

# **Consultation on regulation of optical businesses**

**October 2024**

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## Overview

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### What we're doing

1. The General Optical Council (GOC) is the regulator for the optical professions in the UK. We currently register around 33,000 optometrists, dispensing opticians, student optometrists, student dispensing opticians and optical businesses. The groups on our register are called registrants. For more information, please visit our website: <https://www.optical.org/>
2. We have four core functions:
  - setting standards for optical education and training, performance, and conduct;
  - approving qualifications leading to registration;
  - maintaining a register of individuals who are fit to practise or train as optometrists or dispensing opticians, and bodies corporate who are fit to carry on business as optometrists or dispensing opticians; and
  - investigating and acting where registrants' fitness to practise, train or carry on business may be impaired.
3. This consultation seeks views on changes to our framework for regulating businesses. Section 9 of the Opticians Act 1989 ('the Act') provides for the GOC to register bodies corporate that meet certain eligibility requirements (including around its directors' registration and the nature of its activities). Under section 28 of the Act, it is an offence for an unregistered business to use a title, addition or description that falsely implies GOC registration, i.e. GOC registration is mandatory for bodies corporate using a protected title.
4. Our current system results in an inconsistent application of our regulatory powers for businesses and our [research](#) estimates that around half of all optical businesses are not required, or able, to register with the GOC. Where we refer to businesses in this consultation, we are referring to all providers of optical services, including those that may not be considered traditional optical businesses e.g. university eye clinics and charities.
5. This consultation will be open from 23 October 2024 to 22 January 2025. You can respond either using our online consultation platform ([Project: Business regulation | General Optical Council](#)) or by emailing [consultations@optical.org](mailto:consultations@optical.org)

### Why we're doing this now

6. Should the Department of Health and Social Care's (DHSC) legislative reform programme proceed, we will use this opportunity to update our legislation and the aspects of the Act that apply only to the optical sector. The review of our

legislation began in our 2022 [call for evidence on the Opticians Act 1989 and associated GOC policies](#) which we said was a first step in a programme of work to ensure that our legislation and associated policies were fit for the future.

7. As part of the 2022 call for evidence, we revisited the area of business regulation and commissioned further research from Europe Economics entitled [Mapping of Optical Businesses](#). The consultation confirmed there was strong stakeholder support for extending business regulation to all businesses carrying out restricted functions. In our 2023 [response to the consultation](#) we said that we would develop proposals and consult on an updated framework for business regulation.

### **What will happen next?**

8. The public consultation will be open for 13 weeks.
9. Once the consultation has closed, we will analyse all the comments we have received and identify how to progress our proposals for business regulation. We will produce a document summarising the responses we receive to the consultation and how we propose the new framework of business regulation will work. We will ask our Council to approve this document prior to publication.
10. Although we are leading engagement with stakeholders and the sector through this consultation, responsibility for agreeing changes to the Act does not rest with us but with Parliament, and the pace and outcome of any changes sought to business regulation will be determined by the UK Government.

## Section 1: Current system, risks and benefits of reform

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### Number and nature of UK optical businesses

11. To support the evidence base for legislative reform we commissioned research from Europe Economics entitled [Mapping of Optical Businesses](#). This confirmed there is no definitive calculation of the number of optical businesses, but it provided useful estimates based on data collected from the Office of National Statistics (ONS).
12. We have updated the figures in the Europe Economics research using the latest ONS data. In summary, this suggests:
  - In 2023, there were 5,040 optical businesses operating in the UK, with approximately 4,365 operating in England. Scotland had 335 businesses, followed by Northern Ireland with 170 and Wales with 165.
  - 2,852 body corporates renewed their GOC registration in the 2024 renewal exercise, representing 57% of the total optical businesses estimated by ONS. GOC registered businesses as a proportion of all businesses has increased over time, but many businesses remain outside of regulation.
  - Nearly all businesses (98.2%) are microenterprises or small enterprises, with a shift from microenterprises towards small enterprises over time. Microenterprises are more common in Scotland and Northern Ireland.
  - 86.2% of UK optical businesses are companies and there has been a clear shift towards incorporation over time. Sole proprietorships and partnerships are more common in Scotland, Wales and Northern Ireland.

### Existing legislation

13. The legislation around GOC business regulation is complex and does not currently provide for a clear and consistent system of regulation for optical businesses.
14. Section 9 of the Act provides for the GOC to register bodies corporate that meet certain eligibility requirements (including around its directors' registration and the nature of its activities). Under section 28 of the Act, it is an offence for an unregistered business to use a title, addition or description that falsely implies GOC registration, i.e. GOC registration is mandatory for bodies corporate using a protected title.
15. It is not possible to register businesses that are sole practitioners or partnerships, and it is not mandatory for bodies corporate to register unless they use a protected title. In addition, bodies corporate can voluntarily register if they are not using a protected title but must have a majority of registrant directors.

## The risks we want to address

16. The patient experience is not just dependent on the individual providing the care but also the clinical environment in which care is delivered, and commercial considerations can affect the quality of care. [Research](#) we commissioned from Europe Economics highlighted the risks relating to our current system of regulation and how this could affect patient care and outcomes. They found that aspects of optical practice relevant to patient care are influenced by the practices of businesses as opposed to individual practitioners, and identified the following:
  - the business environment: this should provide practitioners with autonomy to undertake their professional activities to the best of their ability and in line with professional standards;
  - clinical governance: systems and protocols are needed to ensure good clinical governance, including clear communication among staff, adequate supervision of assistants and students, consistent management of locums, processes to deal with whistle-blowing and consumer complaints, and appropriate record keeping;
  - investment: adequate investment in equipment and training of staff are required to ensure that the level of care is up-to-date;
  - commercial considerations: a business could prioritise cost-cutting exercises or income generating incentives over providing safe patient care. These could include pressure on staff to meet sales targets, unrealistic sight testing times or under investment in equipment; and
  - communication to consumers: in addition to risks to patient health and safety, a business should clearly communicate prices including for services such as sight tests through their advertising and on their website.
17. The research concluded that a key factor in mitigating risks was the consistent application of GOC regulation and oversight. In order to address these discrepancies and improve public protection and confidence in the system, we want to amend our legislation so all businesses carrying out the specified restricted functions listed in paragraph 23 of this consultation document will have to register with the GOC.
18. The PSA, in their report [Safer care for all](#), also highlighted the limitations of the GOC's current approach and the need to address outdated legislation and regulatory gaps. They said that the current system hampers the GOC's ability to regulate the whole sector effectively and leaves patients without the assurance that all optical businesses are complying with regulatory standards.

## Benefits of extending business regulation

19. We have identified the following benefits of reforming optical business regulation. Our focus is on improving public protection and benefits to the public. However, we believe that there are also benefits for the wider eye care system, for businesses and for professionals.
20. The *benefits to patients and the public* include:
  - Closing the regulatory gap that exposes patients to potential harm as currently some businesses sit outside of regulation. The current model has resulted in an outdated, complex and piecemeal system of regulation, which is not led by a risk-based approach to public protection but is dependent on the structure of the business rather than the clinical activities it carries out.
  - Ensuring regulation of not just the eye care professionals delivering care but the clinical and commercial environment in which care is delivered. Public inquiries have rightly put an increased focus on the importance of systems and culture in delivering safe care.
  - Strengthening organisational governance. Our proposal for a head of optical practice within a business would ensure there is someone with overall responsibility for implementing effective policies and processes.
  - Relieving the pressure on GPs and hospitals and improving care for patients by supporting plans to move more eye care into primary care. A stronger and more effective system of clinical governance will help instil confidence in the system that means optometrists and dispensing opticians can diagnose, treat and manage common eye conditions in community and high street settings. GOC research<sup>1</sup> highlights that only one in three people would go to an opticians / optometrist practice as their first port of call if they had an eye problem, while the Association of Optometrists estimates that 1.35 million people visit their GP every year for conditions that optometrists are trained and qualified to manage<sup>2</sup>.
  - A simplified system for patients and the public in tune with their expectations. Many will be unaware that the same eye care services are being provided by a range of regulated and unregulated optical businesses.
  - Improved access to consumer redress. We propose that all consumers using business registrants will have access to an independent redress scheme.

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<sup>1</sup> [Public perceptions research 2024 | GeneralOpticalCouncil](#)

<sup>2</sup> [One million appointments \(aop.org.uk\)](#)

21. The *benefits to optical businesses* include:

- A more consistent and fairer framework. Bringing all optical businesses providing specified restricted functions into regulation will ensure that all businesses will be subject to the same regulatory standards and requirements and contribute to the costs of regulation.
- Addressing competitive disadvantages in the current system. Some businesses are unable to be regulated due to the structure of their business, which means they cannot enjoy the benefits of regulation.
- A modernised system of regulation, with any outdated requirements and burdens on businesses removed, such as the current requirement for some businesses to have a majority of GOC registrant directors.
- Improved clinical governance across the sector will help businesses to deliver enhanced services in primary care, enabling them to grow by providing more services to patients and maximise the potential of the optical workforce. [Research](#) we recently commissioned shows that over the next two years businesses are expecting to double their provision of glaucoma and independent prescribing services to patients and expect to increase their use of digital technologies and diagnostic technologies including the use of artificial intelligence and remote sight testing.

22. The *benefits to the optical workforce* include:

- If business regulation supports government ambitions to shift more work into primary care, it supports individual registrants to work to their full potential.
- Requiring all optical businesses to register with the GOC and adhere to regulatory standards will help rebalance responsibilities between a business and its employees. Our proposals for a head of optical practice will help ensure that individual registrants are not unfairly held to account for issues relating to systems, policies and processes which they do not control.
- The consistent application of GOC business standards would benefit employees as it would provide a more standardised and safer working environment, for example, ensuring equipment is fit for purpose, there is adequate supervision arrangements for staff, and supporting registrants to meet their continuing professional development (CPD) requirements. We are strengthening our standards to ensure businesses provide more support to staff who experience bullying, harassment, abuse and discrimination at work.



