

COMPETENCIES COVERED

Dispensing opticians: Communication, Standards of Practice
Contact Lens Opticians: Communication, Standards of Practice
Optometrists: Communication, Standards of Practice



Standards of practice

Avoiding a wrong turn: Part 1

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Rules. Regulations. Advice. Guidance. It sometimes feels that it is impossible to keep up-to-date with regulatory and statutory changes that occur in our day-to-day lives as dispensing opticians and optometrists. Such changes, along with the multitude of advice provided by the various optical bodies and the various facets of the NHS, reminded the author of part of the words of a song by Sir Paul McCartney: *But if this ever-changing world in which we're living, makes you give in and cry.*

The world of optics and optometry certainly has changed and there will be times when we all wish we could give in and cry. However, change must be embraced and, in most cases, it is in the best interests of both the patient and practitioner so we just get on with it. Two interesting and important changes brought about by the General Optical Council (GOC) in recent years were the introduction of the Standards of Practice for Optometrists and Dispensing Opticians, and changes to the Fitness to Practise (FtP) rules. While these two areas can be considered to be disparate, there is in fact a relationship between the two.

GOC REGISTERS AND FUNCTIONS

The GOC was established by the original Opticians Act 1958. It is one of 12 organisations in the UK known as Health and Social Care Regulators. These organisations

oversee the health and social care professions by regulating individual professionals. The GOC is the regulator for the optical professions in the UK and currently registers around 29,000 optometrists, dispensing opticians, student opticians and optical businesses. The statutory function of the GOC is to: *'...protect, promote and maintain the health and safety of members of the public by assuring the health and protection of those who use the services of optometrists and dispensing opticians'*. The GOC has four core functions which are:

1. Setting standards for optical education and training, performance and conduct.
2. Approving qualifications leading to registration.
3. Maintaining a register of individuals who are qualified and fit to practise, train or carry on in business as optometrists and dispensing opticians.
4. Investigating and acting where a registrant's fitness to practise, train or carry on in business is impaired.

The GOC holds registers for optometrists, dispensing opticians, student optometrists and dispensing opticians, specialty practitioners and bodies corporate. The registers are publicly available to search online. Before joining the registers, all optometrists and dispensing opticians, including students, are required to have completed, or currently be studying for, a GOC-approved training course. They must meet certain standards of education and

performance, and comply with the GOC Standards of Practice for Optometrists and Dispensing Opticians.

Registrants have to provide the GOC with a health declaration, and details of any criminal convictions, cautions or investigations, or disciplinary proceedings which have been taken against them or are currently pending. Full registrants working in practice (both full-time and part-time) must also hold professional indemnity insurance (which includes adequate cover for a period of time after the registrant has stopped working), show that they have completed the minimum required amount of continuing education and training (CET) and agree that they have read and will comply with the GOC's Standards of Practice.

With reference to criminal convictions, this does not include speeding tickets which are usually in the form of a fixed penalty notice and incur a standard fine and points. However, serial offenders be warned as 12 points is considered to be a 'totting up offence' and may result in a court appearance and a possible conviction. All convictions have to be declared to the GOC and a totting up offence has been heard by an FtP hearing. You may think that this is rather harsh but the GOC are concerned with the public perception that will accompany any conviction for whatever reason and the possibility of bringing the profession into disrepute.

This article has been approved for 1 CET point by the GOC. It is open to all FBDO members, and associate member optometrists. The multiple-choice questions (MCQs) for this month's CET are available **online only**, to comply with the GOC's Good Practice Guidance for this type of CET. Insert your answers to the six MCQs online at www.abdo.org.uk. After log-in, go to 'CET Online'. **Questions will be presented in random order.** Please ensure that your email address and GOC number are up-to-date. The pass mark is 60 per cent. The answers will appear in the April 2018 issue of Dispensing Optics. The closing date is 12 March 2018.



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STANDARDS OF PRACTICE

In recent years, the GOC has made efforts to make the FtP process more efficient. Past FtP cases have taken an inordinate amount of time to complete – often causing unreasonable stress on the registrant concerned. The GOC FtP rules were changed in 2013 and are discussed later in this article.

Complaints will always be a fact of life but the GOC does actually want to help to keep registrants out of the FtP process altogether. This is essentially the aim of the GOC's Standards of Practice as this publication is designed to help registrants be as clear as possible about the GOC's expectations in order for them to avoid complaints.

