

## **ADVICE & GUIDELINES ON PROFESSIONAL CONDUCT FOR DISPENSING OPTICIANS**

### **SECTION 2: REGULATION OF PROFESSIONAL ACTIVITIES**

#### **GENERAL PROFESSIONAL CONDUCT**

1. a. Dispensing opticians shall always place the welfare of the public, who require their professional services, before all other considerations. They shall behave in a proper manner towards their patients, the GOC, ABDO and professional colleagues and shall not bring them or the profession into disrepute. (See Appendix F – GOC Code of Conduct). They must maintain a high standard of behaviour, integrity and competence, bringing to bear all their knowledge, skill and expertise in serving the public. Dispensing opticians should be aware that conviction for any non-optical offence may cause them to appear before the GOC for bringing the profession into disrepute, and subsequently be reported to ABDO.

b. Dispensing opticians should be aware of local NHS/PCT protocols, especially if working within the NHS.

c. Dispensing opticians should have a policy for chaperoning certain groups of vulnerable adults and children – see Appendix H.

2. Dispensing opticians must recognise their limitations by seeking further advice and guidance; or refer elsewhere when appropriate. In particular, those wishing to practise in specialised areas must be sure of their ability to do so, by obtaining specialist qualifications as available. All dispensing opticians have a duty to maintain and develop their professional competence throughout their careers, since only in this way can they continue to offer the best possible service to the public.

#### **MAINTAINING PROFESSIONAL CONDUCT**

##### **Indemnity Insurance**

3. a. It is a legal requirement that all dispensing opticians in practice and others under their supervision are covered by an appropriate level of professional indemnity and products liability insurance, and that they review the level of cover annually. Possession of such insurance is a condition of full membership of ABDO and is available (inter alia) from the Association.

b. Practitioners working in more than one business, as locums for example are reminded that cover afforded by an employer of one business will not necessarily extend to another. Practitioners covered by an employer's insurance are advised to acquaint themselves fully with the extent and nature of the policy.

c. Members should note that claims can be made many years after an event. They must ensure that cover continues in circumstances where they change insurers, take a career break or retire.

d. **Students' PI Insurance:** The GOC require student registration, and student insurance. Student insurance cannot be issued independently by ABDO's insurers, but must be included on the Supervisor insurance. ABDO's insurance company (via ABDO) must be notified, and details given. For student CLOs, the situation is the same, student CL insurance cannot be issued, and the student CLO must be insured on the supervisor's policy.

#### **Association with Lay Businesses (Unregistered Sellers).**

4. Some unregistered persons and unenrolled bodies corporate engaged in selling spectacles may employ registered dispensing opticians. While it is not unlawful to accept such employment, ABDO recognises that to do so could raise important legal and ethical issues and may create problems.

5. ABDO takes the view that it might constitute serious professional misconduct for a registered dispensing optician to enter, or to remain in the employment of, or in professional association with, lay persons (that is, not a doctor, hospital authorities, registered opticians or enrolled bodies corporate) whose business is carried on without regard to the principles of good professional conduct. The unregistered seller remains subject to no control but the employed registered dispensing optician, working full or part time, would be considered by the GOC as responsible for adhering to GOC policies and ABDO guidelines. Moreover, the fact that a registered dispensing optician is on the premises all or part of the time does not mean that all of the available service will be provided by registered personnel. It is misleading to suggest otherwise to the public. If any title is to be used, it should indicate the registered dispensing optician's name and qualifications and hours of attendance. It is also important to ensure that, in accordance with the Sale of Optical Appliances Order of Council 1984, the prescriptions of the following categories of patients are dispensed by or under the supervision of a qualified registered medical practitioner, qualified registered optometrist or qualified registered dispensing optician:

- a. Children under the age of 16.
- b. Those who are registered blind or partially sighted.

The provision of contact lenses to the public is also subject to the supervision of the above registered practitioners whose qualifications comply with the GOC Contact Lens (Qualification etc.) Rules 1988 (as amended).

#### **Spectacle Prescriptions.**

6. Registered dispensing opticians are reminded that under the Sight Testing (Examination and Prescription) (No 2) Regulations 1989 immediately following an eye examination, whether NHS or private, irrespective of whether the prescription is dispensed at the same practice or elsewhere, the prescriber is required to give the patient a copy of any prescription issued (together with an NHS voucher if appropriate) or a statement indicating that no prescription is necessary. Although the onus is on the prescriber, a registered dispensing optician has a moral public duty to ensure compliance. This enhances the reputation of the profession; the prescription is the patient's entitlement and must be given back to the patient on completion of the dispensing.

## **Particulars to be included in a prescription or statement**

7. A prescription provided in fulfilment of the duty imposed by section 24(2) of the Opticians Act shall include:-

Particulars of any spherical power of each lens to be included in the appliance prescribed and, where appropriate, particulars of the cylindrical power (including particulars of its axis), prismatic power (including particulars of the orientation of the prism) and near addition of each such lens. (BS No: 2738-3/91 Part 3).

- a. The date of the testing of sight.
- b. The name and address of the patient and, if he/she is under the age of 16, his/her date of birth.
- c. The name and practice address of the prescriber who carried out the testing of sight.
- d. The address at which, or the name of the hospital, clinic, nursing home or other institution at which, the testing of sight was carried out.
- e. The PD is not a required part of the prescription. It is in the patient's best interests that their spectacles be dispensed by a registered optician and that the patient's PD is considered to be part of the dispensing, rather than prescribing process.

## **Issue of Duplicate or Copy Prescriptions**

8. When complying with requests from patients for either a copy of an existing prescription from practice records, or the provision of refractive details from an existing pair of spectacles, great care should be taken to ensure that circumstances cannot arise where the practice, or members of staff within a practice, could be alleged to have carried out a sight test and issued a prescription in contravention of the Opticians Act 1989, Section 24. When issuing a copy of the prescription from practice records, particular care should be taken to ensure that any document issued is authorised with the words...

"Certified copy of the prescription for spectacles issued by...(name of practitioner who carried out the sight test)...following a sight test on...(date of test)..."

and then issued under the signature of the person certifying the details. When providing refractive details from an existing pair of spectacles, any documents issued should be authenticated with a similarly worded caveat...