## Section 2: Consultation

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23. The starting point for this consultation is the response to the call for evidence. Our Council made a series of decisions, which we are not revisiting in this consultation exercise. Instead, we are seeking views on the framework that we will use to regulate optical businesses. The relevant policy decisions were:
- businesses would be required to register with GOC if they provide the specified restricted functions (further information is available in annex 1) in the Act, namely:
    - i. sight testing;
    - ii. contact lens fitting;
    - iii. supply of contact lenses (prescription and zero power cosmetic contact lenses); and
    - iv. spectacle sales to the under 16s and those who are registered sight impaired or severely sight impaired;
  - not seek to change any restricted functions in the Act but propose a mechanism for the GOC to make recommendations to the Secretary of State to alter these without the need for primary legislation; and
  - propose an additional secondary consumer protection objective on the face of the legislation, reflecting the nature of risks to the public in the optical sector and our plans for expanding business regulation.
24. This consultation contains proposals for how an updated business regulation framework would work under four areas:
- scope of regulation;
  - models of regulatory assurance;
  - enforcement approach and sanctions; and
  - consumer redress.
25. These proposals are set out in annexes to this paper, and we encourage you to read those annexes before responding to the questions.
26. We recognise that stakeholders will also be interested in registration fees charged for businesses. The matter of fees is outside the scope of this consultation since the government's planned healthcare regulation reforms will give the healthcare regulators broad scope to set fees. We will be reviewing our fee structure as part of the GOC's strategy for 2025-30, and we will engage with stakeholders on options as part of this work.
27. This consultation sets out the principles supporting several proposals, which we are seeking views on so that we can make an informed view before finalising

these. It is therefore not possible to set out the full detail of all the proposals at this stage, but we will carry out further work as and when we progress our proposals, engaging with stakeholders at the appropriate time. Further, reform to the Opticians Act is anticipated to be at a high level leaving it to regulators to make detailed rules, which will be subject to public consultation.

28. Any final model of business regulation will require legislative change, at which point there will be further consultation on the legislation led by government.
29. The strong stakeholder consensus on the need for all businesses carrying out the specified restricted functions to be GOC-registered has been very welcome. In developing the proposals in this consultation, we are grateful for the advice received from our statutory advisory committees, including the Companies Committee. We also established a stakeholder reference group<sup>3</sup> to inform the development of proposals, and we are grateful for their insights.

### **A: Scope of regulation**

30. We are proposing to regulate all entities providing the restricted functions specified in paragraph 23 unless exempted, including not-for-profits such as university eye clinics and charities, as well as businesses. We have set out our proposals for what should fall within the scope of business regulation in annex 2.
31. We are proposing that our new legislative framework for business regulation will not include a requirement for some bodies corporate to have a majority of registrant directors (as is currently required for some businesses under section 9 of the Act). We have set out our reasoning for removing this requirement in annex 3.

**Q1. To what extent do you agree or disagree that GP practices and hospitals (NHS and independent) carrying out restricted functions listed in paragraph 23 should be exempt from GOC business regulation?**

- a) Strongly agree
- b) Somewhat agree**
- c) Neither agree nor disagree
- d) Somewhat disagree
- e) Strongly disagree

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<sup>3</sup> This consisted of the Association of British Dispensing Opticians (ABDO), the Association of Independent Optometrists and Dispensing Opticians (AIO), the Association of Optometrists (AOP), The College of Optometrists and the Federation of Optometrists and Dispensing Opticians (FODO) - The Association for Eyecare Providers. We also held meetings with charities, regulators and education and training providers to understand how our proposals might affect their work or remit.

Please explain your reasoning (including any unintended consequences of our proposals).

*GP practices and hospitals across the UK are already subject to robust regulatory frameworks, although these do not specifically encompass all restricted functions or the full scope of oversight within the General Optical Council's (GOC) remit. Nevertheless, individual registrants operating in these settings remain obligated to adhere to GOC standards, ensuring consistency and upholding the highest standards of care.*

*We support the proposal on the condition that patients receive equivalent levels of protection wherever and whenever they access services involving restricted functions. Any entity delivering restricted functions must be held to equally stringent standards, irrespective of the setting in which these functions are delivered.*

**Q2. Do you think that commercial units operating in GP practices and hospitals that are providing the restricted functions listed in paragraph 23 should be regulated by the GOC?**

- a) Yes
- b) No
- c) Not sure

Please explain your reasoning (including any unintended consequences of our proposals).

*If this is a standalone commercial operation located within the premises of a GP practice or hospital, and thus operates outside the jurisdiction of the GP or hospital regulatory authorities, it should fall under the regulation of the General Optical Council (GOC).*

**Q3. To what extent do you agree or disagree that charities providing the restricted functions listed in paragraph 23 should be regulated by the GOC?**

- a) Strongly agree
- b) Somewhat agree
- c) Neither agree nor disagree
- d) Somewhat disagree
- e) Strongly disagree

**Please explain your reasoning (including any unintended consequences of our proposals and how they could be mitigated).**

*For the protection of patients receiving, and registrants delivering, the restricted functions described in paragraph 23, the corporate structure—whether commercial, or charitable, is irrelevant.*

*Without the regulation of the GOC it is likely that charities (and University Eye Clinics) providing restricted function would not be effectively regulated therefore we would support the proposal that they are included with the business regulations*

**Q4. To what extent do you agree or disagree that university eye clinics providing the restricted functions listed in paragraph 23 should be regulated by the GOC?**

- a) Strongly agree
- b) Somewhat agree
- c) Neither agree nor disagree
- d) Somewhat disagree
- e) Strongly disagree

**Please explain your reasoning (including any unintended consequences of our proposals and how they could be mitigated).**

*Please see our response to Q3*

**Q5. To what extent do you agree or disagree that the GOC should have a discretionary power to exempt particular businesses from registration?**

- a) Strongly agree
- b) Somewhat agree
- c) Neither agree nor disagree
- d) Somewhat disagree
- e) Strongly disagree

**Please explain your reasoning (including any unintended consequences of our proposals and how they could be mitigated).**

*If the regulations are drafted correctly in the first place then we see no reason for exemptions. regs are right in first place no need for exemptions*

*Introducing exemptions could lead to the potential for inconsistency and perceived inequity in regulatory oversight as well as creating disparities in accountability, leading to varying standards of care and undermining public trust in the regulatory framework.*

*It would also risk creating a precedent where businesses, knowing what type of exemptions are available, could seek exemptions based on subjective criteria, making enforcement less transparent and less predictable. For patient safety and registrant protection, all businesses performing restricted functions should be subject to uniform registration requirements to ensure consistent oversight and accountability.*

**Q6. To what extent do you agree or disagree with our proposal to remove the requirement for some bodies corporate to have a majority of registrant directors?**

- a) Strongly agree
- b) Somewhat agree
- c) Neither agree nor disagree
- d) Somewhat disagree
- e) Strongly disagree

**Please explain your reasoning (including any unintended consequences of our proposals and how they could be mitigated).**

*We recognize and agree with the points the GOC puts forward in Paragraph 92 . Registrant directors do not in themselves necessarily add to patient protection and are an unnecessary administrative burden. Removing the requirements could bring new skill sets and innovation to the optical market.*

## **B: Models of regulatory assurance**

32. We are proposing a model of regulatory assurance that includes requiring business registrants to nominate a head of optical practice (HOP). The HOP would be a registrant with overall responsibility for the conduct of the business in accordance with the GOC's regulatory arrangements and be concerned with systems, policies and culture controlled at the top of the business. We have set out our proposals for the role in annex 4.

**Q7. Should all businesses be required to appoint a head of optical practice?**

- a) Yes
- b) No
- c) **Not sure**

**If there are businesses that you think this arrangement should not apply to, please explain which ones and your reasoning (including any unintended consequences of our proposals and how they could be mitigated).**

*Whilst we support consistency and the delivery of uniform regulation we are concerned that for small businesses i.e a "one man band" operation, the requirement to appoint a head of optical services may be disproportionate to the level of risk involved.*

**Q8. To what extent do you agree or disagree with the proposed responsibilities for the head of optical practice?**

- a) Strongly agree
- b) **Somewhat agree**
- c) Neither agree nor disagree
- d) Somewhat disagree
- e) Strongly disagree

**Please explain your reasoning (including any unintended consequences of our proposals and how they could be mitigated).**

*The proposed responsibilities for the head of optical practice ensure clear accountability for maintaining compliance and high standards of care. They promote strong leadership, consistent adherence to regulations, and better support for registrants in meeting their professional obligations. This role enhances patient safety, aligns with the GOC's reforms for ethical care delivery, and provides specialized oversight to address the unique challenges of optical services.*

*However, we do have some concerns in that we do recognise this is a new role within the profession and would need to understand in more depth the support and training that would be offered to individuals to fulfil these positions along with an understanding of the liabilities a registrant would be taking on in fulfilling these roles. There will be a role for the wider optical sector to support the role out of heads of optical practices and any training and support that is needed.*

**Q9. To what extent do you agree or disagree that the head of optical practice should have responsibilities around the adequacy of arrangements for training placements?**

- a) Strongly agree
- b) Somewhat agree**
- c) Neither agree nor disagree
- d) Somewhat disagree
- e) Strongly disagree

**Please explain your reasoning (including any unintended consequences of our proposals and how they could be mitigated).**

*Everyone working within an optical practice has a role within supervision and ensuring patient safety. The head of optical practice role should not overlap with the role or responsibilities of a supervisor, but be complimentary to it.*

**Q10. To what extent do you agree or disagree that the head of optical practice should be a fully qualified GOC individual registrant?**

- a) Strongly agree
- b) Somewhat agree**
- c) Neither agree nor disagree
- d) Somewhat disagree
- e) Strongly disagree

**Please explain your reasoning (including any unintended consequences of our proposals and how they could be mitigated).**

*Whilst we see this role as ideally being registrant-led, we do recognise that the system has to be workable. If the head of optical practice is not a registrant then it should be the business owner so in the event of any concerns being raised the GOC could take action.*

*Additionally, there may be certain times when a "non-registrant" business owner may not be employing registrants and there needs to be some sort of "planned mitigation" to cover these eventualities.*

**Q11. To what extent do you agree or disagree that the head of optical practice should be an individual employed by the business?**

- a) Strongly agree
- b) Somewhat agree**
- c) Neither agree nor disagree
- d) Somewhat disagree
- e) Strongly disagree

**Please explain your reasoning (including any unintended consequences of our proposals and how they could be mitigated).**

*Ideally, the HOP would be an employed registrant working within the practice on a regular basis so they can fulfil their responsibilities.*

*However, we need to recognise that people change jobs, go onto maternity/paternity leave, have periods of sickness and absence and the business owner would need to have flexibility in providing cover for the HOP role in these circumstances if they couldn't take the role on themselves. Ideally, the GOC should provide guidance to address these issues ensuring optical business can continue in unforeseen circumstances in a safe and compliant manner.*

**Q12. To what extent do you agree or disagree that an individual should not be a head of optical practice for multiple businesses?**

- a) Strongly agree
- b) Somewhat agree
- c) Neither agree nor disagree
- d) Somewhat disagree**
- e) Strongly disagree

**Please explain your reasoning (including any unintended consequences of our proposals and how they could be mitigated).**

*We recognise that there are many different models of delivery within optical practices, and it may be that in the case of a HOP that one size does not fit all. However, the overriding ambition to provide dedicated, focused leadership to maintain the highest standards of care and regulatory compliance in each individual business should take precedence. This role requires clear accountability and consistency delivering support for registrants to ensure the delivery of the highest standards of patient care. and this will be difficult to deliver across multiple businesses.*