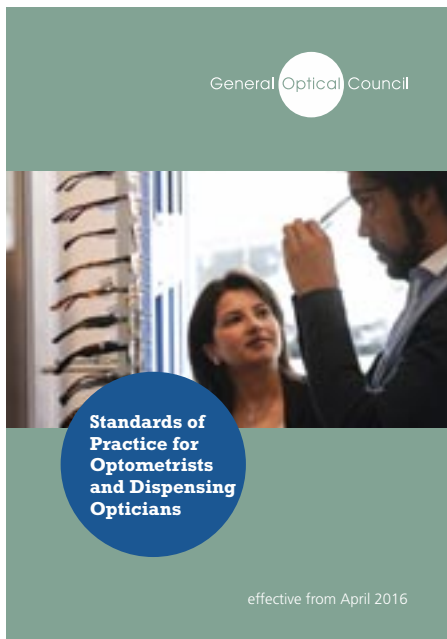
The Standards of Practice replaced the GOC's Code of Conduct for Registrants which, was simply a list of 19 statements. The Code of Conduct consisted simply of statements that registrants had to follow whereas the Standards of Practice provides much more detail about what those statements mean and, therefore, what the expectations of the GOC actually are.

For example, part of the previous Code of Conduct states that registrants must "work with colleagues in the ways that best serve patients' interests." The new Standards of Practice tweaks this slightly to say that registrants must "work collaboratively with colleagues in the best interests of patients". They also give details about what this means in practical terms. For example, this includes referring a patient only when it is clinically justified, sharing information appropriately and ensuring that registrants only work with colleagues who are appropriately qualified.

The Standards of Practice came into effect on 1 April 2016 and, as mentioned above, as part of the annual retention process, all practitioners must declare that they have read them and will abide by them.

There are also Standards for Optical Students. Previously, students had to abide by the same Code of Conduct as fully-qualified registrants. However, the Standards for Optical Students reflect that students are still developing their skills, so are more proportionate than holding students to the same standards as fully-qualified practitioners during the period of their study. The GOC is also developing Standards of Practice for optical businesses that will complement the Standards of Practice for individual registrants.

The Standards of Practice are also designed to enable developments in optical practice that would benefit patients and the public, particularly as the professions develop in the future. They also ensure consistency with developments across the



GOC standards allow for clinical judgement

healthcare sector, such as the duty of candor and with the standards expected of other healthcare professionals. This reflects the fact that practitioners are likely to be working more closely with colleagues in other parts of the health and care system.

The Standards of Practice are not a rule book, and are designed to leave room for practitioners to use their clinical judgement. However, the use of the word 'must' indicates a mandatory requirement, for example, registrants must comply with the law and must meet the GOC's standards.

The GOC has provided additional guidance on two of the 19 standards. These are Standard 3: *Obtain valid consent* and Standard 19: *Be candid when things have gone wrong*. Both of these standards will be discussed in Part 2.

FITNESS TO PRACTISE

Investigating and acting where a registrant's fitness to practise, train or carry on in business is impaired is one of the core functions of the GOC. The term *fitness to practise* (FtP) was introduced following changes to the Opticians Act that took place in 2005 when the idea of serious professional misconduct was abandoned and replaced with the broader concept of impairment of FtP.

Anyone can make a complaint about a registrant. This includes members of the public, employers and other registrants. The professions regulated by the GOC fall within the category of notifiable occupations. This means that the police will inform the GOC when a registrant is convicted of a criminal offence or receives a police caution for an offence.

The GOC is able to proceed with an investigation against a registrant if concerns

about their FtP, fitness to train or fitness to carry on in business comes to its attention – even if a complaint has not been made. The GOC does not get involved with complaints relating to the quality of optical goods and/or services, which are dealt with by the Optical Consumer Complaints Service.

Reasons that may result in a complaint that a GOC registrant may not be fit to practise include:

1. Poor professional performance
2. Physical or mental health problems affecting their work
3. Inappropriate behaviour
4. Being under the influence of alcohol or drugs at work
5. Fraud or dishonesty
6. A criminal conviction or caution
7. A finding by another regulatory body

If an issue regarding an optometrist or dispensing optician is brought to the attention of the GOC, it is required to investigate to protect the public. Depending upon the issue of concern, the registrant may find themselves subject to an FtP investigation, the outcome of which could lead to removal (erasure) from the GOC register.

The GOC's overall purpose is, therefore, to ensure a high standard of conduct and clinical practice and to safeguard the health and safety of the public. The FtP system is crucial to the GOC's statutory function as well as the more general need to establish and secure confidence in the professions of optometry and ophthalmic dispensing.

