Review of the cost effectiveness and efficiency of the health professional regulators

November 2012

professional standards authority

About the Professional Standards Authority

The Professional Standards Authority for Health and Social Care[1] oversees statutory bodies that regulate health and social care professionals in the UK. We assess their performance, conduct audits, scrutinise their decisions and report to Parliament. We also set standards for organisations holding voluntary registers for health and social care occupations and accredit those that meet them.

We share good practice and knowledge, conduct research and introduce new ideas to our sector including our concept of right-touch regulation[2]. We monitor policy developments in the UK and internationally and provide advice on issues relating to professional standards in health and social care.

We do this to promote the health, safety and well-being of users of health and social care services and the public. We are an independent body, accountable to the UK Parliament.

Our values are at the heart of who we are and what we do. We are committed to being independent, impartial, fair, accessible and consistent in the application of our values. More information about our work and the approach we take is available at www.professionalstandards.org.uk.

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

2 CHRE. 2010. Right-touch regulation.

Contents

1. Executive summary

1.1 This advice reports on analysis of the costs associated with UK health professional regulation, and the effectiveness and efficiency of the regulators involved. It is provided in response to a request from the Secretary of State in 2011, and builds on discussion of the cost effectiveness of the regulators' operations in the Command Paper, *Enabling Excellence*.

1.2 Stakeholders need to feel confident that the registration fee charged by regulators is being used to support effective regulation in an efficient manner. As part of this, regulators must balance the level of the registration fee charged on registrants with the actions necessary to fulfil the statutory functions outlined in regulators' legislation.

1.3 Regulators' costs are influenced by a range of factors, for example, statutory duties, requirements in rules, operational processes, non-statutory work, variation in the professions regulated, number of new and renewed registrations, number of internationally qualified registration applications, size of education provider sector, and thresholds for referrals to final fitness to practise hearings. These all can have an impact on the costs of regulation discussed in this report.

1.4 There are limits in the approach we have adopted for this review which should be considered when interpreting the findings. This is the first time that a cost-effectiveness and efficiency review of the health professional regulators has been formally conducted. Therefore the data was collected and processed in a short timeframe, without the benefit of an established and consistent dataset. There are only nine organisations in the study, which limits the sophistication of analytical techniques. The efficiency analysis uses self-reported data from a single point in time, and we are aware that cost savings have been achieved by some regulators in the meantime. The data collected to derive estimates of compliance costs were limited, based on recall and from a self-selecting sample of respondents.

1.5 The effectiveness of the regulators is assessed through our annual performance review process, against 24 Standards of Good Regulation across four core regulatory functions: Standards & Guidance, Education & Training, Registration and Fitness to Practise. The most recent review, in 2011/2012, found that the regulators were generally performing well against most of the standards, but there were areas for improvement, most notably in fitness to practise.

1.6 With help from the Centre for Health Service Economics & Organisation (CHSEO) we analysed the operating costs of the nine regulatory bodies in a single financial year (2010/2011) and examined the question of efficiency in different regulatory functions. The CHSEO model identified four different influences on costs:

- Scale

- Task for each regulator – as judged through metrics assessing the complexity of the task and the extent of regulatory force required to deliver statutory duties
- Effectiveness
- Scale-adjusted efficiency.

1.7 The aim of the analysis was not to comment on absolute efficiency but to identify stand-out differences in relative cost-efficiency among the nine organisations. It confirmed the widespread expectation that scale (size of register) has an impact on efficiency. It found that a doubling the registrant base was associated with a 19 per cent reduction in unit operating costs, and that most scale economies appear to be realised around a registrant base of 100,000 to 200,000. Economies of scale appeared across the core regulatory functions, although the strength of this association varied: Standards & Guidance and Education & Training showed the greatest economies of scale, while Fitness to Practise was least influenced by scale.

1.8 Once the impact of scale on unit costs had been controlled, CHSEO examined the impact of the task facing each regulator through external factors that would have an influence on the cost of regulatory operations. These metrics – such as the length of pre-registration education and training programmes, frequency and extent of harm linked to profession, size of education provider sector and type of allegations made about fitness to practise – were judged to explain some of the variation above and below the expected scale-adjusted unit cost. However, not all variation could be explained. This indicates that there may be opportunities to share cost-efficient operational practices across regulators in some functions.

1.9 There are a number of levers available to improve the effectiveness and efficiency of regulation. As part of this advice, we have assessed regulators' proposals for changes to legislation against a set of criteria established by the Department of Health. Introducing these changes through a section 60 order would help regulators improve the effectiveness and efficiency of their operations. However, in our view this is only one of a variety of options open to regulators and we have been encouraged by the range of non-legislative actions, individually and collectively, that the regulators have reported.

1.10 As this debate continues, we would advise that the role of third parties and the costs they incur is more actively considered. Our report includes an indicative assessment of some of the costs borne by registrants and education providers in complying with health professional regulation. We recommend that this is considered more thoroughly. First, the active participation of third parties such as professional bodies, employers, education providers and the public is essential at different points in the regulatory process, and acknowledging the extent of this input may help prioritise changes to improve the effectiveness and efficiency of delivery of regulatory outcomes. Second, findings that indicate there is no evidence of cost-shifting in the sector may help to identify good practice that may be shared between regulators.

1.11 Our recommendations focus on good practice for regulators in demonstrating cost-effective and efficient working. We advise the Department of Health to proceed with a section 60 order (or changes to primary legislation) to allow for the adoption of good practice more widely across regulatory bodies. We also recommend that this exercise is repeated in two years' time, to maintain the focus on cost-efficient operations and to allow the impact of current improvement activities to be evaluated. Finally, we have identified some issues that may be usefully addressed by the Law Commission simplification review and draft legislation.

2. Introduction

2.1 In June 2011 CHRE were commissioned to provide advice to the Secretary of State for Health on the cost efficiency and effectiveness of the nine health professional regulators we oversee. We were asked to:

- Review the scope for improving the cost efficiency and effectiveness of each regulator
- Identify where significant cost reductions could be made over the next three years
- Set out advice on the priority of the reforms needs to deliver greater cost-effectiveness and efficiency across the regulatory bodies.

2.2 The full text of the request can be found in Annex A. This report provides our advice to the Department.

Background

2.3 The Government raised the issue of the efficiency and effectiveness of the health professional regulators in the 2011 Command Paper on health and social care professionals, *Enabling Excellence*[3], specifically the question of how to reduce the costs of regulation while still protecting the public. The impetus for this question can be found in a number of areas. In recent years the number of complaints and concerns about health professionals raised with the professional regulators has been rising. Fitness to practise processes are usually the most costly elements of a regulator's work and if steps are not taken to improve their cost-effectiveness and efficiency, more resources would be needed to meet this rising demand. This could mean an increase in the fees on registrants at a time when there are other pressures on salaries.

2.4 The Command Paper also reflects on the prevailing economic situation and the impact on pay for workers in the public sector:

‘The Government would not expect registration fees to increase beyond their current levels, unless there is a clear and robust business case that any increase is essential to ensure the exercise of statutory duties.’ [para 2.6]

2.5 Annual registration fees already vary significantly between regulators: at the time *Enabling Excellence* was published they ranged from £76 to £1,000. Some of this variation has been attributed to economies of scale within regulators, but there are likely to be other reasons for some regulators having lower registration fees than others. *Enabling Excellence* suggested this could be a result of a leaner and more business-like approach to work among some regulators. Other factors considered include variation in the use of legal advice or differences in the range of sanctions available during fitness to practise processes.