"Certified as the details of the lenses in...(details of frame)...worn by...(name of patient)...on the ...(date in question)..."

Confirmation of prescriptions must be in a written form to eliminate any possibility of error and given only with the patient's express permission. (Data Protection Act 1998)

## **SALE AND SUPPLY OF SPECTACLES**

### **Guideline**

9. The dispensing optician should ensure that all patients are fully advised of their needs for spectacle frames and lenses and that all spectacles are properly measured for fit and are fitted to the patient and are checked against relevant standards.

## Advice

10. The dispensing optician should ensure that, when dispensing or supplying spectacles to a patient, all appropriate measurements are taken for the lenses and frames, that checks are made against the relevant standards and that the spectacles are fitted to the patient to ensure that the lenses are fitting in the correct plane, at the correct height, and that the frames are adjusted to hold the spectacles in the correct position.

11. Registered dispensing opticians, optometrists, and medical practitioners are allowed to dispense spectacles to a prescription that is more than 2 years old. They may also make up spectacles without a prescription e.g. by duplicating an existing pair of spectacles. Practitioners should be aware that if the patient has not had a recent eye examination, they may - by making up spectacles to an out of date prescription - inadvertently encourage patients to delay having another eye examination. This should only be done in exceptional circumstances and the practitioner should consider what is in the best interests of the patient, and the reasons recorded on the patient's record card.

12. The Association believes that the dispensing of all spectacles or other optical appliances sold or supplied should be carried out by or under the supervision of a registered optician; this applies even if the sale could otherwise be conducted by an unregistered person. The practitioner should decide what is in the best interests of the patient. Dispensing opticians/ optometrists should ensure the following when dispensing or supplying spectacles to a patient:

- a. The purpose and function of the appliance is fully and clearly explained to the patient and should be suitable for their particular needs;
- b. Facial, frame and other appropriate measurements are taken as necessary and recorded prior to ordering the appliance;
- c. The spectacles are appropriate, accurate, CE marked and of an appropriate quality;
- d. The finished spectacles are checked on the patient for fit, function and comfort and any necessary adjustments made before they are taken from the practice. This may include checking against a letter chart to ensure the correct acuity is obtained;
- e. Patients know and understand the financial costs of the professional services and products offered before they are asked to commit themselves to payment. To this end, patients should be informed in advance, itemising the options available for lenses and frames and of any additional features such as coatings or tints. Similarly itemised statements of account should be rendered. (The conditions of the Consumer Protection Act Part III and the Price Marking Order 2004 [SI 102 of 2004] must be complied with).

## Supervision of Dispensing

13. When supervising dispensing, the actual work of supplying the spectacles can be delegated but the supervising practitioner remains responsible for the whole process of supervised dispensing. The supervising practitioner must be on the premises at key stages of the dispensing.

14. The registered dispensing optician should ensure, when supervising a person who is dispensing or supplying spectacles to a patient, that the supervisee is aware of the need to:-

- take appropriate measurements for the lenses and frame,
- check the lenses against the relevant Standards,
- fit the spectacles to the correct plane and height, and
- adjust the frames to hold the spectacles in the correct position.

The supervising practitioner should satisfy themselves that any person under their supervision is able to carry out these measurements or adjustments, or where this is not the case intervene as necessary to ensure these are carried out correctly.

15. Where the supply of spectacles is made under the supervision of a registered professional, the supervisor retains full responsibility for the supply. The supervisor must be on the premises, aware of the procedure and in a position to intervene if necessary to ensure that no untoward consequences to the detriment of the patient can arise from the actions of such a person who is being supervised. In the case of *General Optical Council v Vision Direct (1989)* it was held that supervision by a dispensing optician or optometrist means that the dispensing optician or optometrist is able to exercise his or her professional skill and judgement as a clinician. It does not mean supervision by someone performing a purely clerical or even managerial function, even if the person who is performing that function happens to be a dispensing optician or optometrist.

### **Remote dispensing**

16. The supply of spectacles without practice support or individual consultation regarding patients' measurements, visual requirements, verification and aftercare can put the patient at risk. A dispensing service should not be provided by a procedure where the aforementioned measurements, requirements, verification and aftercare cannot be ensured. These important patient safeguards should apply to any dispensing or supply of spectacles whether regulated or unregulated. If a registered dispensing optician or optometrist is supervising the dispensing or supply of spectacles s/he must ensure that they are in a position to intervene in the dispensing or supply and exercise clinical skill and judgement if necessary.

### **Ready made reading spectacles**

17. As with any other optical appliance, when selling or supplying a pair of ready made reading spectacles the dispensing optician has a duty of care to satisfy him/herself that the appliance is suitable for the patient's needs.

## **Information**

### **Regulation**

18. Statutory regulation does not permit the dispensing of spectacle prescriptions by unqualified persons to children under 16, and patients who are registered as severely visually impaired or visually impaired (blind or partially sighted).

**(Opticians Act 1989, s.27)**. Sales of spectacles to persons in these classes can only be made by or under the supervision of a registered practitioner.

19. Various statutory restrictions apply to dispensing by unregistered persons.

**(Sale of Optical Appliances Order 1984)**. One of the restrictions is that prescriptions must be less than 2 years old.

## Standards

20. On-line access to the relevant Standards is available to ABDO members at Appendix C.

## Sports eyewear

21. Pending a Privy Council Order prescription sports eyewear can only be supplied under the same conditions as other optical appliances.

## 'In-House' glazing

22. Practitioners are advised that because lenses and frames are viewed as medical devices, practitioners must register with the MHRA if they assemble spectacles. This would apply to practices which carry out their own glazing, as well as those where the frame is traced and the lenses are edged remotely before being sent to the practice for assembly into the new frame. This only applies to new products so practitioners do not need to register if they are simply reglazing patients' own frames. There is a one-off fee for registration. The registration form can be downloaded from the ABDO/AOP/FODO/ websites.