The GOC's guidance for FtP panel members is comprehensive to say the least and reminds FtP panel members that any decision in an FtP hearing should "adequately protect members of the public or be in the wider public interest". The concept of 'public interest' is all-encompassing and includes maintenance of public confidence as well as the GOC's statutory obligations to professional standards and public protection. The FtP system operates with all these points in mind.

Unsurprisingly, most FtP hearings involving optometrists concern allegations of a clinical nature. An allegation against a dispensing optician that results in an FtP hearing usually concerns fraud, theft, supervision issues, sexual offences or offences relating to the use of illegal substances. Numerous FtP cases have been heard after a registrant has been accused or convicted of theft and fraud.

The author, as a witness, has been involved in several cases where a dispensing optician was accused of supplying an appliance that was of an 'inferior quality' compared to the product that the patient was expecting to receive and paid for. These



cases usually involve progressive power lenses where the patient was 'dispensed' with a freeform design but supplied with a lens of a conventional design.

Other cases have involved registrants who were accused of inappropriately claiming General Ophthalmic Services (GOS) payments for example, submitting a GOS spectacle voucher when spectacles were not actually supplied or claiming an inflated voucher value. Such actions can involve large sums of money and if the allegation is proven, can often result in an erasure order. Erasure, the most severe sanction, will in theory prevent the same action happening again. Registrants who are guilty of serious criminal offences, including sexual offences, will not only be viewed as a threat to the public, but will have potentially damaged the integrity of the profession's reputation. This fact is important and will be considered during an FtP hearing.

WHAT HAPPENS IF AN ALLEGATION IS MADE?

If the GOC receives a complaint/allegation or concerns about a registrant it will take steps to investigate. These steps include:

- Obtaining further information from the person making the complaint/allegation (the complainant)
- Writing to the registrant to notify them that a complaint/allegation is being investigated
- Asking the registrant for details of their current employer (employers will be notified). Writing to the employer to inform them that the registrant is currently under investigation (a legal requirement)
- Notifying the Department of Health that a registrant is currently under investigation (another legal requirement)

- Obtaining evidence from individuals and organisations other than the complainant. This can include the procurement of copies of patients' clinical records or statements from key witnesses. If the issue relates to a criminal conviction or caution, evidence gathered by the police or court transcripts may be required

FITNESS TO PRACTISE RULES

On 1 April 2014, new FtP rules came into force (SI 2013 No. 2537 The General Optical Council (Fitness to Practise) Rules Order of Council 2013). The new rules were intended to speed up the FtP process, helping the GOC to act faster to protect the public and reduce the stress that long investigations can cause for registrants.

The main changes were:

1. Introduction of case examiners as the principal decision-makers at the current Investigation Committee stage
2. Greater ability to screen out allegations which are not FtP complaints
3. The GOC registrar will have the power to refer the most urgent cases directly to an FtP hearing
4. The GOC registrar will be able to refer some cases to an interim order hearing

The biggest change was the introduction of case examiners. Whereas previously all cases were considered by the GOC Investigation Committee, cases are now decided by pairs of case examiners (one lay and one registrant). However, cases can still go to the Investigation Committee in instances where the two case examiners do not agree, or to direct an assessment of a registrant's health or performance. The case examiners will consider the case and will determine what action needs to be taken.

Options for the case examiners include:

- Take no further action

- Provide advice to the registrant about their future conduct
- Request that further investigation is carried out
- Issue a warning to the registrant
- Refer the complaint to the FtP Committee
- Request that the FtP Committee urgently consider whether the registrant should be made subject to an interim order
- Recommend to the Investigation Committee that the registrant should undertake a performance or health assessment

FtP can be impaired by any one of the seven factors listed above. However, there is no statutory definition of 'fitness to practise' and a finding of misconduct or deficient professional practice, for example, does not necessarily mean that a practitioner's FtP is impaired.

An FtP panel will consider whether or not a registrant's conduct is remediable, whether it has already been remedied and whether it is likely to be repeated. FtP panel members will look favourably on a registrant who has already remedied clinical failings as the registrant is then considered less likely to repeat them. In other words, FtP panel members are asked to look forward, not back when making decisions about a registrant's current FtP.

As an example, consider the situation where a complaint was made against a registrant who misdiagnosed a microbial keratitis as a bacterial conjunctivitis. Even though the changes to the FtP rules were designed to speed up the process, the delay between the complaint being made and an FtP hearing taking place can be considerable – often two to three years. However, this gives the registrant ample time to address any shortcomings in their skills, knowledge and overall competency before any hearing takes place.