**Q13. To what extent do you agree or disagree that the GOC should have a power to introduce a separate set of conduct standards for the head of optical practice should this be required in the future?**

- a) Strongly agree
- b) Somewhat agree
- c) Neither agree nor disagree
- d) Somewhat disagree**
- e) Strongly disagree

**Please explain your reasoning (including any unintended consequences of our proposals and how they could be mitigated).**

*It would be helpful for the GOC to clearly outline the expectations of a head of optical practice above and beyond that of a registrant not only to ensure consistency but to also allow individuals to be able to make informed decisions on whether they wish to take on these roles.*

*As per our previous answer we would prefer head of optical practices to be registrants and therefore feel adequate standards of conduct already exist.*

**Q14. To what extent do you agree or disagree that the GOC should specify in rules/guidance essential characteristics of a head of optical practice that businesses should satisfy themselves are met?**

- a) Strongly agree
- b) Somewhat agree
- c) Neither agree nor disagree
- d) Somewhat disagree**
- e) Strongly disagree

**Please explain your reasoning (including any unintended consequences of our proposals and how they could be mitigated).**

*It is not the role of the GOC to produce rules or guidance on the essential characteristics of a head of optical practice. This should be left to the business owners to decide based around the information provided by the GOC on the roles responsibilities and remit.*

**Q15. To what extent do you agree or disagree with our proposal for the name of the head of optical practice to be listed on the GOC register of businesses?**

- a) Strongly agree**

- b) Somewhat agree
- c) Neither agree nor disagree
- d) Somewhat disagree
- e) Strongly disagree

**Please explain your reasoning (including any unintended consequences of our proposals and how they could be mitigated).**

*For public protection, it is important that head of optical practices are listed on the register.*

**Q16. To what extent do you agree or disagree with our proposal for individuals acting as a head of optical practice to have an annotation against their entry on the GOC register of individuals?**

- a) Strongly agree
- b) Somewhat agree
- c) Neither agree nor disagree
- d) Somewhat disagree**
- e) Strongly disagree

**Please explain your reasoning (including any unintended consequences of our proposals and how they could be mitigated).**

*The register of optical businesses should list the name of the head of optical practice and perhaps indicate whether they are a registrant. It is an excessive burden then to cross reference this onto the registrant list and runs the risk of creating excessive administration whilst adding nothing to patient safety or delivery of standards.*

### **C: Enforcement approach and sanctions**

33. Whilst there is no evidence of any immediate risks to public protection in terms of the powers we currently have, we think that our powers of enforcement and sanction could be enhanced, giving the GOC ability to hold business registrants to account. We suggest that our powers could be enhanced by:
- having the ability to impose an uncapped financial penalty on business registrants supported by updated sanctions guidance; and
  - introducing a power to visit a business as part of the fitness to carry on business process (NB we are not proposing a system of regular or routine inspections).

34. We have set out our proposals for enhancing our approach to enforcement and sanctions in annex 5.

**Q17. In relation to the GOC's powers to impose a financial penalty on business registrants, which option do you favour?**

- a) Power to impose an uncapped financial penalty
- b) Linking the financial penalty to turnover
- c) A new maximum amount (replacing the current £50,000 financial penalty cap)

**Please explain your answer, including any advantages, disadvantages and impacts.**

*We would not support the GOC being given powers to impose an uncapped penalty as there is no evidence that the GOC can point to of "any immediate risks to public protection" and therefore we feel this would be disproportionate. We further recognise that linking a penalty to the turnover of a business may be unfair on businesses with multiple practices (and favour single premises businesses and franchises) Therefore of the options a new maximum penalty – set in a fair and proportionate manner- is our preferred option with the GOC given powers to increase this in the future subject to consultation.*

**Q18. To what extent do you agree or disagree that introducing a power to visit businesses as part of the fitness to carry on business process could give the GOC greater powers to protect patients and the public?**

- a) Strongly agree
- b) Somewhat agree
- c) Neither agree nor disagree
- d) Somewhat disagree
- e) Strongly disagree

**Please explain your reasoning (including any unintended consequences of our proposals and how they could be mitigated).**

*The purpose of the fitness to carry on business process would be to establish whether there was a breach of the standards rather than a continuing breach and they could establish this through witness evidence as they do currently. We would be concerned as to the additional costs on registrants of appointing and training a team of inspectors*

*In exceptional circumstances, there might be need to attend a practice and "one off" arrangement could be made for this but this should not be as matter of course*

*Visits must be limited to investigations into fitness to carry on business and not become a system of regular inspections as this is not justified by the risks involved and would add substantially to the ongoing costs of compliance and regulation.*

## **D: Consumer redress**

35. We are considering whether changes are required to our current consumer redress scheme – the Optical Consumer Complaints Service (OCCS) – to ensure that the public is adequately protected. This includes whether it should be mandatory for business registrants to participate in the OCCS and whether the OCCS could make decisions that are legally binding on businesses. We also seek views on how the scheme should be delivered and funded. We have set out our proposals for an enhanced system of consumer redress in annex 6.

**Q19. To what extent do you agree or disagree that it should be mandatory for business registrants to participate in the consumer redress scheme?**

- a) Strongly agree**
- b) Somewhat agree
- c) Neither agree nor disagree
- d) Somewhat disagree
- e) Strongly disagree

**Please explain your reasoning (including any unintended consequences of our proposals and how they could be mitigated).**

*Mandatory consumer redress schemes ensure that patients have a clear accessible route for resolving complaints. Public knowledge of such schemes would foster trust even further in optical services whilst at the same time driving higher standards of care in optical businesses who would be aware that they would be accountable for their services. A mandated redress scheme would bring consistency across practices and should support registrants in providing clarity and guidance on how to deal with patient concerns alongside helping promote best practices across healthcare.*

**Q20. To what extent do you agree or disagree that the consumer redress scheme should have powers to make decisions that are legally binding on businesses?**

- a) Strongly agree
- b) Somewhat agree
- c) Neither agree nor disagree
- d) Somewhat disagree**

e) Strongly disagree

**Please explain your reasoning (including any unintended consequences of our proposals and how they could be mitigated).**

*The present process with OCCS does work well without powers to make legally binding decisions and we would not want to see consumer redress become a lengthy legalistic process .*

**Q21. To what extent do you agree or disagree with our proposal to continue with our current model of delivering the consumer redress scheme i.e. a single provider through a competition for the market model?**

- a) Strongly agree
- b) Somewhat agree
- c) Neither agree nor disagree
- d) Somewhat disagree
- e) Strongly disagree

**Please explain your reasoning (including any unintended consequences of our proposals and how they could be mitigated).**

*The present process works well and is understood and supported by the sector and patient feedback is supportive of the scheme.*

**Q22. How should any consumer redress scheme be funded?**

- a) Every business contributing through the registration fee
- b) A pay per use model whereby the business pays for any complaint made against them that is considered by the scheme
- c) A combination of the above two models
- d) Other (please specify)
- e) Not sure

**Please explain your reasoning (including any unintended consequences of our proposals and how they could be mitigated).**

*Whilst we recognise that Option B gives accountability to businesses that generate more complaints by passing on the costs more proportionately, creating an incentive to deliver higher standards and resolve issues internally without the involvement of OCCS it would add an increased amount of*

administration and cost to the process and therefore we would support continuing with the present funding process.

## E: General questions

36. Below we have set out some general questions for you to consider.

### *Impact assessment*

37. We have produced a draft impact assessment on the overall proposal to extend regulation to all businesses providing specified restricted functions listed in paragraph 23. We are interested in stakeholder views on our assessment. We will provide a more detailed and costed impact assessment once we have considered views received during the consultation and discussed a set of proposals with government.

**Q23. Are there any aspects of our proposals that could discriminate against stakeholders with specific characteristics?** (Please consider age, sex, race, religion or belief, disability, sexual orientation, gender reassignment, gender identity, gender expression, pregnancy or maternity, caring responsibilities or any other characteristics.)

a) Yes

**b) No**

c) Not sure

**If yes, please explain your reasoning.**

**Q24. Are there any aspects of our proposals that could have a positive impact on stakeholders with specific characteristics?** (Please consider age, sex, race, religion or belief, disability, sexual orientation, gender reassignment, gender identity, gender expression, pregnancy or maternity, caring responsibilities or any other characteristics.)

a) Yes

**b) No**

c) Not sure

**If yes, please explain your reasoning.**

*Welsh language*

38. Under the Welsh language standards, we are required to consider what effects, if any (whether positive or adverse), the policy decision would have on opportunities for persons to use the Welsh language and treating the Welsh language no less favourably than the English language, whether those effects are positive or adverse.
39. The proposals in this document relate to a framework of business regulation that will apply to all optical businesses across the UK, including in Wales. We have assessed that these proposals will not have any effects on opportunities to use the Welsh language or affect the treatment of the Welsh language.

**Q25. Will the proposed changes have effects, whether positive or negative, on:**

- (i) opportunities for persons to use the Welsh language, and**
- (ii) treating the Welsh language no less favourably than the English language?**

- a) Yes
- b) No**
- c) Not sure

**If yes, please explain your reasoning.**

**Q26. Could the proposed changes be revised so that they would have positive effects, or increased positive effects, on:**

- (i) opportunities for persons to use the Welsh language, and**
- (ii) treating the Welsh language no less favourably than the English language?**

- a) Yes
- b) No
- c) **Not sure**

**If yes, please explain how.**

**Q27. Could the proposed changes be revised so that they would not have negative effects, or so that they would have decreased negative effects, on:**

- (a) opportunities for persons to use the Welsh language, and**

**(b) treating the Welsh language no less favourably than the English language?**

- a) Yes
- b) No
- c) **Not sure**

**If yes, please explain your reasoning.**

*Any other areas*

40. We would like stakeholders to let us know about any other areas that we have not specified in this document that they think are relevant to business regulation.