## Duty to Refer

23 a. Every registered dispensing optician has a statutory duty to immediately refer a patient to a registered medical practitioner or directly to a hospital for appropriate medical advice if it appears that a patient is suffering from disease or injury of the eye. In such cases a referral letter must be completed and contain enough information such that the need for referral is explained so that the correct action is taken by the recipient practitioner. The dispensing optician's name and qualifications, the patient's name, address and date of birth, the last examination date and the visual acuities on that date (if known). If possible the visual acuities at the referral date and the symptoms with the duration of the symptoms' signs as observed by gross external examination of the eye or, if appropriate by slit-lamp bio-microscope examination along with relevant details of the patient's history including details of current and recent patient medication should be included. It must be stated that no ophthalmoscopy was performed. A referral made directly to a hospital is necessary if the condition is potentially sight threatening. The patient must be given a casualty note and advised to attend the Accident & Emergency Dept immediately. A copy of the casualty note must be sent to the patient's GP with a covering letter. The reason for referral should be explained to the patient, and it is good practice to support this in writing. Copies of referral letters must be kept with the patient record card. In due course the patient should be contacted and the record card annotated with the result of the referral. For non-urgent referrals, a full eye examination should be recommended as soon as possible.

b. If in the professional judgement of a registered optician there is no justification to refer a person consulting him/her to a registered medical practitioner, or that it would be impracticable or inexpedient to do so, the registered optician may at his/her discretion decide not to refer that person on that occasion; but in that event he/she:

1. shall record on the record card of the person consulting him/her:
  - i. a sufficient description of the injury or disease from which the patient appears to be suffering.

- ii. the reason for deciding not to refer on that occasion.
  - iii. details of any advice tendered to the patient.
  - iv. an account of any action taken; and
2. if appropriate, and with the consent of the person consulting him/her, shall inform that person's general medical practitioner of those matters recorded.

A registered dispensing optician has the option of referring the patient to an optometrist. In that event, it will then be the optometrist's responsibility to refer or not, but it should be recorded that the referral has been made to the optometrist together with the details of the injury or disease from which the patient appears to be suffering and of any advice tendered to the patient. The registered dispensing optician must be fully cognisant of all ocular emergencies which would necessitate referral directly to a hospital.

### **Patient's Records**

24. It is essential in the interests of both registered dispensing optician and patient that full and accurate records, either hard copy or electronic, are kept and stored in a systematic and efficient manner. The retention period for records must be greater than the statutory limitation period. These periods will cover:

- i. the statutory limitation period which allows claims to be brought within:
  - a) 6 years for contractual matters;
  - b) 3 years for personal injury. The three year period runs from the time that someone becomes aware that they have grounds for a claim therefore reliance cannot be made on claims being brought within 3 years of the patient being seen).
- ii. The NHS requires NHS patients' records to be retained for seven years.

Minors, that is children under 18 years old, are entitled to bring claims in respect of personal injury upon reaching their majority, i.e. on becoming 18 years old, and for three years thereafter. Therefore their records should be kept until they are 21 years old, and it is recommended that they are kept until they are 25 years old.

**Note: In view of the fact that hospital records should be kept for 10 years, it is suggested that it is wise to use a blanket 10 year rule for the retention of all adult patient records. This does not conflict with the fifth data protection principle because the purpose of retaining patient data includes complying with the dispensing optician's ongoing legal and professional obligations. Before destroying any patient record dispensing opticians should satisfy themselves that they will have no further need for that record. Disposal should be done securely.**

25. The dispensing records remain the property of the practice, however the Data Protection Act 1998 confers upon living patients and, in certain circumstances, other interested persons, the right of access to records held by, amongst other medical and paramedical practitioners, registered dispensing opticians. For deceased patients similar provisions are made in the Access to Health Records 1990. Patients also have a right to an explanation of the records and a right to copies. A charge of up to £50 can be made for supplying copies (if the dispensing optician thinks it appropriate). Where records are considered to be inaccurate, the patient has a

right to have those records corrected. Accordingly it is necessary that a registered dispensing optician's records are complete, intelligible, reliable and maintained in a way which would not produce difficulties or embarrassment if examined by persons unconnected with the holder's profession or practice. The Act allows 40 days for response to an application for access to records. However, under the Access to Health Records Act, the practitioner may withhold the record if, in his or her judgement, it would be harmful to the patient to release it, although such a decision must be justified in the event of a dispute. Further information can be found at [www.bma.org.uk/ap.nsf/content/accesshealthrecords](http://www.bma.org.uk/ap.nsf/content/accesshealthrecords)

26. If a registered dispensing optician is uncertain about the appropriate response, it is important that, without undue delay, legal advice or advice from ABDO is sought.

27. ABDO takes the view that it is the duty of all registered dispensing opticians to ensure that information of a personal nature entrusted to their care be treated as confidential and divulged only with the patient's consent or when disclosure is required by law. Recorded information should include:

- a. Full name, address and daytime telephone number.
- b. Date of birth.
- c. Occupation (necessary knowledge for giving advice and guidance in dispensing spectacles).
- d. Recreation (for the same reasons as Occupation).
- e. General Practitioner's name and address.
- f. The Prescription.
- g. Measurements, tints, coatings etc, facial measurements and centration distances.
- h. Details of any other services provided – i.e. low vision aids.
- i. Charges and fees.

**Note:** If the General Optical Council (GOC) requests information from the dispensing optician, the dispensing optician should, subject to any statutory restrictions, promptly give the GOC the information that is requested. If such information is not supplied within fourteen days the GOC may seek a court order requiring that the information be produced (unless this is prohibited by any other enactment e.g. the Data Protection Act.)

### **Electronic Records.**

28. Many practices are now equipped with electronic record systems. In such cases it is necessary to register as data users under the terms of the Data Protection Act 1998. Details and application forms are available from the Data Protection Register, Information Commissioners Office, Wycliffe House, Water Lane, Wilmslow, Cheshire SK9 5AF, Tel. 01625 545745. It is important that compliance with the Data Protection Act's requirements concerning patient information, including publication of information to third parties, for example other opticians, and medical practitioners, is observed. In particular, patient permission should be obtained to record data and screen privacy should be maintained to ensure such data remains confidential.

