privy Council if we consider that any actions of the regulator remain outstanding, for example where due diligence activities have been hard to conclude or omitted. We may advise the Privy Council that it can have confidence if a certain condition is met. We will not do so without raising the matter with the regulator first
- 20.3 Once it has decided to make the appointment(s), the Privy Council will formally offer candidates the appointments, and notify the regulator. The Privy Council will confirm candidates' acceptance to the regulator.
- 20.4 The Authority has no decision-making role and will play no part in this stage. Once appointees have formally accepted their appointment, which they should communicate directly to the Privy Council, it will be up to the regulator to make other necessary arrangements with the appointees.
- 20.5 If, following further discussion with the regulator and scrutiny of the regulator's evidence, we are unable to advise the Privy Council that they can have confidence in the process used to make the recommendation we will advise the Privy Council accordingly and provide feedback to the regulator.
- 20.6 If we consider that there were matters that were unsatisfactory, but these were insufficient to prevent us recommending the process we may write to the regulator with a learning point to help it improve its process.

## 21. Good practice in induction for council members and chairs

- 21.1 Induction of new chairs and council members should occur as soon as possible after appointment to enable them to become effective quickly. Induction provides a platform for outlining the organisation's agenda and priorities, accountability arrangements and culture. It is also an opportunity to establish the behaviours required to operate effectively as a council member, and to introduce members to the performance appraisal system to which they will be subject. Completing a well-designed induction programme can form part of the evidence demonstrating an individual's suitability for future reappointment.
- 21.2 When planning an induction process for new council members or chairs, regulators should consider:
- different roles and responsibilities mean council members and chairs will have different induction requirements from executive staff
  - different backgrounds and experience levels of incoming members means that some may need more support and additional background reading than others
  - the need to provide a prioritised induction pack of key information with which new council members should be familiar as soon as possible
  - the need to monitor the induction process to ensure it meets inductees' needs, and to evaluate the process using feedback from inductees.
- 21.3 Induction should cover the regulator's equality and diversity policy and government targets for improving diversity. New council members should receive training on the Equality Act 2010 and the Public Sector Equality Duty, setting out the requirements they impose, including what 'due regard' entails.
- 21.4 Regular contact points should be in place to ensure members continue to be supported appropriately.

## 22. Further reading

22.1 The documents listed below may be of interest. Note that the documents published by the Commissioner for Public Appointments and the Cabinet Office relate to different appointments systems and should therefore not be considered authoritative in relation to the appointments processes to which this document relates.

*The web links listed below were correct at time of publication.*

1. Professional Standards Authority (2015). [Right Touch Regulation \(Revised\)](#)
2. Equality and Human Rights Commission (2011). [Employment Statutory Code of Practice](#)
3. Equality and Human Rights Commission (2022). [Background to the Public Sector Equality Duty](#)
4. Equality and Human Rights Commission (2016). [Technical guidance on the public sector equality duty for England Scotland and Wales](#)
5. Professional Standards Authority (2013). [Fit and Proper?: Governance in the public interest](#)
6. Cabinet Office (2016). [Governance Code for Public Appointments](#)
7. The Civil Service (2022). [Civil Service Diversity and Inclusion Strategy:2022 to 2025](#)