**Q28. Please tell us about any other areas relevant to business regulation that are not covered by this consultation.**

**None.**



### **Section 3: How to respond to the consultation**

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41. This consultation will be open from 23 October 2024 to 22 January 2025.
42. We would be grateful if you could input your responses into our [consultation hub](#) so that we can collect information about you or your organisation and whether your response can be published.
43. However, if that is not possible, you can respond to the consultation by emailing [consultations@optical.org](mailto:consultations@optical.org)

## **Annex 1: Business regulation and restricted functions**

44. The restricted functions explained below relate to paragraph 23 of the consultation document that sets out the restricted functions that will be included as part of a new model of regulation of optical businesses.
45. Sight testing can be conducted only by a registered optometrist or registered medical practitioner, with special provision for students (section 24 of the Act).
46. Contact lenses can be fitted only by a registered dispensing optician, registered optometrist or registered medical practitioner, with special provision for students (section 25 of the Act).
47. Prescription contact lenses can be sold by or under the supervision of a registered dispensing optician, registered optometrist or registered medical practitioner, or under the general direction of a registered dispensing optician, registered optometrist or registered medical practitioner, if the supplier first receives the original specification or verifies the particulars of the specification with the prescriber<sup>4</sup> (section 27 of the Act).
48. Zero powered contact lenses can be sold only by or under the supervision of a registered dispensing optician, registered optometrist or registered medical practitioner (section 27 of the Act).
49. If the user is under 16 years of age or registered sight impaired / severely sight impaired, spectacles can be sold only by or under the supervision of a registered dispensing optician, registered optometrist or registered medical practitioner (section 27 of the Act and articles 2 and 3 of the Sale of Optical Appliances Order 1984).

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<sup>4</sup> See our [statement on verification of contact lens specifications](#) regarding copy specifications.

## **Annex 2: Scope of regulation**

### **Background**

50. The optical sector in the UK is diverse and any system of business regulation must be effective across the entire sector. We have considered the different types of provider of optical services to understand whether there might be any organisations providing the specified restricted functions listed in paragraph 23 that should be exempt from regulation by the GOC because the risks they present are low or already adequately managed. We recognise that our registrants are taking on enhanced clinical roles and so it is important that the environment in which they are undertaking those roles is also regulated proportionately.
51. In this paper, we also consider different forms of business structure and the challenges of regulating unincorporated businesses such as sole traders and partnerships. We set out our preferred approach to registering different types of 'service provider' based on elements of the CQC's model of regulation.

### **Exemption from GOC regulation**

#### *Exempting individual providers on a case-by-case basis*

52. We think it would be helpful if the GOC had a discretionary power to exempt individual providers from the scope of regulation on a case-by-case basis. This provision would provide flexibility, enabling us to future-proof the legislation and take specific circumstances into account. Taking a targeted and risk-based approach would be consistent with the principles of good regulation.
53. As is common in other regulated environments, it would be the responsibility of providers to identify the need to register with the GOC. Unless already exempted by legislation, a service provider would need to apply to the GOC seeking an exemption and decisions would be made by the Registrar. Any decisions made in this respect would be appealable.
54. Detailed provisions would be set out in revised Registration Rules, which the GOC would consult on following the enactment of updated legislation.

#### *Exempting specific categories of providers in legislation*

55. Below we consider whether certain categories of service provider should be exempted from GOC regulation under legislation. We have considered the risks associated with these organisations and the activities they carry out, and where there might be gaps in regulation. This has helped us to consider whether there are any other factors, such as the level of risk in the services provided, or the vulnerability of the patient groups.

56. Five categories of provider have emerged in our research and stakeholder engagement prior to issuing this consultation:
- Charities
  - University eye clinics
  - Primary eye care companies
  - GP practices and hospitals
  - Locums
57. In the first four categories, the main factors for and against these providers falling within scope of GOC regulation are similar. In making the case for extending regulation to all businesses providing specified restricted functions, we have emphasised the importance of the clinical environment in which care is delivered. In some cases, the vulnerability of the patients served by these providers is higher than for most businesses. The risks identified by Europe Economics<sup>5</sup> are relevant to all clinical environments, regardless of whether they operate on a commercial basis. For example, the provider would still need to ensure good clinical governance and investment in equipment and training for a service. While lacking an explicit profit-motive, these providers are still seeking to generate income from their activities and may face financial pressures to cut costs that may create patient safety risks. Although the organisations may be separately regulated, their sectoral regulator is unlikely to have a focus on the same risks as the GOC, especially the clinical services they provide, thus creating a regulatory gap. Such providers are well-used to falling within scope of multiple regulatory regimes.
58. Alternatively, it can be argued that the cost of regulation could lead providers to cease serving vulnerable patients or act as a barrier to new providers. Further, the absence of an explicit profit-motive should rein in behaviours carried out by some commercial businesses. Also, while sectoral regulators may not focus on the same risks as GOC, the presence of another regulator should have a positive effect on the overall culture of the organisation.
59. The registration fees charged to businesses are outside the scope of this consultation, however, to mitigate the risks around withdrawal of services described above, the GOC could charge such providers a lower fee building on our existing low-income fee arrangements for individual registrants.

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<sup>5</sup> [Europe Economics \(2023\), \*Mapping of Optical Businesses: Report for the GOC\*](#)

## Charities

60. We are aware of four charities involved with providing specified restricted functions that are registered with the Charity Commission for England and Wales: 1) Prison Optician Trust, 2) SeeAbility (main name Royal School for the Blind), 3) Royal National Institute of Blind People (RNIB), and 4) Vision Care for Homeless People. We are not aware of any relevant charities registered with the Office of the Scottish Charity Regulator or The Charity Commission for Northern Ireland.
61. Two of these charities (Prison Optician Trust and SeeAbility) have created commercial arms to separate out the restricted functions, both of which are registered with the GOC as bodies corporate – therefore the charities themselves do not carry out restricted functions and there would be no requirement to be regulated by us.
62. The third charity, RNIB, has a General Ophthalmic Services (GOS) contract with the NHS for sight testing alongside providing low vision services at its Low Vision Centre. It is a registered charity and a limited company and is registered with the GOC as a body corporate.

### *Example charity: Vision Care for Homeless People*

Vision Care for Homeless People is a charity set-up to provide eyecare services to homeless and other vulnerable people in an accessible and friendly environment in which they feel safe, welcome and comfortable.<sup>6</sup>

- Provides a fully comprehensive high quality service totally free of charge even to the majority of homeless people who do not receive benefits.
- Aims to preserve, protect and promote the ocular health of homeless and vulnerable people in the UK who are unwilling or unable to access mainstream services available through the NHS. Includes screening of ocular health and the provision of spectacles that meets the immediate visual needs of beneficiaries.
- National organisation: eight clinics across England – sight testing and spectacle dispensing (all individually registered with the local health authority which enables them to claim funding from the NHS).
- [Income](#) for year-ending 31/3/23: £152,326.
- Mainly operated by people giving their time for free (around 160 volunteers serve about 1,800 people each year).
- Partners with Crisis UK every year to operate Crisis at Christmas Opticians Service across London:
  - provide eye tests and glasses to people affected by homelessness; and

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<sup>6</sup> [WHAT WE DO | Vision Care \(visioncarecharity.org\)](#)

- each clinic is led by optometrists, with assistance from dispensing opticians and optical assistants.
- Charity number: [1118076](#)
- Companies House number: [05309978](#)

63. The fourth charity, Vision Care for Homeless People, does carry out restricted functions. It is a limited company but is not registered with the GOC as it cannot meet the requirement to have a majority of registrant directors. Each of its optical practices are registered with the NHS for GOS. Under a new model of business regulation, it would be required to be regulated by us on the basis that it is providing specified restricted functions, unless we decided it should be exempt from regulation. Individuals providing specified restricted functions will be registered with the GOC or GMC.
64. We have met with the Charity Commission for England and Wales<sup>7</sup> and our understanding is that they would not regulate the clinical services provided by a charity, as their regulation focuses more on governance and operational matters rather than provision of services. They indicated that they would have no objections to us regulating charities providing specified restricted functions and that dual regulation would be better than there being gaps in regulation.
65. The arguments for and against regulating charities are broadly those set out in paragraphs 57 and 58. In particular, charities are likely to be seeing vulnerable groups of patients (e.g. homeless persons in the case of Vision Care for Homeless People who are also likely to have other health issues) and therefore having processes in place to ensure appropriate clinical governance, training and a supportive environment is essential.
66. In addition, including charities within the scope of regulation would promote consistency of approach – two of the charities (albeit through external companies) have structured themselves in such a way as to come outside regulation while the other is inside regulation.
67. Arguably, since there are currently only four identified charities in this space it could be disproportionate to create sets of regulatory arrangements for such a small population. However, on balance, we consider there is a strong public protection rationale to include charities within scope of GOC regulation.

### *University eye clinics*

68. Our understanding is that most of the universities providing optometry courses have their own eye clinics which are open to the public and provide specified

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<sup>7</sup> We note that the Charity Commission only regulates charities in England and Wales. Charities in Scotland are regulated by the Office of the Scottish Charity Regulator and in Northern Ireland by The Charity Commission for Northern Ireland. As we are not aware of any charities providing restricted functions in only Scotland or Northern Ireland, we have not contacted those organisations.

restricted functions. Their services range from sight testing, fitting of contact lenses and dispensing, as well as specialist clinics in dry eye, low vision, binocular vision, paediatric, learning difficulties, myopia control, sports vision and colour vision. This suggests that university eye clinics deal with a range of patients and the public, some in vulnerable circumstances.

69. Most of the clinics provide free sight tests when students are undertaking these (under supervision), and most also mention charging for private sight tests, including by a qualified optometrist outside of term time. Some of the universities also mention hiring out equipment and facilities, which we have been told helps them to break even and/or make a surplus.

*Example university eye clinic: Plymouth University*

The university eye clinic is called the [Centre for Eyecare Excellence](#). It provides:

- a teaching facility for undergraduate and postgraduate optometrists;
- a shared regional hub for networking and furthering education;
- eye examinations that are carried out by third year students under supervision of optometry staff – free of charge appointments with 20% discount on spectacles and 10% on contact lenses;
- private eye examinations (£25-35) with a fully qualified member of staff (NHS also available);
- spectacle dispensing and contact lens clinics; and
- specialist clinics include low vision, myopia control, paediatric, visual impairment, colorimetry, binocular vision, dry eye and neuro-visual (at least half of these are run by supervised students).

*Example university eye clinic: University of Bradford*

The [Eye Clinic](#) offers:

- a complete primary eye care service to the general public, students and staff of the university and their families;
- eye examinations undertaken by final-year optometry students under the direct supervision of qualified optometry staff – free for students, staff and NHS patients, otherwise £22;
- contact lens consultations and aftercare appointments free of charge (other than myopia control lenses);
- a range of additional clinical services such as spectacle dispensing, contact lenses, advanced clinical assessment (part of NHS referral refinement scheme), binocular vision (£20 fee), vision and reading (£20+ fee), paediatric, low vision (free), visual electrodiagnostic and myopia management; and
- a student teaching clinic with 25% discount on spectacles.