### **Ownership of Records**

29. The owner of the practice where a sight test takes place owns all records, including the clinical records. However to avoid any dispute over ownership it is advisable to include a clause clarifying ownership in any contract of employment, including any agreement with a temporary employee or a locum.

30. The confidentiality of records means that they should, in no circumstances, be passed on in a change of ownership of the practice to other than a registered optician, registered medical practitioner or enrolled body corporate and the patient must be notified. Should patients themselves choose another registered practice it is appropriate to provide a copy of the dispensing records on request as being in the best interests of all concerned, it is advisable to obtain signed authorisation from the patient before passing on the copy of the dispensing record.

31. Registered dispensing opticians who end employment in a practice in order to set up their own practice or work for a new employer must not use the records or their knowledge of the records of their previous practice for the purpose of canvassing for potential patients for their new practice.

### **Supplementary Dispensing Services**

32. Registered dispensing opticians may wish to offer their patients other supplementary services to meet particular needs. If the registered dispensing optician is satisfied that he/she possesses the necessary knowledge, either by existing training and examination or by additional knowledge and skill acquired through continuing education and training, such services could include:

- a. The provision of contact lenses (see Section III – Contact Lens practice).
- b. Low vision assessment, advice and dispensing. See Appendix D – LVA practice).
- c. Delegated Functions in support of the medical or optometric profession.
- d. The provision of and advice on eye protection appliances.

**Note:** The practitioner should have information available about other services nationally and locally, e.g. local Social Services, Partially Sighted Society, RNIB etc.

33 a. When supplementary dispensing services are offered it is the registered dispensing optician's responsibility, to ensure that the precise nature of each service and the reason for it (advantages and disadvantages) are fully understood by the patient, together with the fees or costs to be paid, before the patient is asked to accept the service.

b. ABDO is not able to recommend fees to members. The Fair Trading Act 1973 (incorporated in the Enterprise Act 2002), in seeking to remove anti-competitive practices, prohibits associations and similar bodies from setting scales of charges for members to follow or from recommending fees. Fees are entirely a matter for negotiation between the purchaser (usually the patient's employer or the patient) and the practice undertaking the work. You should make a reasonable charge for the cost of the time, labour and materials needed to undertake the job.

34. Certain delegated functions e.g. refraction, visual fields, muscle balance, tonometry etc., may be carried out by a registered dispensing optician with the appropriate skills and knowledge, or at the direction of an optometrist or registered medical practitioner, as part of a full eye examination.

### **Disposal of a Practice**

35. When a practice is sold or otherwise disposed of, or when a particular practice association ends, registered dispensing opticians have a duty to ensure the continuing welfare of patients. In the case of closure, arrangements should be made

for the transfer of patients' records to another practice. When the practice is transferred, the public, and in particular existing patients, should be informed and the new owners identified. (Also please see paragraph 8).

### **Dispensing Equipment**

36. In order to comply with the sale and supply of spectacle requirements, the equipment in a practice should be sufficient to discharge a registered dispensing optician's responsibilities effectively and efficiently. The following equipment is recommended:

- Back vertex distance (BVD) gauge
- Frame rulers
- Interpupillary distance gauge
- Demonstration lenses
- Frame heater
- Frame repair and adjustment equipment
- Focimeter
- Verification locating and marking apparatus
- Progressive power templates
- Lens thickness callipers
- Lens measure
- Temple head width callipers
- Facial gauge

### **Continuing Education and Professional Development.**

37. Dispensing opticians must abide by rules relating to compulsory education and training. This includes periods during which the dispensing optician is suspended from the register of dispensing opticians, or when career breaks are taken. Dispensing opticians wishing to practice in specialised areas should be sure that they have the necessary training and skills and comply with the specialty CET rules.

38. Those who cease practise (for domestic, health or other reasons) should ensure that they undergo appropriate CET before returning to practice.

### **Supervision of Trainees**

39. Certain professional functions are regulated by law:

- a. The testing of sight, as defined in the Opticians Act 1989, Section 24 (Testing of Sight) and 26 (Duties to be performed on sight testing) and in the Sight Testing (Examination and Prescription) (No 2) Regulations 1989
- b. The fitting of contact lenses (Section 25 of the Opticians Act 1989).
- c. The dispensing of spectacle prescriptions of a kind that unqualified persons are not permitted by law to dispense (Section 27 of the Opticians Act 1989).The method of supply of all optical appliances including ready-made reading spectacles, on the premises of a registered optician or enrolled body corporate.

40. Those registered dispensing opticians who are charged with the supervision of trainees in practice have a considerable obligation. Supervisors should ensure that their trainees are registered with the GOC.

41. Individual supervisors of pre-registration trainee dispensing opticians and contact lens opticians must be approved by ABDO and comply with the following requirements:

- a. Be registered with the GOC for more than two years.
- b. Undertake to give continuous personal supervision to the trainee and accept full responsibility for his/her actions - i.e. be on the premises whilst the trainee is attending any patient. In the event of temporary absence from the practice due to ill health or holidays, it is the supervisor's personal responsibility to ensure another suitable registered optician will provide the same degree of supervision. For an extended period of cover (say in excess of four weeks) approval for such arrangements must be agreed with ABDO.
- c. Ensure the practice facilities and equipment are to the standard normally required for providing a full dispensing service.
- d. Ensure that the trainee receives practical experience in all areas of practice covered in the GOC Dispensing Core Competencies.
- e. Give the trainee the opportunity to attend appropriate tutorial and revision courses.
- f. Take an active interest so that the trainee is familiar with the practical examination syllabus, observes and comments on the trainee carrying out spectacle dispensing and adjustments and discusses appropriate selected courses of action.
- g. Permit a representative of ABDO to visit the premises at any time considered reasonable by appointment.

### **Disability Discrimination Act 1995**

42. 'An act to make it unlawful to discriminate against disabled persons in connection with employment, the provision of goods, facilities and services or the disposal or management of premises; to make provision about the employment of disabled persons; and to establish a National Disability Council.' [8<sup>th</sup> Nov 1995] This advice is a reminder and update of advice produced in consultation with the AOP, the ABDO, the College, FODO and the Disability Rights Commission.