[3] Department of Health. 2011. *Enabling Excellence: Autonomy and Accountability for Health and Social Care Staff.*

2.6 These three factors – increasing workload, variation in registration fees, and the impact of pay restraint – set the context for our advice alongside the current Law Commissions' review of legislative framework for health professional regulation in the UK and social care professional regulation in England.[4] The request for advice asked us to identify our recommendations as legislative and non-legislative and where we make legislative proposals to consider the fit with thinking emerging from the Law Commissions' review.

Our approach

2.7 There is no established model for assessing cost-effectiveness and efficiency of health professional regulators and to our knowledge this is the first time such an analysis has been attempted. We are aware of studies that have looked at the cost effectiveness of a single regulator or at the impact in a change in regulatory structures on the efficiency and effectiveness of regulation. These studies, in other regulatory sectors, are interesting, but do not help address particular issues of a sector-wide review of health professional regulation.

2.8 Focusing solely on the cost of regulation in the name of efficiency may impede the delivery of effective regulation, threatening public protection and undermining confidence in the regulatory system. We consider that it is strength in both of these aspects of the request for advice that should be encouraged: effectiveness, as the capacity of regulators to deliver their statutory functions to a high standard, with efficient use of registration fees and other resources in meeting this aim.

Effectiveness

2.9 CHRE's annual assessments of regulators' performance allow us to reflect on the effectiveness of individual regulators in the core regulatory functions. Our Standards of Good Regulation focus on the outcomes regulators should be demonstrating if they are to meet expectations of professional regulation. They are, for the purposes of this advice, an agreed and established measure of the effectiveness of a regulator and we discuss recent performance review findings in Chapter 3.

Efficiency

2.10 We commissioned primary research and analysis from the Centre for Health Service Economics & Organisation (CHSEO) to understand more about the scope for efficiencies in the work of the regulators. Their analysis was based on the most recent full year operating cost data (2010/2011) and was informed by metrics relating to nature of the regulatory task facing each organisation.

2.11 We asked CHSEO to consider the costs associated with six areas of activity: the four core functions reflected in CHRE's Standards of Good Regulation, plus continuing fitness to practise and governance. Using operating cost data for each function, alongside other key organisational data, CHSEO have built

[4] Law Commission. 2012. *Regulation of Health and Social Care Professionals Consultation*.

a model to allow us to start to understand where there may be scope for efficiencies. The full report from CHSEO is available on our website.[5]

Limits of the approach

2.12 This is the first time that a cost-efficiency review of the health professional regulators has been formally conducted and there are limitations in the approach which have an impact on interpretation of the findings. CHSEO describe these in their report. The key points to note are:

- The absence of an established process for collecting and comparing expenditure incurred by the regulators, using a consistent set of standards and data definitions, has meant that data had to be collected specifically for the purpose of this review
- While efforts have been made to establish clear and consistent definitions and to validate the submitted data against other sources, much of the data analysed in this review has been self-reported by the regulators (submitted to tight timescales) and is therefore potentially subject to a degree of reporting error
- Furthermore, observing expenditure across just nine organisations has necessarily limited the sophistication of the analytical techniques adopted
- The analysis represents a predominantly desk-based review of self-reported data. The aim of the analysis is to identify the stand-out differences in relative cost-efficiency across regulators at a particular point in time. As such, it does not comment on the absolute efficiency of any particular regulator or of the system as a whole – merely whether there is evidence that some regulators appear to operate more efficiently than others
- In addition, since this review observes regulators at a single point in time – i.e. the year 2010 or its closest annual equivalent – it does not reflect any changes in relative efficiency since then, or any proposed future changes.

2.13 In spite of the limitations of the data and the model, the CHSEO analysis is a useful perspective on the question of the efficiency of the regulators and a valuable starting point for discussions of this nature. However, we must be cautious with any conclusions we draw from these results and further work would be necessary.

Our advice to the Secretary of State

2.14 This advice is presented in three sections:

- Chapter 3 provides an overview of the costs of professional regulation, reflecting on the variation in operating costs across the regulators, the impact of the economies of scale in the sector, and the costs of compliance

[5] www.professionalstandards.org.uk

- Chapter 4 provides an overview of individual regulators, reflecting on effectiveness, the scope for efficiencies and areas of improvement
- Chapter 5 presents analysis and recommendations, reflecting the early agreement with the Department of Health that we would not recommend savings where it was clear to us that it would have a negative impact on public protection.

Acknowledgements

2.15 This report would not have been possible without the cooperation of the nine health professional regulators we oversee and we thank them for their contribution. We are also grateful to the 20 organisations and individuals who responded to our call for ideas, and those who responded to the surveys conducted by CHSEO.

3. Overview of the costs of professional regulation

3.1 The costs of professional regulation are predominantly reflected in the registration fees charged to health professionals. As *Enabling Excellence* observed, and as discussed in the previous chapter, the registration fees charged by regulators to fund the delivery of their functions vary considerably, as does the size of the registrant base, suggesting that there may be some economies of scale in this sector. Table 1 below reproduces data on register size and registration fee from our most recent performance review to illustrate this. These two factors – register size and registration fee – are the major determinants of the budget available to each regulator.

Table 1 – The health professional regulators in 2011/2012

Regulator	No. of registrants*	Fee*	Total income
GCC	2,700	£800 practising £100 non-practising	£3,071,849
GDC	99,518	£576 dentists £120 dental care professionals	£30,695,000
GMC	246,075	£390 with licence to practise £140 without licence to practise	£101,630,000**
GOC	23,935	£270	£5,805,704**
GOsC	4,585	£375 year 1 £500 year 2 £750 after year 2	£3,200,000**
GPhC	66,179	£267 pharmacists £120 pharmacy technicians	£21,237,000
HPC	219,918	£76	£17,404,000
NMC	672,095	£76	£52,781,000
PSNI	2,098	£372	***

** Data taken from CHRE Performance Review 2011/2012*

*** Includes grant income from Department of Health*

**** Data unavailable at time of publication*

Variation in operating costs

3.2 CHSEO's analysis was based upon regulators' operating costs in 2010/2011. Based on the data submitted by the regulators, CHSEO estimated the total operating expenditure for the nine organisations at £195m for 2010/2011 (see Table 2).

Table 2 - Total operating expenditure by regulator in 2010/11

Regulator	Year	Start of financial year	Total expenditure
GCC	2010	01 Jan	£2,971,547
GDC	2010	01 Jan	£26,796,000
GMC	2010	01 Jan	£87,342,000
GOC	2010/11	01 Apr	£5,156,909
GOsC	2010/11	01 Apr	£3,030,577
GPhC	2010/11	01 Apr	£8,339,000
HPC	2010/11	01 Apr	£16,257,000
NMC	2010/11	01 Apr	£44,716,000
PSNI	2010/11	01 May	£870,966
Total			£195,479,999

Source CHSEO

3.3 Within any financial year we can reasonably expect there are items of exceptional or non-core expenditure. CHSEO adjusted the operating cost data for these for each regulator to take this into account (as far as possible). The adjusted figures were the basis for CHSEO's calculations of the operating cost per registrant across six core areas of regulatory activity ('adjusted unit operating cost'). The adjusted unit operating costs for each regulator, by function are reported in in Table 3 below. Table 4 provides details of the mean per cent share of expenditure, and the range of per cent share of expenditure for each function.