70. The business structures of the eye clinics are not clear from their websites and so we have engaged with the Optometry Schools Council to learn more about them. We understand that some of the eye clinics are set up as a separate entity from the university.
71. It should be noted that any universities in England and Wales are known as 'exempt charities' and whilst they are charities in law, they do not have to register with the Charity Commission for England and Wales, partly because they are regulated by other bodies such as the Office for Students<sup>8</sup>. It is unclear whether all universities providing GOC-approved qualifications are not-for-profit but this is likely.<sup>9</sup> Exempt charities may make a surplus, but these surpluses are put back into the organisation to be used for the public good in pursuit of their charitable objectives.
72. We have met with the Office for Students and understand that their focus is on the education of students and not on the provision of services, although this could potentially be raised as an issue through concerns around education. The quality assurance activities carried out by the GOC on qualification providers include a review of equipment and facilities. While our education standards refer to patient safety, our focus is on the quality of education for students. Therefore, we consider there is a regulatory gap.
73. In addition, as with charities, differences in set-up would introduce issues around consistency and transparency of regulation, and universities might structure themselves in such a way as to avoid the need to be regulated by the GOC. Where set up as business entities in their own right (separate to the main university) it would seem unfair on other businesses not to regulate them.
74. On balance, we consider there is a strong public protection rationale to include university eye clinics within scope of GOC regulation.

#### *Primary eye care companies*

75. Primary eye care companies are a type of prime provider organisation – entities that take the lead in delivering a range of services within a specific contract. In the context of this consultation, they are not-for-profit contracting vehicles for optical practices to provide locally commissioned NHS funded eye care services. Typically, these include urgent and minor eye conditions services, pre- and post-operative cataract services and disability/autism services. Where restricted functions such as sight testing are also required, we understand these are delivered under separate contractual arrangements not held by the primary eye care company. Therefore, while the practice may see the same patient on the same day for both the enhanced eye care services and sight

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<sup>8</sup> [Charities Act 2011 - ARU](#)

<sup>9</sup> [Are Universities Non-Profit Organisations? - Think Student](#)



testing, these episodes of care would be different contracts and dealt with as separate transactions.

76. Since our proposed model regulation is tied to the specified restricted functions, primary eye care companies would not need to register with the GOC as they do not hold a contract for restricted functions. This may change if the model evolves so that primary eye care companies provide restricted functions as entities in their own right. An alternative view is that primary eye care companies are ultimately accountable for the patient and will hold the patient's record card in their databases, and so should be regulated.
77. We would wish to avoid duplication of regulation. The individuals providing the services are registered with the GOC or the GMC. At least one company is regulated by the Care Quality Commission (CQC). However, while the enhanced services provided by the primary eye care companies are likely to be regulated by the CQC (or equivalent in the nations) at entity level, the CQC would be unlikely to look at the provision of restricted functions.

#### *GP practices and hospitals*

78. The specified restricted functions listed in paragraph 23 may be performed by a registered medical practitioner as well as by GOC registrants<sup>10</sup>. Our 2013 business regulation consultation indicated that we would not seek to regulate GP practices and hospitals (NHS and independent) in organisational form. They are already registered with and regulated by the CQC (or equivalent in the nations<sup>11</sup>) which monitors, rates and inspects health and social care services. Further, the individuals providing these services are regulated by the GMC. We would not wish to duplicate regulation unless it was necessary.
79. However, we understand that some hospitals, clinics and GP practices have set up commercial sight testing and/or dispensing units alongside providing medical treatment. We are considering whether these should register with the GOC or be exempt from registration and will be having further discussions with the relevant regulators.
80. Subject to public consultation, our position will remain (as when we consulted in 2013) that we are not seeking to regulate GP practices and hospitals/clinics providing medical treatment. This is on the basis that these services are

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<sup>10</sup> Under the Sight Testing (Examination and Prescription) (No 2) Regulations 1989 the requirements in section 26(2) of the Act do not apply where the testing of sight is carried out by a doctor at a hospital or clinic in the course of diagnosing or treating injury or disease of the eye, as part of a general medical examination, or where the patient was resident in a hospital or a clinic (for the purposes of treatment) when their sight was tested. Section 27(5)(c) of the Act provides that the sale and supply restrictions listed in section 27(1) shall not apply to any authority or person carrying on a hospital, clinic, nursing home or other institution providing medical or surgical treatment.

<sup>11</sup> In Wales: the Healthcare Inspectorate; in Scotland: the Care Inspectorate and Healthcare Improvement Scotland; and in Northern Ireland, the Regulation and Quality Improvement Authority.

already regulated by another regulator and that the Act is drafted in such a way that: a) sight testing requirements are not applicable when carried out by a doctor at a hospital or clinic in the course of diagnosing or treating injury or disease of the eye, as part of a general medical examination, or where the patient was resident in a hospital or a clinic (for the purposes of treatment) when their sight was tested; and b) the sale and supply restrictions do not apply to any authority or person carrying on a hospital, clinic, nursing home or other institution providing medical or surgical treatment. We intend that the new legislation will enable us to have powers to exempt individual service providers where appropriate.

### *Locums*

81. We have considered whether registrants working as locums should be required to register as a business with the GOC, particularly if they have set themselves up as a limited company. Our view is that because locum practitioners are contracted to provide services through other businesses, they would not need to be registered as a business in their own right, as the business providing the service would already be registered with the GOC. The locum practitioner would be registered with the GOC as an individual registrant and therefore any concerns about fitness to practise can be addressed through this route. It would be confusing for the public if care was delivered by two different business registrants.

### **Business structures and registration options**

82. We have carried out background research into business structures and identified several incorporated and unincorporated legal forms. These are summarised in the appendix, which also looks at current business models in the optical sector. Currently, we only regulate incorporated businesses, but we wish to regulate all organisations providing specified restricted functions, unless exempted, regardless of their business or ownership structure.
83. We need to consider how best to regulate unincorporated types of business, such as sole traders and partnerships. Legally, these structures are more complicated for regulatory purposes than incorporated businesses. For example, in the case of a sole trader, the business does not exist as a separate legal entity to the business owner. Similarly, a partnership itself has no legal existence apart from any of the partners. All business assets are legally owned by at least one of the partners in their personal capacity.
84. After considering arrangements elsewhere in professional services regulation, we are satisfied that the GOC can regulate unincorporated businesses by registering them. Several models operate elsewhere, including:
  - registering a regulated activity – the CQC model;

- registering a physical premises – the General Pharmaceutical Council (GPhC) model;
  - registering an approved person – the Financial Conduct Authority (FCA) model; and
  - registering a provider as a registered person – the Ofsted model.
85. Our provisional view is that the aspects of the CQC model are the best fit for the optical sector since it most closely complements the design principles of the Opticians Act, in particular linking regulation to the specified restricted functions. Under this model, all service providers carrying out the specified restricted functions would need to register with the GOC, as follows:
- Sole traders – individuals would register in their own name as a legal entity and be directly responsible for carrying on the regulated activities.
  - Partnerships – where an activity is carried on by a partnership, the partnership would need to be registered as the service provider. The GOC would not register each partner individually but place a condition on the partnership registration that details the names of each partner. If there are any changes to the membership of the registered partnership, the provider would need to apply to vary that condition.
  - Organisations – this would include companies, charities, university eye clinics and other types of providers. It would be the organisation itself that registers, not the people who control it. When registering, each location must be identified, and this information would appear on the public register, but the GOC would not regulate individual premises.
86. We are not proposing to make changes to our approach to joint ventures and franchises. These are usually separate legal entities to the parent company and must register in their own right, although the GOC liaises with the parent company as required.

## Appendix to annex 2: Business structures and business models

### Our understanding of business structures

Below are the main types of business structures. One of the main distinguishing features is whether the structure is unincorporated or incorporated:

- **Unincorporated legal forms** – the distinguishing feature of unincorporated forms is that they have no separate legal personality.
- **Incorporated legal forms** – companies are ‘incorporated’ to form an entity with a separate legal personality. This means that the organisation can do business and enter into contracts in its own name, however, it is subject to more regulation than unincorporated forms.

### Main forms of business structures

- **Sole trader:** This is an unincorporated legal form. A sole trader is the exclusive owner of a business, and they own and run the business as an individual i.e. they keep all the profits and own all the risk. There are fewer regulations that they need to comply with. There is no legislation in the UK that focuses on regulating sole traders, however, this does not mean sole traders are not governed by a variety of trade, contract and business laws.
- **Partnership:** This is an unincorporated legal form. A partnership is where two or more people set up and run a business together and share in the profits and risk. Each partner is responsible for the others' negligence and misconduct.
- **Scottish partnership:** This has legal capacity, distinct from that of its partners. A partnership must have at least two partners. The firm is known as the ‘principle’ and the partners as its ‘agents’. It can own property and have its own rights and duties. Normally the partnership is constituted by a written contract between the partners.
- **Limited liability partnerships (LLP):** An LLP is a body corporate with a separate legal personality from that of its members (i.e. it is an incorporated legal form). The members of the LLP have limited liability to the amount of money they invested in the business. In an LLP there are no shares or shareholders or directors (unlike a limited company). An LLP has designated members who are treated as directors for the purpose of the GOC's body corporate registration (as well as ordinary members). These types of businesses are often used by solicitors and accountants.
- **Limited company:** A limited company is incorporated to form its own distinct entity with a separate legal personality i.e. it is legally separate from the people

who run it (i.e. it is an incorporated legal form). This type of company can do business and enter into contracts in its own name. In a limited company one person could own, manage and register the company by themselves, acting as both director and shareholder.

### Other possible business structures

- **Charities:**
  - **Charitable trust:** A charitable trust is a way for a group of people ('trustees') to manage assets such as money, investments, land or buildings. A charitable trust is not incorporated, so it cannot enter into contracts or own property in its own right. It is not a legal entity.
  - **Charitable company:** A charitable company is a private limited company registered under the Companies Act 2006 that fulfils the essential criteria for charitable status. The vast majority are limited by guarantees rather than shares. Trustees have limited or no liability for a charitable company's debts or liabilities.
  - **Charitable incorporated organisation:** This is an incorporated legal entity. The trustees have limited or no liability for debts or liabilities.
  - **Unincorporated charitable association:** A group of volunteers running a charity for a common purpose. Unincorporated charitable associations cannot employ staff or own premises.
- **Local authorities:** Local authorities are organisations, created by statute as single legal entities.
- **Trusts:** A trust is a legal device for holding assets that separates legal ownership and beneficial interest. Trusts are not separate legal entities like an incorporated company. They cannot enter contracts, sue others or own property. Trusts cannot be brought into existence through incorporation.
- **Cooperative society:** A cooperative society cannot be charitable because its beneficiaries are its own members, rather than the public. A cooperative society is incorporated and can have paid directors.

### Business models in the optical sector

There are a variety of different business models in the optical sector which are outlined below.

**Sole trader:** These types of businesses can be: owned and managed by a non-GOC registrant; owned by a non-GOC registrant who employs GOC registrant(s); or owned and managed by a GOC registrant. It is not possible for this business model to register with the GOC under the current system.