### **Who Has Rights Under The Act?**

43. Disabled People - A person is disabled if he/she has a physical or mental impairment, which has a substantial and long-term adverse effect on his/her ability to carry out normal day-to-day activities. The effect must be substantial (that is, more than minor or trivial), and adverse, and long term (that is, likely or is likely to last for at least a year or for the rest of the life of the person affected):

- People who have had a disability within the definition are protected from discrimination even if they have since recovered.
- Physical or mental impairment includes sensory impairment. Hidden impairments are also covered (for example, mental illness or mental health problems, learning disabilities, dyslexia, diabetes and epilepsy).

### **Duty as an Employer**

44. This duty applies to all employers regardless of how many staff you have. You must not discriminate against a disabled person in relation to the recruitment or retention of staff. There are four forms of discrimination which are unlawful:

- Direct discrimination

- Failure to comply with a duty to make reasonable adjustments
- Disability-related discrimination
- Victimisation of a person ( whether or not he is disabled)

The duty to make reasonable adjustments applies for example, to selection and interview procedures and the premises used for such procedures, as well as to job offers, contractual arrangements and working conditions. Reasonable adjustments may include:

- Making adjustments to premises
- Allocating some of the disabled person's duties to another person
- Transferring the person to fill an existing vacancy
- Altering the person's hours of working or training
- Assigning the person to a different place of work or training
- Allowing the person to be absent during working hours for rehabilitation, assessment or treatment
- Giving, or arranging for, training or mentoring (whether for the disabled person or any other person)
- Acquiring or modifying equipment
- Modifying instructions or reference manuals
- Modifying procedures for testing or assessment
- Providing a reader or interpreter
- Providing supervision or other support

This is not an exhaustive list and it might be reasonable for you to take other steps. The employer owes the duty to the individual employee and does not have to anticipate the disabled person's requirements. However, although there is no duty under Part 2 of the Act to anticipate the needs of disabled people in general, you should keep all your policies under review and consider the needs of disabled people in the process. It would also be sensible and cost-effective to consider access issues during any major alterations to the work place environment.

Access to Work - In the event that your employment duties are triggered when an employee becomes disabled, you employ a disabled person or when a disabled person applies for a job you may get help from 'Access to Work' (AtW). AtW provides advice and practical support to disabled people and their employers to help overcome work related obstacles resulting from disability. In addition AtW pays a grant, through Jobcentre Plus, towards any extra employment costs that result from disability.

The Disability Symbol - The Disability Symbol is a recognition given by Jobcentre Plus to employers who have agreed to meet five commitments regarding employment, retention, training and career development of disabled employees:

- To interview all disabled applicants who meet the minimum criteria for a job vacancy and consider them on their abilities
- To ensure there is a mechanism in place to discuss, at any time, but at least once a year, with disabled employees what can be done to make sure they can develop and use their abilities
- To make every effort when employees become disabled to make sure that they stay in employment
- To take action to ensure that all employees develop the appropriate level of disability awareness needed to make these commitments work

- Each year, to review these commitments and what had been achieved, plan way to improve on them and let employees and Jobcentre Plus know about progress and future plans

Policies, Procedures and Practices - As an employer you may be liable for any discrimination which happens in the work place whether or not you are aware of it! You should therefore have anti-discriminatory policies and practices and make all staff aware of them. If such policies and training can be demonstrated an employer may be able to defend themselves in a legal action.

**A primary area of attention is training for all staff on your policy towards disabled people and their legal rights, disability awareness and disability etiquette.**

**Your responsibilities as an employer under the DDA**

Scope	<ul style="list-style-type: none"> <li>• All employers covered by DDA except Armed Forces</li> <li>• Practical work experience, whether paid or unpaid, is covered</li> <li>• Provisions on discriminatory advertisements</li> <li>• Employment services are covered</li> </ul>
Types Of Discrimination	<p>Four kinds of discrimination</p> <ul style="list-style-type: none"> <li>• Direct discrimination</li> <li>• Failure to make reasonable adjustments</li> <li>• 'Disability-related discrimination'</li> <li>• Victimisation</li> </ul>
When Is Justification Relevant?	<p>Justification is NOT relevant in cases about:</p> <ul style="list-style-type: none"> <li>• Direct discrimination</li> <li>• Failure to make reasonable adjustments</li> </ul> <p>Justification is relevant in cases about Disability-related discrimination</p>
Harassment	Provisions on harassment

**The Legal Requirements as a Service Provider**

45. Unlike the duties as an employer the duties as a service provider are anticipatory and the duty is owed to all disabled people. It requires the service provider to plan ahead.

You must not discriminate against a disabled person because of their disability. This could include:

- **Refusing to serve a disabled patient**
- **Offering a disabled patient a lower standard of service**
- **Offering a disabled patient a service on worse terms**
- **Failing to make reasonable adjustments to the way services are provided to disabled patients**
- **Failing to make reasonable adjustments to the physical features of service premises, to overcome physical barriers to access.**

A service provider will have to take reasonable steps to:

- Remove the feature; or
- Alter it so that it no longer has the effect; or
- Provide a reasonable alternative means of avoiding it; or
- Provide a reasonable alternative method of making the service available

The legislation does not deal with the above concepts hierarchically: the question is what is reasonable. In broad terms, reasonableness will depend on the type of service being provided; the nature of the service provider and its size and resources;

and the effect of the disability on the individual disabled person. The Disability Rights Commission's statutory Code of Practice (Rights of Access: Goods, Facilities, Services and Premises) covers the legal position and may assist service providers' legal advisors to give best advice. However, the fact remains that the DDA is an evolving piece of legislation and the concept of what is reasonable will develop and change as legal precedents are set.

**You must** make reasonable adjustments for disabled people.

- **Undertake a disability access audit in each of your practices covering not only physical access but other issues such as lighting, colour schemes, signage etc.**
- Review all your policies, procedures and practices and make reasonable changes to anything which might make it more difficult for a disabled person to use your services
- Take reasonable steps to introduce equipment or other methods which make it easier for your disabled patients to access your services. Examples would be to provide a range of information in larger print for the visually impaired or the provision of a text telephone for deaf patients or an induction loop for patients who use a hearing aid
- Assess the physical features of your premises and make reasonable adjustments to overcome physical barriers to access
- Consider alternative methods of providing a service. For example home-visits for wheelchair -users

### **Good Practice - Training**

46. All your staff must be aware of the law. They need to know that services for disabled patients are more than just a part of good customer care. All staff should have disability awareness training covering the etiquette of serving patients with the full range of disabilities.