Table 3 – Unit operating costs by core function and regulator, adjusted for exceptional and/or non-core expenditure

Regulator	Standards & Guidance	Registration	Education & Training	Fitness to practise	Continuing fitness to practise	Governance	Overall
GCC	£25.18	£104.07	£0.00	£409.75	£73.63	£108.37	£721.00
GDC	£6.09	£63.06	£12.60	£179.10	£2.91	£14.61	£278.36
GMC	£5.82	£64.48	£20.28	£244.37	£11.50	£21.93	£368.39
GOC	£9.77	£31.81	£24.11	£73.30	£19.36	£33.87	£192.22
GOsC	£131.65	£141.60	£52.52	£205.53	£75.14	£104.83	£711.28
GPhC	£6.39	£33.55	£21.53	£73.43	£10.20	£19.52	£164.62
HPC	£2.94	£15.68	£6.87	£45.25	£0.41	£4.43	£75.58
NMC	£5.30	£11.18	£2.66	£41.83	£0.54	£5.99	£67.50
PSNI	£23.49	£47.16	£56.60	£65.90	£103.78	£43.15	£340.07
Overall	£5.68	£27.58	£8.79	£92.97	£4.01	£10.95	£149.98

Source CHSEO

Table 4 – Share of expenditure by function

Function	Average share of expenditure	Range of share of expenditure
Standards & Guidance	3.77%	1.6%–18.5%
Registration	18.32%	10.3%–22.7%
Education & Training	5.84%	0.00%–16.6%
Fitness to practise	62.14%	19.4%–69.1%
Continuing fitness to practise	2.66%	0.5%–30.5%
Governance	7.27%	5.2%–17.6%

Source CHSEO

3.4 These two tables illustrate the range of variation across these nine organisations. We would not expect this range of variation in share of expenditure if the major determinant of operating costs was the size of the organisation. It indicates that operating costs are influenced by more than just economies of scale and suggests that regulators are faced with qualitatively different tasks.

3.5 This is in line with what we have observed through CHRE's ongoing oversight of the regulators. There are a number of different factors that influence how they meet the overall aim of public protection and maintaining confidence in health professionals and themselves, and all of these have the potential to influence the cost of regulation. In addition to the factors highlighted in chapter 2 – increasing numbers of complaints about fitness to practise and the opportunities for economies of scale – the following factors may apply:

- Individual regulators may have other statutory duties beyond these four functions, as set out by their legislation, such as registration of students or businesses
- The rules that regulators make to govern procedures associated with their statutory duties can lead to contrasting approaches and therefore different costs
- Operational processes can vary even if rules are similar
- Regulators may undertake additional work beyond their statutory functions
- Variation in the characteristics of the professions being regulated may have an impact on the nature of the workload the regulators have to manage, for example:
- The number of new and renewed registrations each year

- The number of applications for registration from international graduates
- The number of education and training programmes and institutions that require approval and accreditation
- The number of fitness to practise cases that are referred to a hearing before a panel.

3.6 For the basis of their analytical model, CHSEO identified four sources of influence that theoretically would determine regulators' unit operating costs, and examined these in further detail:

- Scale
- Task
- Effectiveness
- Scale-adjusted efficiency.

We'll consider the first of these here. The impact of the other factors is discussed in the next chapter.

Impact of economies of scale

3.7 CHSEO analysed the operating cost data provided by the regulators to understand more about the impact of scale on efficiency. Their analysis revealed that on average, a doubling of the registrant base is associated with a 19 per cent decrease in unit operating costs and that most scale economies appear to be realised once regulators achieve a registrant base of around 100,000 to 200,000. These findings support the view that the size of the registrant base influences the registration fee that needs to be charged.

3.8 The analysis also found that economies of scale appear to be prevalent across each of the core regulatory functions, although the degree and strength of the relationship varies:

- The assurance of education and training providers and the setting of professional standards exhibit the strongest scale economies
- The unit operating costs of processing fitness to practise complaints appear to be least influenced by scale.

3.9 Based on these observations, CHSEO investigated the potential savings that might be realised, through consolidation of entire regulators or specific functions. These experiments were based upon the model established from scale economies shown by the operating cost data. We highlight these examples here to demonstrate the power of the economies of scale within the sector. They are hypothetical and any estimate of potential savings does not include any assessment of the transition costs that would inevitably arise from the disruption involved in consolidation on this scale. The cost of this has not been estimated and would need to be assessed against any potential future savings. None the less, we consider these data are interesting and illustrate the power of the scale economies in this sector:

- **Consolidation of two small regulators could offer savings of £0.6m in operating costs:** the model predicts a total annual unit operating cost

of £514 for a regulator with 3000 registrants. If two regulators of this size consolidated their activity, the model predicts the total annual unit operating cost would fall to £416 for 6000 registrants

- **Consolidation of one small regulator with a large regulator could offer savings of £1.2m per year in operating costs:** the model predicts a total annual unit operating cost of £514 for a regulator with 3000 registrants, and a total annual unit operating cost of £143 for a regulator with 200,000 registrants. If these two organisations consolidated their activity, the model predicts that the total annual unit operating cost for 203,000 registrants would be £143
- **Consolidation of education and training across three medium sized regulators offers the potential to save £1.1m per year:** the model predicts the annual unit operating cost for education and training for a regulator with 50 programmes to quality assure would be £17,360. If three regulators of similar size (ie 50 programmes each to quality assure) collaborated, the annual unit operating cost across 150 programmes would be £9,873 each.

3.10 The inverse relationship between number of registrants and registration fee is one option that could be explored further if savings are needed and we note that there are recent examples of this that could be evaluated, such as the transfer of hearing aid dispenser regulation from the Hearing Aid Council to the HPC. However, we have not been asked to advise on this. We leave it to the Department of Health to assess the value of investigating this approach further. The significance of this observation for our advice is the limit that scale places on smaller regulators in making savings.

Compliance costs

3.11 Health professional regulation would struggle to fulfil its statutory duties without input from third parties, especially in registration, education and training, and fitness to practise. This activity incurs costs which are met by third parties as they work with the health professional regulators, for example:

- Education and training providers' time and resources in preparing for regulators' quality assurance activities
- Employers' costs where staff are suspended pending the investigation of a fitness to practise concern by a regulatory body
- Registrants' time spent complying with registration requirements
- Costs to witnesses involved in fitness to practise processes and attending hearings.

3.12 The indirect costs have, to our knowledge, been less well quantified to date but they are important in the context of analysing the cost effectiveness and efficiencies of the regulators. Aside from a broad interest in the compliance costs incurred by third parties, we were also interested to understand whether there was any evidence of cost-shifting in the sector, that is,

regulators achieving a low operating cost for a function at the expense of third parties.

3.13 Within the scope of this project we were only able to focus on a subset of compliance costs. CHSEO provided us with some estimates of the costs incurred by registrants and education providers. They considered the time registrants spent registering and renewing their registration with the regulator and the time education providers spent complying with quality assurance requirements regulators establish for pre-registration courses. We were interested to see if there was evidence of any relationship between the direct and indirect costs of regulation.

3.14 This small study, based on data provided by a self-selecting sample of respondents, estimated that compliance costs imposed on registrants and education and training providers in these areas to be equivalent to around £37.5 million a year. Within the small sample CHSEO detected variation in the use of online systems for renewal and CPD reporting. They found that there was a greater mean satisfaction score reported by those who used online methods (7.1 out of 10) than among those who did not (5.9 out of 10).

3.15 We are pleased that CHSEO's analysis did not reveal any clear evidence to suggest that regulators achieve lower unit operating costs by shifting the burden to registrants and education and training providers. More work to investigate the costs of a wider range of compliance activities would be useful to understand more about the nature of these costs and their relationship to the operating costs incurred directly by the regulators.

Discussion

3.16 The CHSEO assessments of the direct costs and compliance costs provide useful benchmarks. The scale economies in this sector are considerable but exploring these further is outside the scope of this request for advice. The findings on compliance costs suggest that this issue would benefit from further study; however we are heartened by the indication from this initial analysis that there is no evidence of cost-shifting onto third parties. This finding may be helpful when considering the scope for more cost-effective approaches in the delivery of particular regulatory functions.