**Partnership:** These types of businesses can also be owned and managed by a combination of GOC registrants and non-registrants. It is not possible for this business model to register with the GOC under the current system, unless it is a Scottish partnership.

**Franchise:** A franchise is an agreement between two parties which allows one party (the franchisee), to market products or services using the trademark and operating methods of the other party (the franchisor). Examples of a franchise include privately-owned optical businesses within a wider brand (e.g. Boots' franchise).

*"The business is generally 100 per cent owned by the individual (usually the practice manager) with all profits and equity retained by them. The business will pay a franchising fee to the host brand as part of a franchising agreement. The business receives support from the host brand (systems and processes such as human resources, practice management and record keeping; insurance; IT; infrastructure/investment; purchasing/cost-price stock). One feature of a franchise is that the owners can focus on frontline innovation rather than on the administration of running a business, and can innovate within the security of the franchise, i.e. benefitting from the scale of large business without losing the motivation of the owners. Franchise practices can offer NHS and/or private services."*<sup>12</sup>

**Joint ventures:** A joint venture (JV) is a business arrangement in which two or more parties agree to pool their resources for the purpose of accomplishing a specific task. This task can be a new project or any other business activity. In relation to the legal structure, a JV can be formed using any legal structure, such as corporations or partnerships.

*"Similar to a franchise in that the businesses are individually owned whilst receiving support from the wider brand; the main difference is that ownership is held partly by the individual (director) and partly by the parent group. The main example is the Specsavers' Joint Venture Partnership (JVP). Under the JVP model the parent group has greater oversight of individual practices than a pure franchise model, and individuals take on less risk than a franchise...the Hakim Group has also become prominent in this sector. The Hakim Group operates a distinct JV model where the group gains a 50 per cent plus controlling stake in partner practices alongside the owner optometrist or dispensing optician, who runs and operates the practice. The practices are able to retain their brand identity, and take advantage of a dedicated back-office support team and infrastructure. Joint ventures can offer NHS and/or private services."*<sup>13</sup>

**Multiple:** A multiple is a single corporation with multiple branches.

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<sup>12</sup> [ee-mapping-of-optical-businesses-final-report-22-feb-2023.pdf \(p4\)](#)

<sup>13</sup> [ee-mapping-of-optical-businesses-final-report-22-feb-2023.pdf \(p4\)](#)

*“The main examples of multiples are Boots (which has branches as well as franchises) and Vision Express (which also has joint venture partnerships), and superstores (e.g. Asda).”*<sup>14</sup>

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<sup>14</sup> [ee-mapping-of-optical-businesses-final-report-22-feb-2023.pdf \(p4\)](#)

## **Annex 3: Majority registrant director requirements**

### **Background**

87. Section 9 of the Act provides for the GOC to register bodies corporate that are carrying on business as a dispensing optician and/or optometrist and can meet one of four requirements specified in sections 9(2)(a)-(d). Where a body corporate is not caught by sections 9(2)(b)-(d) (which includes where most of its business is not testing of sight and fitting/supplying optical appliances), section 9(2)(a) requires a body corporate to meet certain eligibility requirements including around its directors' registration. Most body corporates currently registered with the GOC are registered under this requirement.
88. Where bodies corporate register with us under section 9(2)(a) of the Act, they must have a majority of directors who are GOC registrants. Where a body corporate having only one director wishes to register with the GOC, that director must be a registrant. These arrangements are known collectively as the majority registrant director requirements.

### **Analysis**

89. In a future where all businesses carrying out specified restricted functions listed in paragraph 23 regardless of their structure must be regulated by the GOC, we need to consider whether the majority director requirements remain necessary to maintain public protection.
90. Approaches vary across healthcare regulators which have a business/premises regulation remit. The General Dental Council (GDC) does not register businesses or body corporates, but its legislation provides that a dental body corporate "commits an offence if it carries on the business of dentistry at a time when the majority of its directors are not persons who are either registered dentists or registered dental care professionals"<sup>15</sup>. The General Pharmaceutical Council (GPhC) does not have majority registrant director requirements but relies on other safeguards, including the superintendent model, requiring new pharmacy premises applying for registration to satisfy it about their governance arrangements, and systems for ensuring the competence of staff, working environment and so on.
91. The arguments in favour of the GOC maintaining majority registrant director requirements relate to concerns about commercial imperatives outweighing clinical factors risking standards of care being compromised. The argument runs that this risk may be increased if individuals exercising a significant degree of control over the conduct of an optical business are not subject to the

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<sup>15</sup> [Corporate dentistry \(gdc-uk.org\)](http://gdc-uk.org)



professional duties which should underpin the practice of eye care services. Further, having a majority of registrant directors would help ensure that the ethos of the business is fostered by professionals sharing a common set of values. Such a requirement would protect the independence of clinical decision-making and ensure that the interests of patients are always put first.

92. There are several arguments against the GOC maintaining majority registrant director requirements, including:

- The skills needed to run a modern optical business include finance, HR, technology, and marketing among others. Providing safe and effective care for patients requires not only that the clinical advice given is sound, but also the presence of the business skills necessary to provide a cost-effective service in a consumer-friendly way. Individuals with specific expertise, such as in audit and finance, can bring additional controls into the business that might otherwise be missing. Regulation should support this skills mix in the decision-making structures of optical businesses. In many optical businesses, professionals with these other skills already sit on the boards of their firms, with significant control over the conduct of the practice suggesting that registrants and non-registrants can work together without compromising standards of patient care.
- It may be difficult for small businesses to find or finance sufficient individuals to meet the requirements. Also, it can encourage small businesses to have a single director to comply with the requirements at lowest cost, which may not be in their best interests.
- The requirements are an indirect barrier to entry that could restrict competition and hinder innovation in service provision.
- Since a director role is often aligned with ownership of the business or owning shares, the requirements could reduce opportunities for external investment. It may be more difficult for smaller practices to be acquired, in a context where the market is going through a consolidation phase.
- Research by Europe Economics<sup>16</sup> highlighted a stakeholder view that the requirements can be complied with to no real effect, e.g. having 'token' registrants as directors with no real say in the running of the business.
- The requirements create a role for registrants they do not necessarily want and may not be qualified for, with anecdotal evidence that some feel pressured to act as directors and do not fully understand the extent of their responsibilities and liabilities.

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<sup>16</sup> [Europe Economics \(2023\), \*Mapping of Optical Businesses: Report for the GOC\*](#)

- Other safeguards would ensure standards are maintained without the requirements. Specifically, we are proposing there should be a 'Head of Optical Practice', who must be a registrant, nominated to the GOC and with overall responsibility for the conduct of the business in accordance with the GOC's standards of practice. Our existing standards require businesses to prioritise a patient's safety so that they can receive the best possible care. Should the GOC later consider further safeguards are needed to enhance public protection, it would be better to introduce these through the standards of practice or other levers, rather than impose an artificial restriction on business structures in legislation.
  - The GOC incurs administrative costs, reflected in registrant fees, in checking that businesses are complying with the requirements. This also creates situations where businesses temporarily become non-compliant, for example when a director is forced to step down at short notice for health or other reasons. In the GOC's 2024 compliance exercise, 2,809 companies were audited and 26 found to be non-compliant. Of these, eight were issued a removal notice, 16 made changes to return to compliance and two were granted an extension due to extenuating circumstances.
93. Overall, we consider that the majority registrant director requirements are no longer justified. Further, there are many benefits from having non-registrants in decision-making structures that we are keen to encourage through the reform process. Other potential safeguards, in particular the Head of Optical Practice and our existing standards requiring that patient safety is prioritised, should ensure standards are being maintained without this requirement.
94. Optical businesses with a majority of registrant directors may retain this structure should they wish. Our proposal is a liberalising measure that would permit all optical businesses to choose the decision-making structure that works best for them.

## Annex 4: Head of Optical Practice

### Background

95. As part of our approach to regulatory assurance, we need to consider what arrangements are necessary to ensure compliance with our business standards. In the call for evidence on the Opticians Act, we asked stakeholders if there was an alternative model of business regulation that we should consider. Our response document stated:

*“We continue to see merit in a system where named individuals have specific responsibilities within a wider system of regulation that demands accountability on individual professionals and businesses. This would promote effective leadership and culture in the context where business-level systems impact on patient safety. We need to identify the best model to achieve this aim reflecting the specific needs and characteristics of our sector. We note points about the benefits and drawbacks of different elements of the GPhC model and will consider this and similar models operating outside of the healthcare sector”.*

96. While there was some interest in the model used by the General Pharmaceutical Council (GPhC), there was concern that the responsible pharmacist role element of this would not translate well to retail opticians given differences in risk profiles and operating contexts and added costs. There was a view that the GOC should provide other models of business regulation that are evidence-based and appropriate for the sector. Following publication of the response document, we have reviewed the GPhC model more closely and considered regulatory regimes in other professional services sectors (legal services and financial services) where similar roles exist.

### Overview

97. In broad terms, we are proposing there should be a nominated senior manager in optical businesses regulated by the GOC with overall responsibility for the conduct of the business in accordance with the GOC’s regulatory arrangements. Our nominal title for the role is Head of Optical Practice (HOP).
98. Broadly, we consider the HOP’s responsibilities should be to take reasonable steps to ensure that the business:
- complies with the GOC’s standards for business registrants and other regulatory requirements and avoids breaches of those requirements;
  - declares relevant information to the GOC, including material breaches of GOC requirements that may need investigation by the GOC; and

- maintains up to date GOC business registration requirements.
    - Given some optical businesses provide training placements, we are interested to hear views on whether the HOP should have responsibilities here, such as ensuring the adequacy of such arrangements at a systems level.
99. The GOC's regulatory arrangements are designed to protect the public from a range of both clinical and non-clinical harms (such as mis-selling of products and services). We consider the HOP's responsibilities should apply to all GOC requirements and not just those which are directly related to patient safety in a clinical sense.
- We consider the HOP should be a registrant and this information will be recorded on the public registers for both individual and business registrants.
  - The HOP's responsibilities will be set out in primary legislation and supported by rules made by the GOC. At this stage, we do not consider that a separate set of standards of practice for the HOP is necessary but want legislation to enable us to introduce such standards in future, as required.

## **Rationale**

100. In making the case for extending regulation to all businesses providing specified restricted functions, we have emphasised how the patient experience is not just dependent on the individual providing the care but also the clinical environment in which care is delivered, and how commercial considerations can affect the quality of care.
101. Findings of healthcare inquiries and modern notions of good practice in regulation place importance on the role of organisational governance in protecting the public. There is heightened focus on the role of systems, policies and processes, and culture in shaping the conduct of organisations and everyone who works for them. Further, the GOC like other healthcare regulators, is strategically placing greater focus on preventing harm and moving regulation 'upstream'.
102. The proposal would support a rebalancing of responsibilities between businesses and individuals, ensuring that individual registrants are not unfairly held to account for issues resulting from systems, policies and processes which they do not control. The role is framed in terms of what the HOP can reasonably be expected to do to ensure the business delivers safe and

effective care but without diminishing the responsibility of individual healthcare professionals to ensure the care and safety of their patients and the public, and to uphold professional standards. It will remain core to the GOC's standards that individual registrants are professionally accountable and personally responsible for their practice and for what they do or do not do, no matter what direction or guidance they are given by an employer or colleague.