Figure 1:  
Planning, Advance Notice, and implementation

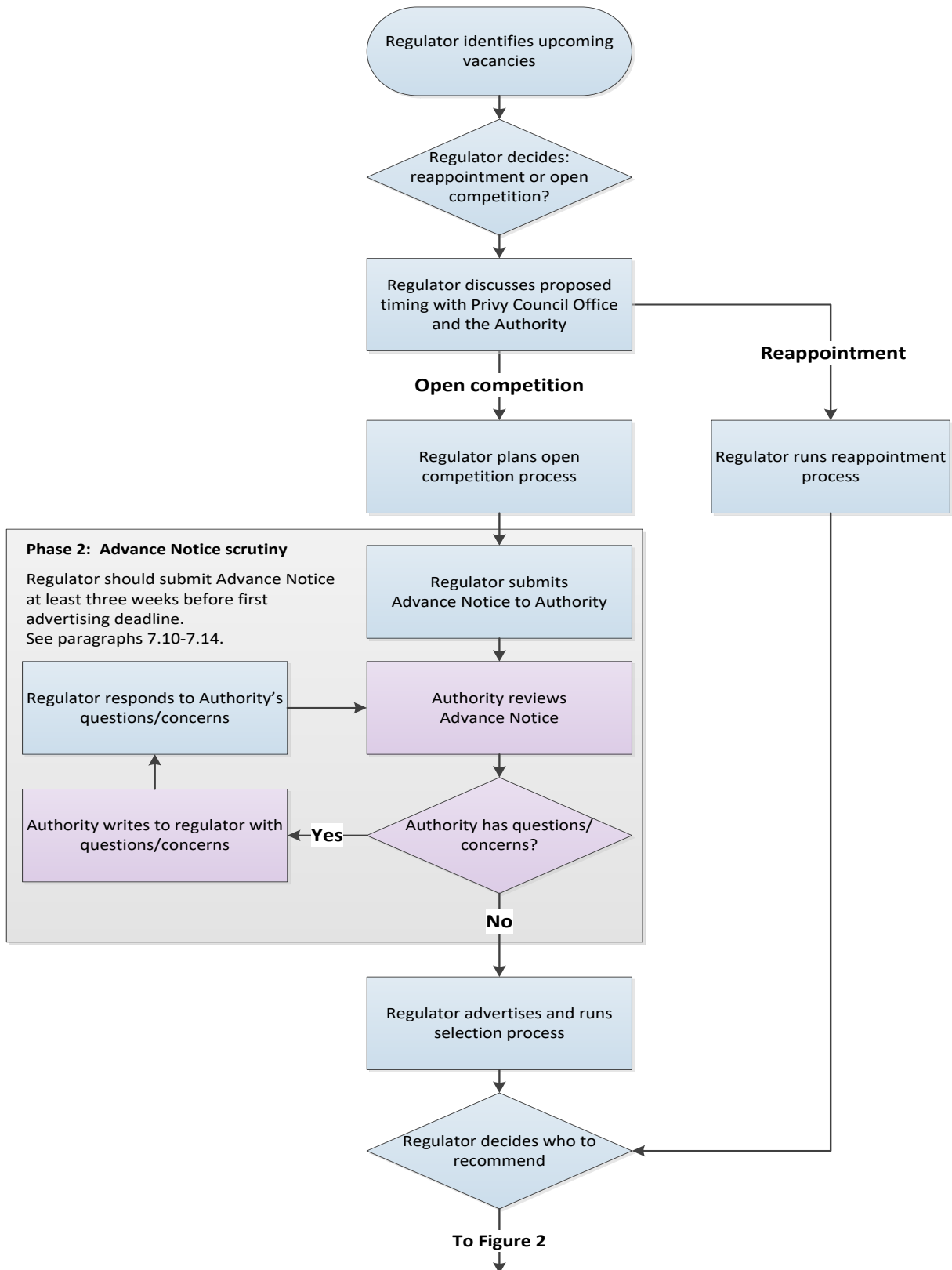


Figure 2:  
 Recommendation, scrutiny, and Privy Council consideration

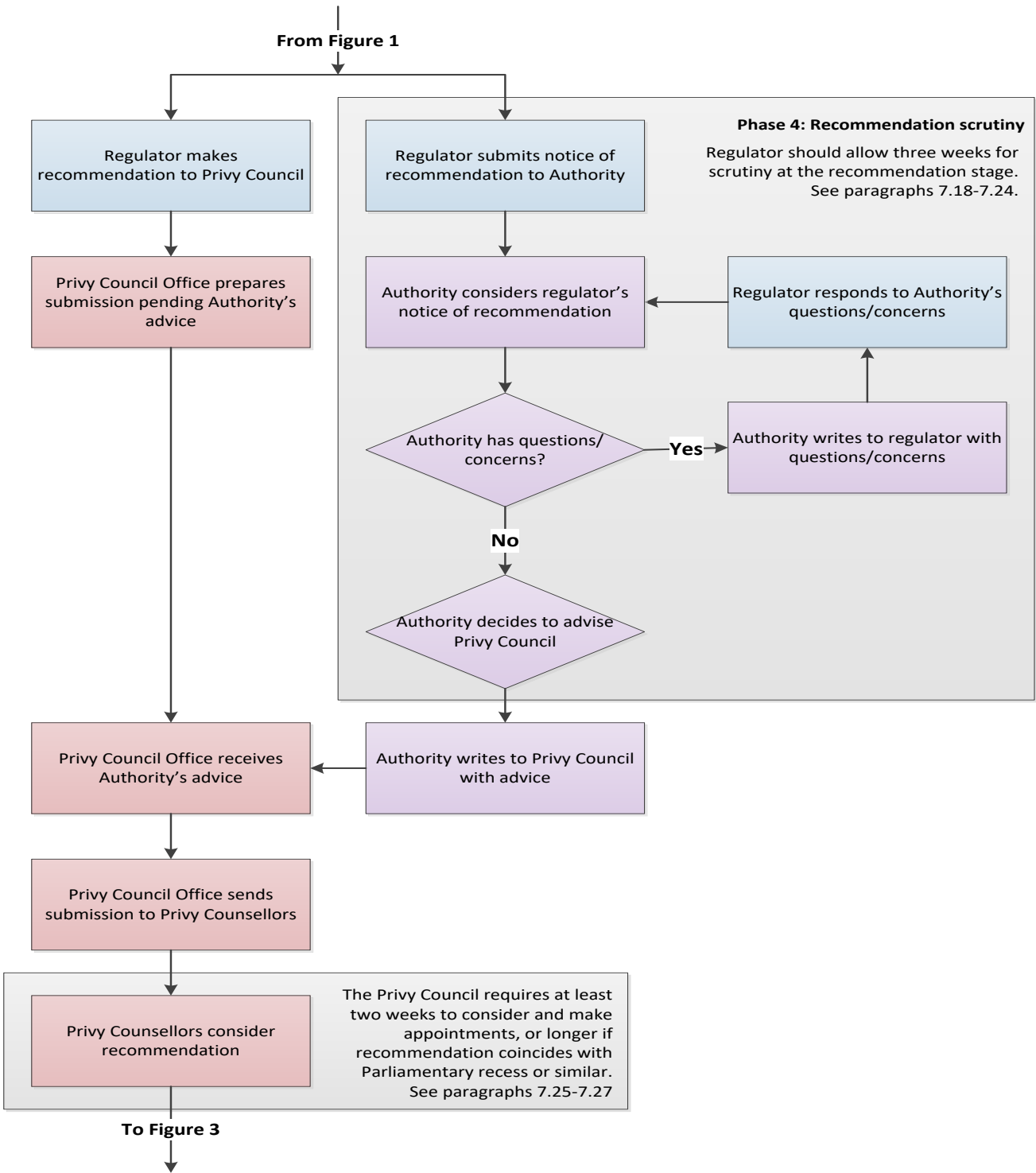
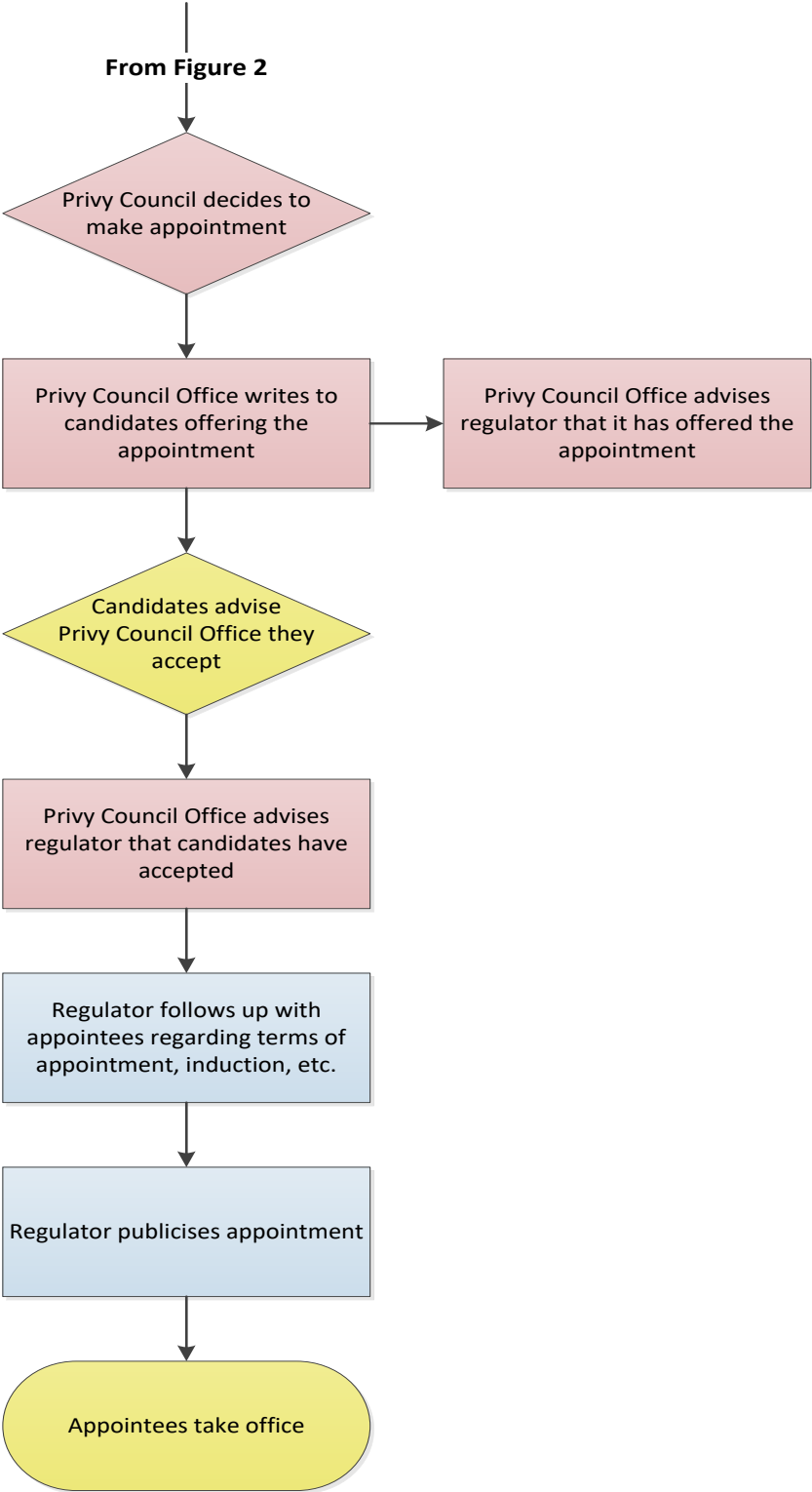


Figure 3:  
Making the appointment



**Professional Standards Authority for Health and Social Care**

157-197 Buckingham Palace Road  
London SW1W 9SP

Telephone: **020 7389 8030**

Fax: **020 7389 8040**

Email: [info@professionalstandards.org.uk](mailto:info@professionalstandards.org.uk)

Web: [www.professionalstandards.org.uk](http://www.professionalstandards.org.uk)

© Professional Standards Authority  
for Health and Social Care March 2019