4. Effectiveness and efficiency of regulators

4.1 We need to look beyond economies of scale in the sector to understand the immediate opportunities to improve cost effectiveness and efficiency at the level of the individual regulator. In this chapter we reflect on this recent activity and regulators' proposals for more cost effective and efficient working, alongside assessments of the effectiveness of regulation and the scope for efficiency savings.

4.2 This chapter focuses on individual regulators and summarises evidence on

- Effectiveness, assessed through CHRE's 2011/2012 Performance Review
- Efficiency, via analysis of 2010/2011 operating cost data
- Actions to improve and future opportunities including legislative change, identified by the regulators.

4.3 Prior to the publication of *Enabling Excellence* some regulators were focusing efforts on improvements to the cost effectiveness of their operations, but the command paper and this project provided added impetus to this work. This has been reflected in the establishment of the Directors of Resources group and the inter-regulatory action to facilitate on-going improvements in the interests of cost-effectiveness. We understand that the Directors of Resources are establishing cross regulatory benchmarks to enable financial and operational comparisons between regulators.

Effectiveness of regulators – 2011/2012

4.4 Our annual Performance Review report provides data on each regulator's activity across their four core functions. In our 2011/2012 report[6] we found that the regulators are generally performing well against most of the 24 Standards of Good Regulation and meeting their statutory responsibilities. However, we found that eight regulators' performance either did not meet one or more of the standards, or gave us concern about the consistency of their performance against one or more of the standards.

4.5 It may not be significant for public protection that a regulator fails to meet one standard. It may reflect a regulator's developing policy position, for example around continuing fitness to practise. However, a failure to meet some other standards may have more serious implications for public protection.

4.6 We found that all regulators were effective in meeting the Standards of Good Regulation for Standards & Guidance. In Education & Training, standards were widely being met, with most exceptions in the area of continuing fitness to practise, which is a developing area of regulatory activity. Within the registration function, standards were broadly being met with the exception of one regulator (the NMC) which did not meet a standard relating to public access to information.

[6] CHRE, 2012. Performance Review Report.

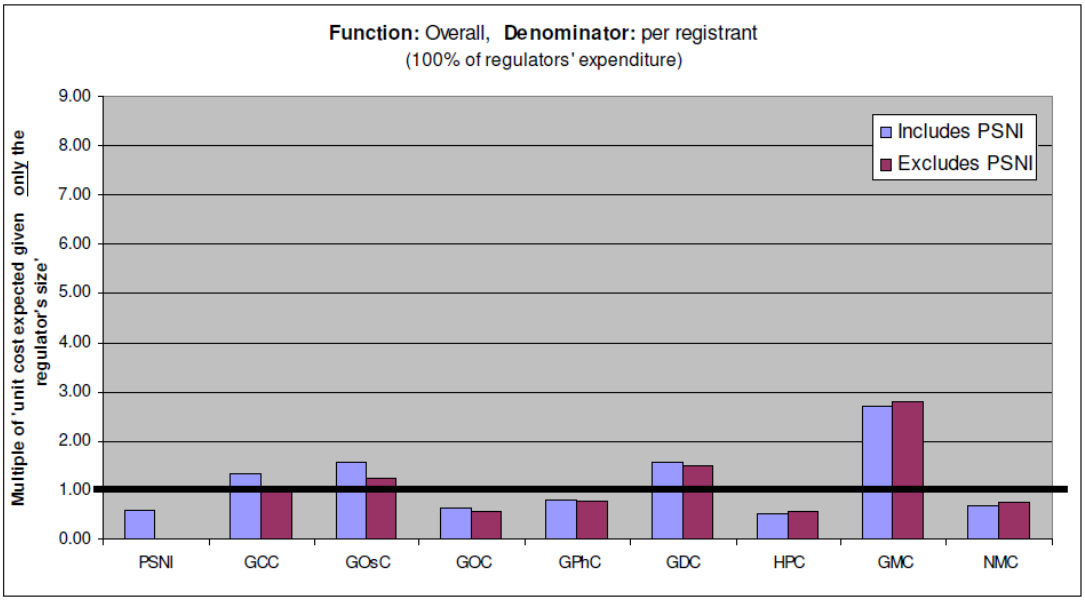
4.7 We observed the greatest variation in performance within the Fitness to practise function. Most regulators are managing their caseload effectively, but some are still struggling to control the core elements of their process, such as timely and robust investigation and decision making. Within this function, risks to good regulation arise from:

- Poor management and administration of cases
- Failure to follow established processes and information security policies
- Delays and poor communication with key participants.

4.8 Fitness to practise is therefore an area where greater effectiveness could be achieved by those who in 2011/2012 were failing to meet the standards.

Efficiency analysis – 2010/2011

4.9 We know from chapter 3 that scale has an impact on operating costs. CHSEO took the 2010/2011 data on unit operating costs and controlled for the impact of the size of each organisation. The variation in scale-adjusted unit costs is represented in section 5 of CHSEO's report in 'distance from the line' charts, the 'line' being the expected unit cost given the size of the regulator. One example of these charts is reproduced below, reflecting the distance from the line chart for total operating costs ('overall').



4.10 CHSEO urge caution when interpreting these distances from the line for the smaller regulators as the model is more sensitive to changes in reported expenditure for these organisations. Furthermore, they carried out two calculations to find the distance from the line – one including the PSNI and one excluding their data. They took this approach because of the differences between PSNI and the other regulators.[7]

[7] The PSNI were operating with a limited sanction set for fitness to practise in 2010/2011. It also has a closer working relationship with other agencies to deliver pharmacy regulation in Northern Ireland, notably the DHSSPSNI.

4.11 CHSEO used these charts as the basis for an investigation into the extent of the variation in unit costs of different regulatory functions. CHSEO reasoned that scale-adjusted unit costs may vary between regulators because of the following factors:

- The 'task' faced by each regulator is different, due to varying complexity and/or regulatory force required
- The level of effectiveness that a regulator operates at may vary
- The level of efficiency that a regulator operates at may vary.

4.12 For their analysis, CHSEO assumed that effectiveness was constant, so by attempting to account for the degree to which each regulator's task varies, it was possible for CHSEO to examine each regulator's scale-adjusted efficiency.

Regulatory task

4.13 CHSEO considered the task facing each regulator using a number of metrics. These are the external factors that could influence the cost of regulation and may vary in their impact across the nine organisations in this study. These either related to the regulatory force required to regulate the profession(s) or the operational complexity of the task and include the following:

- Length of pre-registration education and training for each profession
- Frequency and extent of harm linked to profession
- The source of complaints received about the profession
- Number of professions regulated
- Maturity of profession
- Number of education providers
- Type of allegations made about impaired fitness to practise.

4.14 CHSEO used the metrics to examine how far they could explain the variation in scale-adjusted unit costs above and below the line expected. They looked at the total operating cost (overall) and five of the six core functions. Continuing fitness to practise was excluded as it would be difficult to compare the regulators' activity in this function due to the varying stages of development of this function.

Scope for efficiencies

4.15 CHSEO identified the 'stand-out' differences above or below the line in the 2010/2011 data. These variations are noted in the regulator summaries (below) and indicate theoretical scope for efficiency; that is, where we may have usefully looked for savings in 2010 if we had this analysis at that time.