103. At its core, the focus of the HOP role is about preventing foreseeable systemic errors and strengthening systems when things go wrong. It would make sure businesses clearly allocate responsibilities to those key individuals and hold them accountable. Equally, it does not remove responsibility from the business entity, and we recognise the need for clarity of accountabilities across the different actors in the system so that key responsibilities neither slip through the cracks nor end up too diffused.
104. A stated rationale for recent pharmacy reforms is that putting in place the necessary system governance framework will support maximising the potential of community pharmacy and make better use of the skill mix of pharmacy teams to deliver more clinical services in the community and support wider NHS/health and social care capacity.<sup>17</sup> The GOC is keen to enable community eye care to evolve in similar ways. However, as registrants take on more complex clinical roles so the risks of harm increase, and as such the need for appropriate controls and accountability rises. Therefore, strengthening organisational governance through business regulation reforms could help to underpin stronger confidence – including among the public, government and ophthalmologists – in registrants carrying out these wider roles.
105. Our discussions with regulators and those with experience of similar roles in other sectors suggests potential secondary benefits. For example, large businesses have described that having such senior a role helps them to ensure consistent compliance at local branch level. Others have reported that this clarity of accountability has improved the effectiveness of their leadership. Further, that the role can improve communications between regulators and businesses. Finally, we have been told how individuals in the role have formed professional networks and shared good practice.

### **Learning from other sectors**

106. We have researched similar roles in other professional services regulatory settings, including pharmacy, legal services and financial services.
107. Should we proceed with making proposals, we are clear that we need to identify a model that meets the needs of the optical services sector. We do not

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<sup>17</sup> The Pharmacy (Responsible Pharmacists, Superintendent Pharmacists etc.) Order 2022.

consider there to be existing models in other sectors that could be copied over wholesale.

108. Much debate has focused on the responsible pharmacist role in pharmacy. However, we consider that something closer to the superintendent pharmacist role would better meet our objectives and fit how optical businesses work. The key difference between the two roles is that the responsible pharmacist is in charge of a particular registered pharmacy premises when it is open, while the superintendent pharmacist has oversight responsibilities across the whole of the retail pharmacy business 24/7. The superintendent pharmacist role is more relevant given our focus on business systems, policies and culture. We also acknowledge differences between optical services and pharmacy that could make the responsible pharmacist role problematic, for example an optometrist is not always present when retail stores are open and there are differences in models of delegation and supervision.
109. Our review of models in other sectors has identified some useful learning points:
- To support an agile regulatory framework, legislation should specify the broad purpose of the role with practice standards set and enforced by the regulators. Across healthcare regulation, government has pursued a clear direction of travel to move matters out of inflexible primary legislation and into regulator rules, regulations and standards. It sees the role of legislation as being to set the broad framework and to be sufficiently 'enabling' so that the regulators can then consult on and set out the detail in professional regulation.
  - The importance of clarity of relationships between different actors to ensure protection of the public, making clear the accountability of each role. In optical services the principal actors would be the business entity, the HOP and individual registrants. Agreeing the limitations of the HOP's responsibilities and accountabilities will be important. The HOP should not be unfairly penalised for everything that goes wrong, for example if staff do not follow agreed procedures. The concept of 'reasonable steps' used in legal services and financial services is instructive.
  - The need for the individual to have sufficient seniority and decision-making responsibilities to perform their duties. What counts as a senior manager is well-defined in pharmacy and financial services regulation.

### **Detailed considerations about the operation of the arrangements**

110. If the case for the HOP role is accepted, there are a series of detailed considerations that will need to be resolved. Legislative reform will give the GOC powers to make and amend rules across its regulatory activities, and we

would intend to make use of these powers to set out more detailed arrangements for the HOP role.

111. Some initial thinking as the basis for consultation is set out below.

*How will responsibilities between different actors in the system work?*

112. The key actors in the system are the business registrant, the HOP and individual registrant. As noted above, having clarity of responsibility between these three actors will be important. The HOP's main responsibilities will be set out in legislation, as detailed in paragraphs 98-100.

113. We have set out hypothetical scenarios below giving examples of the differing responsibilities. Every situation is unique and each fitness to practise case is treated on its merits, but since the HOP is a new concept for the sector, we hope the hypothetical scenarios are a useful indicator of the direction of travel. As with all fitness to practise work, a body of practice will develop over time. While important to consider enforcement, the key purpose of these proposals focuses on prevention of harm that may give rise to fitness to practise issues.

- Business registrants will retain overall responsibility for compliance with our standards. Broadly we see the business registrant being accountable in a scenario where they do not put something in place as advised by the HOP (or go against the advice of the HOP in doing so), and the individual registrant being accountable where they were not complying with the policies/processes put in place by the business/HOP (whether the HOP was appropriately monitoring compliance with these policies/processes may be a relevant factor). A HOP might be accountable where they make a decision that contravenes the standards/regulations, encourage a breach of standards/regulations, or cover up or not report a breach to the GOC (or other relevant body).

*Example scenarios: responsibilities of a HOP*

Scenario 1

The commercial team for the business registrant publishes incorrect information about a clinical matter that the HOP was not aware of. When the HOP becomes aware of the information, they advise that it should be taken down and a correction issued. They also advise that any patients who were known to have made decisions based on this matter should be contacted to advise them of the correct information. If the business follows the advice, the HOP should advise the

business to consider whether they should self-report the matter to the GOC. If the business does not follow the advice, the HOP will need to consider what further steps to take, which may include reporting the matter to the GOC.

#### Scenario 2

The business registrant proposes that the practice starts using unqualified staff to dispense to children under 16 in order to increase profitability. The HOP is aware that this is illegal practice and advises the business against this course of action. If the business follows the advice of the HOP, no further action will be necessary. If the business does not follow the advice, the HOP should report this to the GOC.

#### Scenario 3

The HOP puts measures in place to ensure that there is six-monthly checking of registrant members of staff against the GOC register. It is found during an audit that a locum has been working as an optometrist carrying out sight tests for a year but is not registered with the GOC. The HOP agrees with the business registrant that patients should be recalled, the NHS should be contacted regarding General Ophthalmic Service claims, and the matter should be referred to the GOC (both in terms of referring the individual for illegal practice and self-referring as a business registrant). They also review internal processes to understand how this matter has arisen (e.g. why it was not picked up on previous audits) and make necessary amendments to the measures already in place, including staff training for those responsible for carrying out the internal processes.

#### Scenario 4

An individual registrant goes against company policy by not meeting the minimum standards of sight testing and refusing to allow patients to have a chaperone. The business registrant is satisfied that the company policies are clear and that the HOP has ensured that staff are aware of these through training and regular monitoring of compliance. Following an internal investigation the HOP has concerns about the fitness to practise of the individual registrant and refers the matter to the GOC.

*Should the requirements apply to all or only some businesses?*

114. The three main types of business structure are body corporates, partnerships and sole traders. One option is that the HOP requirements would only apply to body corporates since in other business structures responsibility for compliance is clearly vested in the partners or sole trader. However, an alternative view is that sole traders and partnerships can be large businesses employing many people across multiple premises, and therefore the HOP requirements should apply to all business registrants.
115. We need to consider whether the requirements should apply only to businesses of a certain size, e.g. based on number of premises or staff.



Limiting the scope of the proposals could make them more proportionate, risk-based and targeted. Alternatively, setting a threshold could be arbitrary and would introduce complexity and compliance challenges, such as when businesses change size.

- Some larger optical business will already employ someone with lead responsibility for regulatory compliance. In the case of smaller businesses, we anticipate that an existing employee would be nominated for this role. It should not be necessary for small businesses to employ additional staff and it is important to remember that the proposals do not introduce substantive new compliance requirements.
- There are a small number of businesses that are owned by a lay person where there are no permanent registrant employees. If the HOP must be a registrant and a permanent employee (see below), such businesses could not comply. In these rare situations, there may need to be an exemption from the HOP provisions with compliance responsibility resting with the business registrant.

*How will this fit with business structures like joint ventures and franchises?*

- Our expectation is that the postholder would be a senior manager in the parent company reflecting our focus on business systems, policies and culture.

*Should the individual be a registrant?*

- We consider the individual should be a fully qualified individual registrant (either an optometrist or a dispensing optician). Since the individual will exercise a significant degree of control over the conduct of the business, we consider they should be subject to the professional duties which should underpin the practice of optical services. Also, the nature of responsibilities requires clinical expertise to be performed effectively. This requirement should help underpin both public and professional confidence in the regulatory system. Since we propose removing the majority director requirements, if the HOP is a registrant, this would ensure there remains professional leadership within optical businesses.

*Should the individual be employed by the business?*

116. We consider the individual should be a senior manager employed by the business. This would confer the postholder with the necessary authority to access information and take certain types of decisions, and for there to be proper accountability both within the business and through to the GOC.

*Could someone be the HOP for multiple businesses?*

- We wish to avoid situations where someone performs a nominal or consultancy role across multiple businesses since this could undermine the need for access to information, authority to take certain decisions and proper lines of accountability. Meeting these requirements should normally mean that the postholder works for a single business or business group. In most optical businesses the role would not normally require specific prior skills or experience and would be part of an existing employee's responsibilities (this may be different for large businesses with complex operations). However, we recognise the requirements need to fit a wide variety of business models.

*Would there be a separate set of conduct standards for the HOP?*

117. Future regulatory arrangements will need to interact with the GOC's standards of practice for individual and business registrants and relevant GOC policy statements, including requirements relating to delegation and supervision.
118. At this stage our view is that we would not need a separate set of standards for the HOP since the core responsibilities will be set out in legislation and we will be able to hold the individual accountable against those. We also expect to complete a review of the GOC's business standards before new legislation comes into force. However, since this would be a new feature of the GOC's regulatory arrangements, we think it would be sensible for legislation to contain enabling powers that would allow us to introduce separate standards for the HOP in future, as required.
119. Our research indicates differing practice in other sectors. For example, the Solicitors Regulation Authority (SRA) has largely copied the legislation into its standards, the Financial Conduct Authority (FCA) has additional conduct rules for all senior managers and the GPhC is currently developing an approach which will involve setting specific standards.