**Training should be carried out by suitably qualified trainers.** The Disability Rights Commission website has a list of licensed trainers who have been licensed to use the DRC Best Practice Trainers Resource Pack to train others in DDA implementation. There are also numerous organisations and companies who can provide training for your staff either on-site or by distance learning. The DRC has a list of organisations and companies which provide training; however, it is not exhaustive and does not imply endorsement. When commissioning training identify what you need for your staff, and explore with potential trainers what they are willing and able, to undertake.

### **47. How Friendly, Or Otherwise, Is Your Practice to Disabled Patients?**

- Do all your plans include disability issues?
- Do you know who your disabled patients are and their requirements?
- Are your premises user-friendly? Can your disabled patients get in and out easily?
- Are there any physical barriers to access on your premises?
- Is your complaints procedure accessible? For example, could a deaf person complain easily?
- Is your information clear and accessible? For example, could a visually impaired person access practice information in larger print or Braille?

## Enforcement and Remedies

48. To minimise the possibility of a County Court action or employment tribunal emphasis should be put on internal grievance procedures to handle any claims of disability discrimination. If a claim is upheld the court can make a declaration, award compensation for financial loss, injury to feelings and issue an injunction to prevent future discriminatory acts. In a case in 2003 Purves v Joydisc where an appeal against the level of damages was heard, the Court of Session found that £750 is the least that can be awarded 'for the very slightest injury to feelings'. If a claim is upheld at employment tribunal compensation can be claimed for loss of earnings, personal injuries, injury to feelings and aggravated damages.

## 49. Conclusions

- **Good access, both physical and environmental, is good business!**
- **Complying with the law and striving for good practice in patient care can only reflect well on your practice and the profession generally**
- **Don't assume that the DDA doesn't or won't apply to you**
- **Be fair. You should treat disabled customers exactly like any other customers and be prepared to make reasonable adjustments**
- **Consider whether you need to change the way you treat your customers or employees in the light of the DDA and act on it.**

## Mental Capacity Act 2005

### Providing spectacles and contact lenses to the adult patient with learning disabilities

50. No-one can give or withhold consent to the provision of optical appliances on behalf of an adult patient without an appropriate court order. The practitioner must first assess the patient's capacity to make an informed decision about the appliance. *The practitioner must then assess whether the patient is able to make a decision about whether to have the appliance.* If the patient lacks the capacity to decide, provided the patient complies with the process the practitioner may provide the appliance which s/he judges to be in the patient's best interests. *To have protection from liability regarding the provision, the practitioner must have a reasonable belief that the patient lacks capacity to make relevant decisions.* It would be appropriate for the practitioner to make a note in the patient record of the reason.
51. Where the practitioner considers a patient to be capable of giving consent to the provision of an optical appliance, s/he should carefully explain the implications. If the patient then withholds consent, s/he must not be provided with the spectacles or contact lenses.
52. If spectacles are to be provided particular care should be paid to the dispensing. The patient may not be able to indicate when a spectacle frame is uncomfortable and irritating. Careful fitting and advice on care of spectacles is essential if they are to be of benefit to the patient.
53. Patients should be treated with dignity and respect at all times.

## **Domiciliary Visits.**

54. A domiciliary service is intended for those who are house-bound. A registered dispensing optician offering this service should ensure that the required high standards of care, conduct and professional responsibility are provided.

55. Registered dispensing opticians carrying out domiciliary visits should be readily identifiable by name to the patient. As patients retain the right to freedom of choice of dispensing it is important that, should a dispensing be requested, a range of spectacle frames and/or other appliances (such as magnifiers etc.) appropriate to the patient's need, be made available.

56. Proper patient records must be made, kept secure and confidential. Domiciliary visits should not be viewed as a 'one-off' service. Specific arrangements must be made for a contact address and telephone number so that patients have access to a local contact for queries, advice and any necessary aftercare service in connection with the dispensing.

## **Consumer Complaints**

57. Wherever possible complaints should be given priority and speedily resolved within the practice. Unwillingness on the part of any registered dispensing optician to deal with a complaint does not reflect well upon either the individual or on the profession as a whole. It is therefore essential that a sound procedure for handling complaints exists and can be explained to patients by all members of staff.

58. ABDO fully supports the independent Optical Consumer Complaints Service, (OCCS) which was established to handle complaints that could not be resolved in-house. Any complaint against a member who refuses to accept any finding of OCCS will render himself/herself liable to investigation for conduct unbecoming membership of ABDO, and could result in GOC fitness to practise procedures being instigated.

59. It is important that when other organisations are involved – including the GOC, Primary Care Trusts (PCTs), Local Health Boards (Wales), Health Authorities, Scottish Executive, OCCS etc., information requested by such an authority is provided as promptly as possible, subject to the guidelines in paragraph 24.

## **Professional Publicity**

60. Although the GOC has ceased to issue rules on publicity, ABDO takes the view that any advertising by a dispensing optician should not bring the profession into disrepute.

61. Items for sale should be clearly marked with their price. It is very important that members of the public who might purchase the product or service are fully aware of prices and fees charged. Registered dispensing opticians should encourage the public to use eyecare and eyewear services and may employ acceptable publicity.

62. It is universally recognised that the success of the practice depends upon the public reputation it enjoys for the quality of the services and product provided. The public is the only true guide in this matter, since no registered dispensing optician can be competent to claim, directly or indirectly, that his/her quality of service is superior to that of professional colleagues. Any claim of superiority therefore carries a serious risk of being misleading and should not be made.

63. Registered dispensing opticians should observe their professional obligation to avoid publicity or advertising which could bring the profession into disrepute or which their colleagues or the public could find distasteful.