4.16 CHSEO reported that it would be impractical to aggregate the savings that may be indicated by this analysis across all regulators, not least because among those who are operating ineffectively at present it is difficult to quantify the extra expenditure that would be needed to deliver effective regulation. However, to aid comparison with the opportunities for efficiency

savings offered through realising economies of scale, CHSEO calculated that annual scale-adjusted efficiency savings within a single regulator demonstrating greatest distance from the line overall and not explained by evidence of regulatory task would be around £650,000, based on 2010/2011 data.[8]

Areas of improvement, including legislative changes

4.17 The summary tables (below) also list actions taken and opportunities to improve cost effectiveness that regulators have identified themselves. Some of these are operational changes that have already been introduced. Others proposed by the regulators require a change in their primary legislation. Seven regulators submitted a list of proposed changes they would like to see made to their legislation under section 60 of the Health Act 1999.[9] While offering an opportunity to remedy problematic legislation, using a section 60 order to make a change to primary legislation is not a swift process and can take up to two years. Given the concurrent Law Commissions' review of legislation, the Department of Health indicated that they would need to be persuaded that amending the law now would be a proportionate course of action to take. The Department established criteria for CHRE to use to assess the merit of proposals put forward by the regulators. These were:

- The amendments are required to protect patients and the public
- The amendments will improve the efficiency and effectiveness of the regulatory body
- The amendments are consistent with overall Government policy
- The amendments do not pre-empt or contradict any proposals from the Law Commissions.

4.18 We have already advised the Department of Health where we believe these proposals fit with the criteria they have established in reports submitted between March and September 2012. The tables below highlight those changes we believe meet the Department's criteria and should feature in any forthcoming section 60 orders. The majority of proposals relate to fitness to practise amendments.

[8] These estimated savings do not include any up-front costs associated with transition.
[9] The HPC did not propose any changes, and the PSNI do not fall under the Section 60 legislation.

General Chiropractic Council

Effectiveness – performance against Standards of Good Regulation in 2011/2012

The GCC met the majority of the Standards of Good Regulation. We expressed concerns about weaknesses in performance relating to aspects of fitness to practise, and the management of risks associated with the practice of chiropractic by non-registrants. The GCC is taking steps to address these concerns.

Efficiency - Notable variation in scale adjusted costs according to CHSEO (2010-2011 operating cost analysis)

Education & Training - no expenditure reported for year, unclear why but may relate to the small number of education providers leading to greater fluctuation year on year.

Fitness to practise - above unit cost expected line but caution due to size of organisation. Variation not obviously explained by metrics on regulatory force required, source of complaints, type of allegations, or financial means. Mix of allegations for GCC suggests this function would be more costly than average. Cases more are likely to reach the end stages of the FTP process, which would explain some of the variation. Would need to understand whether this high proportion of cases reaching final hearing is warranted or not.

Overall – above unit cost expected and not obviously explained by the regulatory metrics

Improvements – actions and opportunities

- Reduced annual registration fee in 2012 from £1000 to £800
- Taking steps to reform fitness to practise, using in-house expertise to draft allegations, present cases, and instruct counsel. Stop requirement for affidavit at investigation committee stage, greater use of videoconferencing for meetings to avoid lengthy delays, greater use of expert opinion at IC stage, to avoid unnecessary PCC hearing – predicted to save £380,000 per annum.

Proposals for legislative change

- Replacement of Investigating Committee with case examiners and an interim orders panel
- Replacement of the threshold test of ‘case to answer’ with ‘realistic prospect’
- Power for professional conduct committee to impose a Wasted Costs order.

General Dental Council

Effectiveness – performance against Standards of Good Regulation in 2011/2012

The GDC met all except two of the Standards of Good Regulation during 2011/2012. The standards that have not been met relate to its fitness to practise function. We are encouraged by the work that has been undertaken and look forward to seeing evidence of the impact of the improvement work.

Efficiency - Notable variation in scale adjusted costs according to CHSEO (2010-2011 operating cost analysis)

Registration – appears to have been significantly above the line but this could be explained by metrics, as dentists may demand more regulatory force than the average profession, with the additional responsibility of specialist registers to maintain

Improvements – actions and opportunities

- Anticipated saving £2.4m in 2013, and £4m in subsequent years
- Greater use of digital communications, renegotiating contracts and changing suppliers
- Fitness to practise reforms including improving triage of complaints, reducing panel sizes, paperless working, case management, expert clinical input earlier in cases, introduce case examiners
- Changing size of council and sub-council governance structure.

Proposals for legislative change

- Introduce case examiners to reduce use of Investigating Committee.

General Medical Council

Effectiveness – performance against Standards of Good Regulation in 2011/2012

The GMC has maintained and in many ways improved its performance as an effective regulator across all of its regulatory functions. It does not yet meet one standard, around CPD and revalidation, but it has made significant progress in this area.

Efficiency - Notable variation in scale adjusted costs according to CHSEO (2010-2011 operating cost analysis)

Registration – significantly above the line. Could be explained by metrics, as doctors may demand more regulatory force, with the additional responsibility of specialist registers to maintain and the cost of running Professional and Linguistic Assessment Board

Education & Training – an outlier, but the model is focused on pre-registration responsibilities and GMC have significant responsibilities for provisional registration period and for post-registration education and training (since the 2010 merger with the Postgraduate Medical Education and Training Board) which could explain the variance from the unit cost expected

Governance – GMC is significantly above the line expected, not obviously explained from metrics

Improvements – actions and opportunities

- Annual retention fee reductions in 2012, doctors with licence to practise from £420 to £390, doctors without a licence to practise from £145 to £140
- Three year efficiency programme in place, yielded savings of £8m in 2011, through expanded in-house legal service, reduced panel size from 5 to 3, daily transcripts threshold moved to 15 days from 11 days, in-house IT specialists, expenses policies on travel and subsistence, rent review, greater use of e-communications
- Future plans include business process improvement, contract renegotiations, relocate adjudication team, co-locate registration team with tribunal service staff, reduce council size.

Proposals for legislative change

- Include language proficiency among the categories of fitness to practise impairment
- Remove the test of fitness to practise at the point of transition from provisional to full registration
- Introduce a presumption of erasure for serious criminal convictions
- Powers to test the competence of doctors before returning them to unrestricted practice.

General Optical Council

Effectiveness – performance against Standards of Good Regulation in 2011/2012

The GOC has generally performed well and has met the majority of the Standards of Good Regulation, but, we have concerns relating to two standards for fitness to practise. We note that the GOC is already taking appropriate action to address these concerns.

Efficiency - Notable variation in scale adjusted costs according to CHSEO (2010-2011 operating cost analysis)

Fitness to practise - below the line expected. GOC refer almost all cases to Investigating Committee, but refer fewer onto final hearing than others in this position

Improvements – actions and opportunities

- Annual registration fee reduced from £270 to £260, and low income retention fee from £170 to £160
- Plans to introduce case examiners, pending rule changes agreed with the Privy Council.

Proposals for legislative change

- Allowing the Fitness to Practise committee to impose an immediate order following a review hearing
- Contacting primary care organisations during investigations
- Delegation of Investigation Committee power to direct an assessment, and allowing referral for non-compliance with an assessment direction
- Complaints screening.

General Osteopathic Council

Effectiveness – performance against Standards of Good Regulation in 2011/2012

The GOsC has continued to perform effectively against the Standards of Good Regulation across all four of its regulatory functions and is now taking the opportunity brought about by the *Enabling Excellence* agenda to review its role in the development of the profession (the second of its statutory duties).

Efficiency - Notable variation in scale adjusted costs according to CHSEO (2010-2011 operating cost analysis)

Standards & Guidance – unit cost of around 4 times than that which would be expected of a regulator of this size, not obviously explained by metrics

Registration – unit cost above that which is expected, but caution because of the small numbers

Education & Training – below the unit cost expected, may be due to outsourcing

Fitness to practise - above the line expected – not obviously explained by reference to metrics on regulatory force required, source of complaints, type of allegations, financial means. Mix of allegations is more costly than average. Stand out factor is that more are likely to reach the end stages of the fitness to practise process

Overall – above the line unit cost, not obviously explained by the regulatory metrics

Improvements – actions and opportunities

- Registration fee reduced from £750 to £675 in 2012, with anticipation of further reduction in 2013 to c.£600 arising from ongoing review of costs
- Debate around balance of responsibility for profession development
- Proposing further legislative changes to make efficiency savings, including reducing size of Council
- Cloud computing initiative to reduce ongoing IT support costs.