In this example, the registrant could undertake specific CET/CPD relating to the differential diagnosis of the red eye or spend time in a corneal/red eye clinic within the hospital eye service. Such action would be welcomed by an FtP panel and would certainly be considered to be a mitigating factor when deliberating possible sanctions against the registrant.

Other mitigating factors would include good character history and insight into the alleged failings. Conversely, aggravating factors would include a lack of insight into failings, repeated failings, and abuse of trust, premeditation and attempts to conceal wrongdoings.

If a registrant is described as 'fit to practise', it means they have reached the standard of health, character, knowledge, skill and behaviour necessary for them to undertake their job safely and effectively. Where FtP is found to be impaired, the FtP Committee may impose a sanction. The purpose of any sanction is not to punish the registrant but to protect patients and the wider public interest.

The sanctions available to the committee starting with the least severe are:

1. Financial penalty (up to maximum of £50,000)
2. Conditional registration (ordinarily to be followed by a review) for up to three years
3. Suspension (ordinarily to be followed by a review) for up to 12 months
4. Erasure

The FtP Committee would also normally direct that there be a review of a conditional order or a suspension order before they expire. This is because before a suspension or conditions are lifted, the FtP will need to be reassured that the registrant is fit to resume practise either unrestricted or with conditions or further conditions.

Also, where conditions have been imposed, the registrant must demonstrate to the committee that they have satisfied the conditions imposed at the previous hearing. The committee will also need to satisfy itself that the registrant has fully appreciated the gravity of the offence, has not re-offended and has maintained his or her skills and knowledge and that the registrant's patients will not be placed at risk by resumption of practise or by the imposition of conditional registration.

GOC registered optometrists and dispensing opticians must ensure that they do not bring the profession in to disrepute. Any conviction, even non-optically related, could lead to an FtP investigation and the registrant could be removed from the GOC register. If a registrant has received a criminal conviction which resulted in a custodial sentence (whether it is immediate or suspended), the GOC registrar can refer the case directly to the FtP Committee. This is known as 'automatic referral' and complaints and allegations which fall into this category will not be considered by the case examiners or Investigation Committee.

INTERIM ORDERS

If a case examiner, or the GOC registrar, is of the opinion that the FtP Committee should consider making an interim order, they can direct that the matter should be referred to an interim order hearing. An



Follow the rules and keep up-to-date to avoid a complaint

interim order can either suspend a registrant from the register or place conditions on their registration. Interim orders take effect immediately and are reviewed every six months. They usually remain in place until the investigation has been completed and the substantive FtP Committee hearing has completed its business.

An interim order is only imposed on a registrant if the FtP Committee is satisfied that it is necessary for the protection of members of the public, is otherwise in the public interest or is in the interests of a registrant.

CONCLUDING POINTS

In the event of an FtP complaint being made against you:

- Acknowledge the complaint
- Contact your insurer immediately
- Keep full records of what you have done for each patient
- Keep a record of all communications between yourself (or the patient's representative) or your employer
- Draft an account of your dealings with the patient, or your employer, and your comments on their complaint, for your information while fresh in your mind
- In the event of an FtP hearing, make sure that your insurer provides legal representation
- Don't admit liability to anyone, including your employer
- Don't offer to settle any claim
- Don't offer any costs in connection with a claim or complaint or do so without prejudice
- Don't disclose the nature or terms of your insurance
- Don't make a statement or comment on any situation that could give rise to a claim of negligence

- Don't alter the patient's records. Remember that the view of an FtP hearing is that if something was not recorded, it probably did not happen

As previously mentioned, FtP hearings involving optometrists are in the main clinical in nature. However, for dispensing opticians, FtP hearings usually concern theft, sexual offences or offences relating to the use of illegal substances. Fraud, forgery or supervision issues are also areas that can give rise to an FtP hearing. So keep up-to-date, follow the rules and don't panic. And finally, if you are unfortunate enough to be called to an FtP hearing, make sure that you turn up.

Full details of the GOC complaints and investigation procedures are available on the GOC website. Part 2 will discuss GOC guidance on obtaining valid consent and being candid when things have gone wrong.

FURTHER READING

- The General Optical Council *Standards of Practice for Optometrists and Dispensing Opticians*
- Calver R (2016) Fitness to practise: promoting standards, protecting the public or punishing practitioners? *Optometry in Practice* 17 1 27 - 34
- The General Optical Council *What happens if a complaint is made about me?*

Part 2 will appear in the February 2018 issue.

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