64. Considerable care has to be exercised when offering discounts or special offers to ensure that the public is not misled in any way. Complete details of any conditions connected with an offer or discount must be included in any advertising material and prominently displayed in the practice. Failure to do so results in prosecution being brought by Trading Standards Officers and involves GOC fitness to practice procedures. False claims of 'sale' items will incur similar action and penalties. (See Consumer Protection Act 1987 Part III)

## **Media Relations**

### **Information**

65. Registered dispensing opticians are occasionally called on by journalists and radio and television reporters to make statements on current issues in the profession, grant interviews or to help in the composition of feature articles, pamphlets or books. While good publicity and a free flow of information to the public through the news media is desirable and potentially of benefit to the public, such activities must be handled with the greatest of care, especially by the inexperienced.

66. It is preferable that questions about dispensing practice be dealt with by the ABDO Secretariat, rather than individuals. If there is no alternative but to make a statement on a professional matter of public interest, ideally advice and guidance should be sought from the Secretariat before responding.

67. Local newspapers frequently publish feature articles publicising some (usually retail) enterprise, associated with editorial matter and supportive advertisements by retail shopkeepers. Registered dispensing opticians are advised to treat any such requests for interviews with caution and should insist on the right to approve the text of articles before publication.

68. ABDO takes the view that all registered dispensing opticians who own or manage practices must take responsibility for such publicity even if they can claim lack of knowledge.

### **Advice**

69. a. The registered dispensing optician should be adequately prepared for questioning. Avoid 'off the cuff' statements to casual callers; insist on time for reflection on questions from journalists if unprepared.

b. If unsure of how to handle the interview either refer the interviewer to the Association's Secretariat or seek the latter's advice.

c. If wishing to express personal opinions ensure that they are identified as such, and do not be harassed into imprudent over-simplification.

d. Avoid overt self-advertisement or assertions of superiority of professional services over colleagues.

e. Insist on editorial right to vet any material for publication.

f. Be especially cautious of interviews intended to be the basis of feature articles.

### **British and European Standards**

70. UK registered dispensing opticians may be placing themselves at risk in law if they do not supply lenses and frames that conform to the various Standards for appliances. (See Appendix C). This applies to all finished spectacles. The Standards have been 'registered' with the Department of Trade and Industry under the Consumer Protection Act 1987. The Act makes provision with respect to the liability for damage caused by defective products. Consumer goods (and this includes optical appliances) will be deemed not to conform to general safety requirements unless they comply with British Standards in the case of spectacles.

71. Existing ophthalmic standards are being further developed and British Standards have become based on European norms.

### **Use and Supply of Pupil Dilating Drugs**

72. Optometrists and Dispensing Opticians are reminded that pupil dilating drugs such as Tropicamide are prescription only medicines (POMs). As such the supply of these drugs is controlled by law and only certain classes of person, such as optometrists and OMPs, are legally permitted to acquire or supply them. They are therefore responsible for any other members of the practice team who place orders with wholesalers, or those, such as retinal screeners, who wish to instil the drug into a patient's eyes. The use of pupil dilating eye drops should always be done under the direction and supervision of an optometrist (or doctor).

73. Practices should have Standard Operating Procedures to ensure that drugs are managed in accordance with the legislation. This is particularly crucial if the practice relies on locum optometric/OMP cover.

74. Optometrists are referred to the Appendix A of the College Formulary, and College Guidance on delegation. If they are in any doubt about what to do in their particular circumstances they are advised to contact their professional and/or defence body for advice.

### **Medical Devices Directive**

75. The Medical Devices Directive (MDD) (93/42/EEC) covers a wide range of products. The Medical Devices Regulations (SI 1994 No. 3017), which implemented this Directive, came into force in the UK on 1 January 1995. From 14 June 1998 all devices placed on the market under the Regulations, with the exception of devices intended for clinical investigation and custom-made devices, must carry the CE mark. However, as regards ophthalmic devices, registration must occur in the following groups:

1. lamps in ophthalmic examination
2. fundus cameras, keratometers/slit lamp microscopes
3. low vision aids
4. ophthalmoscopes/retinoscopes
5. spectacle lenses
6. spectacle frames
7. ready-made non-prescribed spectacles
8. sight testing devices

Further information is obtainable from The Medical Devices Agency, Department of Health, Hannibal House, Elephant & Castle, London SE1 6TQ Tel: 020 7972 8090/8300 (24 hours) Fax: 020 7972 8112. Website address: [www.medical-devices.gov.uk](http://www.medical-devices.gov.uk)

### **Registration and Enrolment**

76. The General Optical Council (GOC) was established in 1958 to promote high standards of professional education and professional conduct among opticians and to carry out some additional duties assigned by the Opticians Act. The GOC discharges its function in relation to professional conduct by means of its powers to require the registration of qualified dispensing opticians and to enforce standards by means of its disciplinary machinery. Under all circumstances it is the dispensing optician's responsibility to register and to maintain registration.

77. Registration with the GOC is essential for full scope of practice. The title dispensing optician is a registered title and can only be used by registered dispensing opticians. The GOC shall maintain a register of persons undertaking training as dispensing opticians. A person who is undertaking training provided by an approved training establishment or obtaining practical experience in the work of a dispensing optician shall have his/her name in the appropriate register.

### **Professional Discipline**

78. The professional activities of registered dispensing opticians are regulated in five ways: by education and training to standards set by ABDO; by ABDO as the professional body with its powers for peer review; by fitness to practise procedures at the instigation of the GOC; by criminal law; by civil law – litigation.

### **Criminal Records' Disclosure**

79. With the implementation of new legislation in Part V of the Police Act 1997, many organisations will now be able to access criminal record information, as part of their recruitment process, through a new service called Disclosure.

80. The CRB Disclosure service is used to help assess the suitability of applicants for positions of trust and has been set up to facilitate safer recruitment of staff by making more information available from police and other records. The CRB provides a service to check on criminal records of candidates for jobs. The object of this checking procedure is to vet potential candidates and thereby reduce the risk of harm to children and vulnerable adults.

81. This level of disclosure is recommended by the CRB for persons working with children, or who have regular contact with vulnerable adults on a one to one basis. These include optometrists and dispensing opticians. This disclosure will include:

- spent and unspent convictions, cautions, reprimands and warnings held on the Police National Computer.
- information from the Department of Health and Department of Education and Skills lists for childcare positions.