Proposals for legislative change

- Allow powers to include within the remit of the Investigation Committee convictions for criminal convictions committed outside the UK
- Extend length of time Interim Suspension Order can be imposed
- Removal of lacuna in legislation in relation to interim suspension orders
- Abolishing the role of the screener and create new role of case examiner
- Provide power for administrative removal from the Register for those not cooperating with the fitness to practise process.

General Pharmaceutical Council

Effectiveness – performance against Standards of Good Regulation in 2011/2012

The GPhC has met all of the Standards of Good Regulation apart from one, which relates to the timely progression of fitness to practise cases. However, we consider that it is taking appropriate action to improve its case progression. We also have concerns about the GPhC's performance in consistently complying with the second Standard of Good Regulation for registration.

Efficiency - Notable variation in scale adjusted costs according to CHSEO (2010-2011 operating cost analysis)

Education & Training – above the unit cost expected, but may be explained by the additional work in the pre-registration year and assurance associated with this

Fitness to practise – below the unit cost expected, explained perhaps by closure of cases before Investigating Committee

Improvements – actions and opportunities

- Renewal fees reduced in 2012, pharmacists from £267 to £240, pharmacy technicians from £120 to £108
- Reforms to fitness to practise to reduce costs, such as use of external legal experts, increased use of registrar in less serious cases, fewer investigating committee sittings
- Keen to end 'rolling register' through legislative change.

Proposals for legislative change

- Require evidence of English language competence from EEA applicants for registration
- Remove the detail which specifies registration expiry dates in legislation; and enable the Council to deal with these matters (including the 'rolling register') in rules, following consultation
- Increase the flexibility and efficiency of the initial stages of the fitness to practise procedure
- Requiring third parties to provide information about applicants for registration, as well as information about current registrants
- Require certain European pharmacist applicants and all European pharmacy technician applicants to meet the standards of proficiency for safe and effective practice of pharmacy prior to registration
- Removing the requirements to specify the intervals for routine inspections, and the circumstances for special inspections and other visits, in rules.

Health Professions Council	
Effectiveness – performance against Standards of Good Regulation in 2011/2012 Met the majority of standards of good regulation. We had concerns about performance against two of the standards but we are encouraged by the steps the HPC are taking to address these.	*Efficiency - Notable variation in scale adjusted costs according to CHSEO (2010-2011 operating cost analysis)* **Standards & guidance** – HPC is significantly below the line. Potentially notable scale-adjusted efficiency **Governance** – HPC is significantly below the line expected, not obviously explained by metrics **Overall** – significantly below the unit cost expected
Proposals for legislative change The HPC did not submit any proposals for amendment of their legislation under a section 60 order or details of any plans to change their operational processes as they were focusing on the transfer of the regulator functions from the GSCC to the HPC and adjusting its operational processes. The Department of Health predicted that this transfer would save around £15–20 million each year.[10]	

[10] Paragraphs E77 and E78 included in the impact assessment that accompanied the Health and Social Care Bill 2011 looks at the savings from abolishing the GSCC: http://www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsLegislation/DH_123583

Nursing and Midwifery Council

Effectiveness – performance against Standards of Good Regulation in 2011/2012

Although the NMC has met most of the Standards of Good Regulation we expressed concerns that six of the standards have not been met, and that there are weaknesses in performance when meeting a further two. Our concerns related to the NMC's education, registration and fitness to practise functions.

We are encouraged that the NMC has already recognised the need to focus on delivering real improvements in its core regulatory functions.

Efficiency - Notable variation in scale adjusted costs according to CHSEO (2010-2011 operating cost analysis)

Standards – unit cost around 1.8 times what may be expected for an organisation of this size

Registration – below the unit cost expected – unclear whether this is efficiency or under resourcing

Fitness to practise – near the line, but regulatory force would anticipate that costs would be above it

Overall – below the line, but given the regulatory force required, would expect to be closer to the line, or even above it

Improvements – actions and opportunities

- Reforms to fitness to practise process, through more in-house investigations, legal assessors, direct referrals of interim order cases, earlier involvement of employers.
- Considering a move to online registration, and digital distribution of publications

Proposals for legislative change

- Use voluntary removal more widely, during investigation, when suspended (interim or substantive), subject to conditions of practice order
- Allow removal from one part of the register
- Allow removal of additional entries on the register
- Introduce case examiners to investigate and refer cases
- Registrar powers to deal with fraudulent or incorrect entries to the register
- Interim orders - reduce frequency of reviews hearings and allow orders to stay in place following remittance for a re-hearing
- Power to cancel hearings
- A single committee for fitness to practise
- Establishing a separate registrations appeal panel

Pharmaceutical Society of Northern Ireland	
Effectiveness – performance against Standards of Good Regulation in 2011/2012 The PSNI has maintained its performance as an effective regulator. It continues to meet the Standards of Good Regulation, to the extent that this is possible given the confines of its current legislative framework. We have concerns about inconsistent compliance with one standard for fitness to practise and have encouraged the PSNI to work with other agencies to review practice.	*Efficiency - Notable variation in scale adjusted costs according to CHSEO (2010-2011 operating cost analysis)* CHSEO made no comment on variation from the line of unit cost because of differences observed that limited the application of the model they had developed to the PSNI (see above and CHSEO report, page 20 for further discussion on this point).
Improvements – actions and opportunities The PSNI have been preparing for the substantial reforms to their governance, fitness to practise and continuing professional development functions arising from Pharmacy (1976 Order) (Amendment) Order (Northern Ireland) 2012.	

Discussion

4.19 These summary tables bring together effectiveness, efficiency and improvement ideas. Viewed collectively they reveal that:

- Across the core regulatory functions fitness to practise is the area with greatest room for improvement in effectiveness
- Variation above and below the unit cost expected by the CHSEO model can be explained by the nature of the regulatory task in some circumstances, but not all
- The regulators' reliance on legislative change to improve the efficiency of operations varies.

4.20 The CHSEO analysis also reflects what we noted in Chapter 3 about the variation in regulators' responsibilities and approaches to education and training, although we note the relatively small proportion of operating costs associated with this function.

4.21 We are pleased to see that action has been taken to improve how regulation is delivered among those regulators whose costs appeared above the unit cost expected by the CHSEO model. We are encouraged that those regulators who were assessed to be above the expected unit cost in CHSEO's model using 2010/2011 data have since taken action to reduce their registration fee.

4.22 We see that different regulators take different approaches to the use of the various levers available to improve cost-effectiveness and efficiency. The inter-regulatory initiative under the Directors of Resources is encouraging and we are hopeful that it may offer a collaborative means of improving the cost-effectiveness and efficiency of individual regulators as well as opportunities to demonstrate good practice more widely across the sector.

4.23 In terms of improvement activity, the focus on fitness to practise is understandable. *Enabling Excellence* highlighted this function as a candidate for improving cost-effectiveness. The data collected by CHSEO (see Table 3 and 4) shows how this function often demands the greatest share of resources. The nature of the improvement proposals indicates that the source of some of the demand is considered to arise from the nature of the legislative framework regulators must work within. However, this is not the only determinant, and we have observed through our performance reviews that operational processes and approaches to fitness to practise also influence the overall effectiveness and efficiency the delivery of this function.

4.24 Rule changes need external support to introduce and therefore take longer to implement. Section 60 order amendments to primary legislation require even more input from other agencies, notably the Department of Health, and it can be two years before changes are delivered. Therefore, while we have supported a number of proposals from regulators to change legislation on fitness to practise, with the effect of speeding up the decision making process and providing for resolution of cases outside a formal hearing where appropriate, we do not consider that this is the only route to improving cost

effectiveness, especially in the short term, and a willingness to learn and share good practice should be the norm.

4.25 These changes are predominantly focused on fitness to practise, but there are other changes that can help to improve effectiveness of regulatory bodies now, such as reducing board size. In 2011 we advised the Secretary of State on the question of effective board sizes for the health professional regulators. Following an assessment of literature and research we identified that boards with eight to 12 members were associated with greater effectiveness. At the time of the advice the health professional regulators councils ranged in size from 12 to 24 members. Since this time, the Department has taken steps to reduce the board sizes of the GMC, GDC and NMC to 12 members each.

4.26 It is important to note that the savings that may be realised from this reduction in board size are a consequence of the desire for more effective boards, rather than a reason for the change of policy direction. One of the consequences of our advice will be some benefits to the cost-effectiveness of regulators, through a reduction in the costs associated with recruiting and remunerating the council. The overall cost savings from these proposals cannot be estimated until the final board size has been determined, but the DH have already estimated that the GMC and GDC will save 16-19% of the costs of the appointment campaigns.[11] In July 2012 the GMC indicated that they will save £90,000.

4.27 Finally, we note that five regulators have taken steps to reduce their registration fees. Any recommendations we make in this report must respect these changes. Furthermore, it would also be inappropriate for us to recommend fee reductions for others when they are involved in important work to maintain or enhance their effectiveness. Therefore we will focus on broader themes in our recommendations in Chapter 5 rather than a detailed list of specific changes that the regulators should make over the next three years. This approach is consistent our emphasis on regulatory outcomes, respecting individual regulators' ownership and responsibility for their own operations and processes.

[11] Analysis carried out by DH shared with CHRE.

5. Analysis and recommendations

5.1 Each regulator is responsible for resourcing their work appropriately. The registration fee funds the work that allows regulators to fulfil the threefold purpose of professional regulation:

- Protection of the public
- Declaring and upholding professional standards
- Maintaining public confidence in the profession and the regulatory process.

5.2 The cost-effectiveness and efficiency of regulators means balancing the level of the registration fee charged on registrants with the actions necessary to fulfil the statutory functions outlined in regulators' legislation. As part of this balance, we need to feel confident that the registration fee charged by regulators is being used to support effective regulation in an efficient manner. This is in the context of the limits of regulation. We know from the work we commissioned on the impact of regulation on health professionals' behaviour that there are limits to regulation's ability to protect the public, so we must anticipate an upper limit to a registration fee. However, professional regulation is not a 'free good', and public protection demands some investment to support the delivery of core regulatory functions stipulated in regulators' legislation, so there would be a theoretical minimum to the fee, too.

5.3 Within these limits, it is widely expected that registration fees will be appropriately spent by regulators, and during this work third parties expressed to us their expectation that improvements in the interests of cost-effectiveness will be actively pursued by regulators. Economies of scale play a part, as we have seen, but this is not the only factor and others are influential such as the regulatory force required, legislative constraints and operational processes.

Levers for change

5.4 There are a range of levers available to improve regulatory operations in the interests of cost effectiveness and efficiency. In every instance it is essential that regulators consider the range of actions at their disposal to maintain and improve their effectiveness, and the time needed to introduce more cost-effective and efficient ways of working. It may be that the outcomes being demonstrated by an individual regulator indicates that a change in operational approach is necessary to improve the delivery of a particular aspect of work.

5.5 Changes to rules and legislation take longer to implement. Looking ahead, any section 60 order amendment is not likely to be operational for approximately two years. Therefore, while these proposals for legislative change will lead to improvements in regulation, they will not be felt for some time. Therefore, we will expect that regulators do all they can to improve their processes and demonstrate good practice through more timely interventions that do not rely on legislative change. This includes such actions as on-going

reviews and audits of processes, thorough quality assurance and elimination of errors, working and collaborating with others to share good practice, amending rules where necessary, with support of the Department.

5.6 While we can expect targeted and proportionate legislative amendments through a section 60 order will help to protect the public and allow regulators to deliver more cost-effective and efficient regulation, it is not the only solution. Any plans to introduce change through a section 60 order should be matched by clear strategic and business planning within regulators to allow them to exploit non-legislative opportunities while legislative amendments are being progressed.

5.7 Taking a sector-wide view of the need for changes to primary legislation, we consider there is value in a section 60 order now, in the context of the on-going Law Commission review, to facilitate wider sharing of established good practice in regulation. This would allow adoption of good practice to address issues that have been highlighted through our scrutiny and oversight work over the last few years.

Considering collaboration and cooperation

5.8 CHSEO analysis identified that most economies of scale are realised at around 100,000 to 200,000 registrants. For those regulators with smaller registers, other approaches such as collaboration and cooperation may need to be explored. There are striking similarities between the regulators, for all their differences. These similarities are clearly seen by third parties and instinctively they represent a source of potential efficiency savings. CHSEO's analysis indicates that there would be scope to reduce annual operating costs if regulators cooperated across functions, or in a more widespread manner.[12] Sharing back office functions is often cited as a potential source of savings and the original commission asked us to consider the Department of Health's Arm's Length Body review work to rationalise and deliver efficiencies in back office functions. The Department's review, published in July 2010, identified that integrated business support functions would allow greater efficiencies and economies of scale across the ALB sector. It was suggested that this would yield initial savings in the first 12-18 months.

5.9 However, we are cautious. Shared services schemes have not always delivered the predicted savings and may lead to some organisations incurring greater costs under the shared arrangements than they previously had to bear. Across organisations with different functions and duties the extent of potential overlap and possible integration in the interests of greater cost-effectiveness may be limited to common activities, ie back office functions. However, among organisations of a similar function, such as the regulatory bodies, we may consider a wider approach when seeking efficiencies and increased cost-effectiveness, adjusting for the variation in the size and nature of a function. Our analysis based on regulatory functions offers a different outlook on the issue of cooperating and collaborating, building on the greater similarities between the nine regulators than simply so-called 'back office'

[12] Please note that their analysis did not include the cost of any change programme to alter the delivery of functions and this should be accurately estimated in any options appraisal.

functions. In these circumstances it is encouraging that regulators are working together through the Directors of Resources group to explore opportunities to work together and share good practice.

5.10 In the short term any action of this nature will depend on the willingness of individual regulators, as independent organisations, to work together. In the longer term this is something that could be usefully supported by the work of the Law Commissions in new legislation for this sector, providing a framework to support the delivery of shared functions or services in practice.

Recognising the role of third parties

5.11 Right-touch regulation calls on the variety of agencies involved in healthcare to focus on their core role and responsibilities that contribute to the delivery of high-quality care. It recognises that third parties make an important contribution to the effectiveness and efficiency of the regulators. For example:

- Effective and efficient fitness to practise requires pre-hearing case management. If parties fail to engage with this process, it can lead to increased costs of this function. The willingness of registrants and their defence organisations are necessary for pre-hearing case management to succeed. Supporting the use of pre-hearing case management meetings with costs provisions for non-compliance may help to improve the overall effectiveness and efficiency of fitness to practise
- Complaints from service users and the public that are well handled at a local level by employers and service providers may be less likely to be escalated to regulators, reducing demand for resources
- Arguments for student indexing and registration seek to shift responsibility and cost for establishing and maintaining registers to regulators, who are not well placed to manage these risks, and away from the education providers who are.