### **Recruitment of New Staff**

82. Employers are entitled to have details of potential employees' spent convictions and ask for candidates to produce a basic disclosure from the CRB to assess the candidates' suitability for the role. There is no legal obligation for employers to ask

this question, but if asked the candidate is required to reveal any spent convictions. If at a later date it is found that the employee gave false information then the employer may be able to dismiss them. It is recommended that employers advise the candidates of this in the contract of employment.

### **Existing Employees**

83. Employers may only carry out CRB checks if employees sanction such checks or it is a condition of their employment. If a CRB disclosure is sought where there is no entitlement to do so e.g. on existing staff, this may be an offence under The Police Act 1977. This could result in imprisonment for up to 6 months or a fine (currently between £2,500 and £5,000).

### **Criminal Offences.**

84. Under Section 28 of the Opticians Act it is a criminal offence for a person who is not appropriately registered to use any of the titles dispensing optician, registered optician, enrolled optician or optician. However in the case of the use of 'optician' without a qualifying adjective the user will have a defence against a charge if it can be proved that in the circumstances of the title's use it would be unreasonable for people to believe that the user was registered.

85. Under section 24 of the Opticians Act 1989 it is a criminal offence for a registered dispensing optician to test the sight of another person with intent to prescribe an optical appliance. However, when contact lenses are fitted by registered dispensing opticians in accordance with the advice in Section III of these guidelines, when a refraction by a registered dispensing optician forms part of an LVA examination, or when certain types of low vision aids are supplied, the use of techniques to check their performance does not constitute the testing of sight within the meaning of the Opticians Act.

86. By Section 25 of the 1989 Act it is a criminal act for any person (other than in the excepted cases) who is not a registered medical practitioner or a registered dispensing optician or optometrist with the appropriate qualifications, to fit contact lenses. The excepted cases are medical students and, by the Rules on the Fitting of Contact Lenses 1985, students training as opticians (optometrists or dispensing opticians); those engaged on approved basic training and pre-registration students. Such optical trainees, however, may fit contact lenses only when the fitting is done in the course of obtaining practical experience under supervision of a registered medical practitioner, optometrist or dispensing optician.

87. By Section 27 of the Act it is a criminal offence for optical appliances designed to correct a defect of sight to be sold (with some exceptions which include sales for the wholesale trade, for export and antiques) unless the sale is:

- a. Effected by or under the supervision of a registered medical practitioner, optometrist or registered dispensing optician.
- b. An excluded sale, that is a sale for a person not under the age of 16, of spectacles which have two single vision lenses of the same positive spherical power not exceeding four dioptres, where the sale is wholly for the purpose of correcting, remedying or relieving the condition known as presbyopia.
- c. Exempt by reason of the Sale of Optical Appliances Order 1984, that is, where the appliance is not a contact lens or low vision aid, where the sale is not for a person under 16, or who is registered blind or partially sighted, and where the

purchaser produces a prescription not more than two years old signed by a registered medical practitioner or registered optometrist.

88. These sections, for the most part, do not penalise registered opticians. It is important to note, however, that if a dispensing optician's registration is revoked or suspended (for example, because of non-payment of GOC fees or the effect of a disciplinary order) he/she will be liable to prosecution if he/she continues to practise as though registered during the period of revocation or suspension.

89. It is also a serious criminal offence to defraud the National Health Service (NHS) of money through submitting false claims. Registered dispensing opticians, as trustees of NHS money, have a professional duty to handle payments appropriately, effectively and honestly. Abuse of NHS procedures is considered a serious breach of trust and may incur prosecution and GOC investigation, with possible consequential penalties imposed by ABDO.

**Note should also be made of the last sentence of paragraph 1a. It is, of course, a serious offence to steal from the employer.**

### **Counter Fraud Charter**

90. ABDO and the Department of Health have agreed a Counter Fraud Charter to which they are both signatories. The Charter spells out the need to fight fraud and commits both the Government and the Association to do all in their power to educate, encourage and inform both professionals and patients about this vital issue. As well as reducing fraud and corruption to an absolute minimum the aims of the Charter are to free-up resources for the best possible patient care and to maximise the confidence that the public has in the NHS professions.

### **The Fitness to Practise Jurisdiction of the GOC – see Appendix A**

91. A registered dispensing optician who becomes involved with the GOC fitness to practise procedures should seek the advice of the Association at an early stage. Legal protection and professional indemnity cover in such an event is a benefit of membership.

92. The General Optical Council appoints selected members to its Investigation Committee. This committee investigates an allegation made against a registrant. It decides whether the complaint ought to be considered by the Fitness to Practise Committee, or by the Optical Consumer Complaints Service (OCCS), or whether the allegation warrants no further action.

93. a. The Fitness to Practise Committee is independent of the membership of the General Optical Council. It receives evidence and adjudicates on allegations made against a registrant following referral from the Investigation Committee. Other than in exceptional circumstances it deliberates and adjudicates in public. Its powers in the case of a guilty verdict range from an erasure order or suspension from the register or, if appropriate, conditional registration.

b. The committee may impose either in addition or instead of it, a financial penalty order currently not exceeding £50,000. In reaching a decision the committee will, in appropriate cases, take into account ABDO's Advice and Guidelines.

c. If either the Fitness to Practise Committee or the Investigation Committee finds a registered dispensing optician's fitness to practice is not impaired, they may

nevertheless give the registrant a warning regarding his/her future conduct or performance. Such cases may be referred to the ABDO to invoke a Performance Review Procedure (PRP) although the GOC still maintains overall responsibility.

### **The Association's Powers**

94. By Article 17 of its Articles of Association, ABDO has the power to act against a fellow or member who is the subject of a complaint or whose conduct does not befit a Fellow or Member of the Association. Article 17.1 (e) states that someone shall cease to be a Member "If the Board of Directors, after due enquiry, resolves that the interests of the Association so require";

Article 17.3 states

"In addition to its powers under 17.1 (e) the Board of Directors, after due enquiry, may suspend, or take some other action against, a member as it resolves that the interests of the Association so require.