5.12 The initial findings from CHSEO on indirect costs are helpful, but the survey limitations mean that we need to do more to understand the costs of complying with the requirements of the nine regulators in this study. Such data would inform discussions about good practice, reflecting the significant contribution made by service users and the public, employers, professional bodies, registrants and education providers to the regulatory system and inform discussions about cost effective regulatory practice.

Recommendations

5.13 We have identified the following recommendations for regulators, the Department of Health and the Law Commission simplification review:

Recommended good practice for regulators

- Regulators should maintain an overview of the sector they are regulating and use this knowledge to influence their strategic planning and resourcing. Over time, the risks associated with public protection and the

demand for regulatory action can change, as seen by the increase in complaints about fitness to practise

- Cost-effective and efficient working demands accurate management information based on data that is meaningful, that informs comparison over time, and is proportionate to the purpose for which it is collected
- In the interests of transparency regulators should report publically on how they allocate and spend registration fee income
- Regulators should share regulatory good practice in the interests of more effective and efficient operations.

Recommendations to the Department of Health

- We recommend that the Department commences work on a section 60 order to allow for the adoption of good practice more widely across the regulatory bodies. Using a section 60 order now would also mean that particular inefficiencies within individual regulators may be eliminated without any detrimental impact on public protection and without the need to wait for the Law Commissions' draft bill. It is our view that any section 60 order should prioritise those changes necessary to facilitate the adoption of existing good practice more widely, rather than those that seek to develop innovation in regulatory practice, given the Law Commissions' concurrent review. The Department may consider that it is possible to support the swift delivery of these changes via primary legislation.
- We recommend that this cost effectiveness analysis is repeated in two years' time. This will help to maintain the focus on the cost-efficiency of regulatory operations, and allow for the impact of the current improvement activities to be assessed and evaluated.[13] We also recommend that the scope of a future project is extended to allow for more thorough analysis of the compliance costs associated with this sector, anticipating that these may increase with the introduction of continuing fitness to practise schemes. Future work could also usefully investigate whether the cost of more active regulatory interventions (such as revalidation) offset expenditure on reactive interventions (such as fitness to practise). Early commitment to a follow-up study would allow a more consistent cost reporting dataset to be established, which would help to address a recommendation arising from CHSEO's report.
- Regulators made a number of proposals for section 60 order changes that we supported in principle but did not recommend to the Department as they related to subjects under discussion in the Law Commission review. We recommend that, should there be for any reason significant delays in the progress of the Law Commission's legislative proposals, the Department provides an opportunity to revisit those proposals, in the interests of cost effective and efficient regulation.

[13] This could include evaluation of the savings yielded by the transfer of regulatory functions from the GSCC to the HCPC.

Recommendations to the Law Commission

- The legislative framework is fundamental to professional regulation and therefore the current simplification review being undertaken by the Law Commission has an influential role in setting the context for future delivery of high-quality regulation. The focus on cost effectiveness should be embedded in the Law Commission's approach to new legislation, and in the new statute itself.
- The challenge we experienced in gathering comparable data for this project to allow CHSEO to analyse scope for efficiencies leads us to recommend to the Law Commission that consideration is given in their review to allow for consistent data sets to be collected and reported by the regulators. This could be achieved for example through common definitions of key points in the fitness to practise process, for example, or origins of complaints
- The new statute should also allow regulators the opportunity to develop efficient approaches to delivering their regulatory functions; for example, registration should include provision for registration periods of more than one year, without the need to amend original legislation through a section 60 order
- The new statute should be clear on the role and purpose of statutory regulation to avoid confusion with roles that sit elsewhere, in line with right-touch regulation.

Conclusion

5.14 This has been a useful exercise. Just as our annual performance reviews offer the opportunity for a sector-wide view of effectiveness and a chance to identify good practice, so this project allowed us to take a different view across the regulatory bodies and identify where there may be scope to improve. We have examined the operating costs of regulators and the levers that are available to maintain a cost-effective and efficient approach to regulating health professionals and CHSEO's analysis has uncovered new perspectives on this issue. Improving cost-effectiveness and efficiency of regulation is a multi-faceted undertaking. The obligation is on the regulators to collect just enough through the registration fee to deliver their regulatory functions effectively. We are encouraged by the savings achieved to date, and those that are anticipated for future years.

5.15 However, the urge to deliver efficiency savings must not lead to a fall in the quality or effectiveness of regulators' performance. The analysis completed as part of this project has indicated that one regulator has underfunded its regulatory activity in the past. We understand this is now being addressed, but we would be extremely concerned if this situation ever arose in the future. The pursuit of savings for registrants must not be at the expense the necessary resourcing of public protection and the delivery of good regulation.

6. Annex A: commissioning letter

Quarry House
Quarry Hill
Leeds
LS2 7UE

7 June 2011

Harry Cayton
Chief Executive
Council for Healthcare Regulatory Excellence
157-197 Buckingham Palace Road
London
SW1W 9SP

Dear Harry

In accordance with section 26(7) of the NHS Reform and Health Care Professions Act 2002, I am writing on behalf of the Secretary of State to ask the CHRE for advice on the matter outlined below. We would appreciate an **interim update on progress to officials by the end of August 2011** and a final report by **December 2011.**

We understand that CHRE has agreed processes for the development of advice. We would request that the work take into account the differing systems in operation across the UK that impact on regulation of the healthcare professions.

The focus of this advice is look at the efficiency and effectiveness of regulators in delivering a high quality regulatory regime. This would build on CHRE's experience and take account of any work that the regulators have in hand which is likely to deliver improvements.

It will be used to inform the development of a vision of what a modern cost effective and efficient regulatory system looks like for the health professional regulators. As such it should be seen as complementary to the ongoing Law Commission Review and should not duplicate the work being undertaken there. In light of this, any recommendations should be clearly identified as legislative and non-legislative in their nature. Where legislative proposals are made we will need to consider the fit with any emerging thinking on the part of the Law Commission. As such, it would be helpful if CHRE could liaise with the Law Commission before drawing up its final report.

It would assist the Secretary of State, if the Council could, in presenting the advice:

(i) take account of the views of the patient and public representative groups, Regulatory Bodies referred to in section 25(3) of the 2002 Act, and healthcare practitioners and their employers;

(ii) provide evidential detail including a range of qualitative and quantitative evidence demonstrating that the exercise considered impact on equality; and

(iii) clearly indicate in the advice the opinions of each of the groups with whom CHRE engaged and of the Devolved Administrations.

We suggest the work could progress through three key phases:

1. Following review of earlier CHRE work such as the 2009 report on Shared Functions and the work that is in hand to identify points of learning from the proposals for OHPA, review what scope there is to improve the cost-efficiency and effectiveness of each regulator within the CHRE's remit. We anticipate that this will also draw on and where relevant, make appropriate links to learning from the review of the Department's arms lengths bodies back office functions.

2. Identify for each regulator areas where significant cost reductions could be secured over the next three years.

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3. Setting out detailed advice to Ministers on CHRE's view of the reforms needed, including the relevant priority of any proposed reforms to deliver greater cost effectiveness and efficiency across the health professions' regulatory bodies. This should include the matters raised under paragraph 3.14 of *Enabling Excellence* in relation to the case for moving to smaller councils. This advice should take account of good practice and also consider what scope there is for appropriate harmonisation across the regulators. Detailed advice should be submitted by December 2011, with an interim update on progress to officials in August 2011. The interim report should include any indicative recommendations that have been identified by that point.

We would welcome sight of the proposed plan for delivery of the advice at the earliest opportunity.

We will agree with CHRE resources required for this work before the work commences and support the necessary business cases required by Government.

I am copying this letter to Chief Executives of the other healthcare regulatory bodies.

Yours Sincerely

Matthew Fagg
Deputy Head Professional Standards

Direct line: 0113 254 6365

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