*Should there be any suitability requirements, such as fit and proper person tests, pre-approval of candidates by the GOC, a list of disqualified persons?*

120. We do not consider that postholders should be pre-approved by the GOC, which would be disproportionate given the lower risk profile in optical services compared to financial services. However, we may use rules or guidance to describe some essential characteristics that businesses should satisfy themselves are met.

- Since the postholder should be a registrant they may be subject to enforcement action should their fitness to practise be impaired. If a registrant is suspended or erased from the register, in effect they would be disqualified from acting as a HOP (at least until the sanction expired). Business registrants would be expected to exercise due diligence in checking the GOC public register before appointing a HOP and could additionally make use of the existing 'letter of good standing' system. Therefore, we do not consider a formal list of disqualified persons is necessary.

*What information about HOPs should appear on the public register?*

- In the interests of transparency and to ensure appropriate accountability, we consider the name of the postholder should appear on the GOC register of businesses and as an annotation on the individual register. Rules would set out requirements and processes around notification to the GOC upon an individual's appointment and when stepping down from the role.

## Annex 5: Enforcement approach and sanctions

### Background

#### *Current fitness to practise / carry on business process*

121. The fitness to practise process for individuals and the fitness to carry on business process for businesses and the sanctions currently available for both are outlined in the tables below.
122. Table 1 outlines the current process for business and individual registrants. The difference between them is the set of acceptance criteria applied and that individual registrants can be subject to a health or performance assessment. The rest of the process is the same.
123. Table 2 outlines the sanctions we can currently take against business and individual registrants, which are the same. If a fitness to practise committee decides that no sanction should be imposed as fitness to practise / carry on business is not impaired, a warning about future conduct or performance may be given.

*Table 1: Fitness to practise / carry on business process*

<b>Fitness to practise / carry on business stage</b>	<b>Does it apply to business registrants?</b>	<b>Does it apply to individual registrants?</b>
Initial action (triage)	Yes	Yes
Acceptance criteria applied	Yes – specific criteria for business registrants	Yes – specific criteria for individual registrants
Case closed (if complaint does <i>not</i> amount to an allegation of impaired fitness to practise / carry on business under section 13D of Opticians Act)	Yes	Yes
Investigate the concern (if complaint <i>does</i> amount to an allegation of impaired fitness to practise / carry on business under section 13D of Opticians Act)	Yes	Yes
Case examiner (CE) stage	Yes	Yes

<b>Fitness to practise / carry on business stage</b>	<b>Does it apply to business registrants?</b>	<b>Does it apply to individual registrants?</b>
Investigation Committee in cases where no agreement between CEs	Yes	Yes
Investigation Committee direct an assessment of a registrant's health or performance	No	Yes
Case closed via agreed panel disposal	Yes	Yes
Interim order	Yes	Yes
Fitness to Practise Committee	Yes	Yes

*Table 2: Sanctions*

<b>Type of sanction</b>	<b>Does it apply to business registrants?</b>	<b>Does it apply to individual registrants?</b>
Financial penalty – this can be made in addition to, or instead of, an erasure order, suspension, or conditional registration order	Yes, up to £50,000 – the size and financial resources of the business should be taken into account <sup>18</sup>	Yes, up to £50,000
Conditional registration – the registrant can stay on the register providing they comply with certain conditions, such as undertaking extra training. Conditions can only be imposed for a maximum of three years <sup>19</sup>	Yes	Yes
Suspension from the register – the individual is temporarily removed from the register meaning they can no longer practise (or if they are students continue with their education). The maximum period is for 12 months <sup>20</sup>	Yes	Yes
Erasure from the register – the individual is removed from the register	Yes	Yes

<sup>18</sup> [hearings-and-indicative-sanctions-guidance-final.pdf \(optical.org\)](https://www.optical.org/hearings-and-indicative-sanctions-guidance-final.pdf)

<sup>19</sup> No conditions have been imposed on a business registrant for the last ten years.

<sup>20</sup> No business registrant has been suspended from the GOC register in the last ten years.

Type of sanction	Does it apply to business registrants?	Does it apply to individual registrants?
and they cannot practise <sup>21</sup> (can apply for restoration after 24 months <sup>22</sup> )		

### *Allegations against business registrants*

124. This section outlines the types of allegations that can be made against business registrants and the route for investigating them i.e. by the GOC or the Optical Consumer Complaints Service (OCCS).

125. Firstly, in terms of fitness to carry on business we will decide if there has been a breach of the [Standards for Optical Businesses](#), and then we will consider if the breach would amount to an allegation of impaired fitness to carry on business under [section 13D\(3\) of the Opticians Act 1989](#). If the complaint meets one or more of the criteria, an investigation is opened.

126. A business registrant can be impaired by any or all of the following:

- misconduct by the business registrant or by one of its directors;
- practices or patterns of behaviour occurring within the business which –
  - the registrant knew or ought reasonably to have known of; and
  - amount to misconduct or deficient professional performance;
- the instigation by the business registrant of practices or patterns of behaviour that would amount to, or would if implemented amount to misconduct or deficient professional performance;
- conviction or caution of the business registrant or one of its directors;
- Scottish proceedings against the business registrant or one of its directors in line with section 13D(3)(e) and (f); and
- determination of another body<sup>23</sup>.

127. An allegation can be opened against the business and/or its registrant director(s). Depending on the nature of the allegation, a GOC registrant director may be held to account via the Standards for Optical Businesses or the Standards of Practice for Optometrists and Dispensing Opticians.

<sup>21</sup> No business registrant has been erased from the GOC register in the last ten years.

<sup>22</sup> [GOC Hearings and Indicative Sanctions Guidance](#)

<sup>23</sup> [GOC Acceptance Criteria for Business Registrants](#)

128. Types of allegations that can be made under 'misconduct' include the following<sup>24</sup>:

- persistent failings in keeping patient data secure (allegation against the business registrant);
- failing to declare a caution/conviction of a lay director (allegation against the business and/or registrant director);
- failure to have robust and clear policies in place and/or failure to ensure adherence to them (allegation against the business registrant);
- permitting unregistered individuals to undertake functions that are restricted by the Opticians Act 1989 to GOC registrants (allegation against the business registrant);
- failure to manage whistleblowing appropriately (allegation against the business registrant); and
- inaccurate or misleading advertising leading to a potential risk to the public (allegation against the business registrant).

129. Cases that are unlikely to amount to 'misconduct' could include<sup>25</sup>:

- concerns that have been appropriately addressed at a local level and regulatory intervention would be disproportionate;
- minor non-clinical matters, such as poor complaint handling;
- monetary or contractual disputes;
- employment matters; and
- complaints about the cost of sight tests / treatment and/or the cost of optical devices.

130. These are not exhaustive lists and for more information on other types of allegations that could amount to impaired fitness to carry on as a business, please refer to the GOC's [Acceptance Criteria for Business Registrants](#).

131. Some cases might be better dealt with by other bodies, including consumer matters that are better dealt with by the OCCS. The OCCS is funded by the GOC and deals with consumer related complaints. It offers a free mediation

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<sup>24</sup> [GOC Acceptance Criteria for Business Registrants](#)

<sup>25</sup> [GOC Acceptance Criteria for Business Registrants](#)

service between patients and the optical professional/business to help resolve cases. Key statistics from the 2023-24 annual report<sup>26</sup> are as follows:

- 1,757 enquiries were received by the OCCS between 1 April 2023 to 31 March 2024 (representing a 3% increase on the previous year);
- 1,675 enquiries fell with the OCCS's remit and 348 enquiries were mediated;
- 85% of complaints concluded within the OCCS process;
- types of complaints:
  - goods and services 40%;
  - customer care 29%;
  - product 6%;
  - charges 6%; and
- the majority of complaints came via the OCCS website (63%), with only 81 complaints (5%) being referred from the GOC's Fitness to Practise team.

*GOC fitness to practise / carry on business data*

132. This section provides an overview of the number of cases brought against business registrants.

133. We received 1,976 complaints between 1 April 2019 to 31 March 2024. Of these, 531 investigations were opened – 488 against individual registrants (92%) and 43 against business registrants (8%). The table below shows the outcomes of those investigations where a decision has been made or the case has been concluded.

*Table 3: Outcome of investigations 1 April 2019 – 31 March 2024*

	<b>Individual registrants (488)</b>	<b>Business registrants (43)</b>
Closed by case examiners (or via Registrar administrative closure) with no further action	116	23
Closed by case examiners with no further action and a non-public warning	55	5
Closed by case examiners with no further action with advice	22	0
Referred to Fitness to Practise Committee	159	3 <sup>27</sup>

<sup>26</sup> [public-council-meeting-26-june-2024-meeting-papers.pdf \(optical.org\)](#)

<sup>27</sup> Of these three referrals, two are still awaiting a hearing to take place and the other was closed by case examiners via Rule 16 (referral to Fitness to Practise Committee terminated).



## Policy options

134. Despite the relatively low number of complaints we currently receive in relation to business registrants, it is important that we have an effective suite of sanctions available in order to protect patients and maintain public confidence.
135. In terms of the wider healthcare context, we are mindful of the challenges that regulating businesses can pose. The Professional Standards Authority for Health and Social Care (PSA) highlighted some of these challenges in their report 'Safer care for all', where they said that the power imbalance between regulators and large corporations delivering healthcare services could impact the ability of regulators to impose the most serious sanctions<sup>28</sup>.

*"Not only are regulators outstripped financially by large businesses, there is also the question of how feasible it would be, in practice, for regulators to impose the most serious sanction of erasure on a large chain. Boots for example has over 2,200 UK stores, Lloyds Pharmacy over 1,500, and Specsavers almost 2,000. These businesses play an integral role in the delivery of healthcare in the community. Were regulators to take the most extreme action of removing these businesses from the register it would leave a large number of people – in the short term at least – without a healthcare provider they can rely on. These businesses may, in effect, come close to being too big to fail."*

136. In terms of the more serious sanctions, it is rare for us to impose the maximum fine and we have not erased a business registrant in the last ten years. In 2019, we imposed the maximum £50,000 fine on Boots Opticians for failures in its whistleblowing policy and a lack of remorse and insight. To put this in perspective, Boots had an annual turnover that year of £167 million.
137. There is also a risk with erasure of a 'phoenix' company emerging from the assets of a failed one, so in effect carrying on as a new company. While this issue is not unique to the optical sector it is a risk that we should be aware of.
138. Whilst there is no evidence of any immediate risks to public protection in terms of the powers we currently have, as the risk profile of the sector increases, we must maintain effective regulatory powers to protect patients and the public. This includes ensuring that the sanctions available to us are proportionate and appropriate to the failure that has occurred.
139. As such, we think that the model could be enhanced by giving the GOC greater powers in the following areas:

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<sup>28</sup> Professional Standards Authority (Safer care for all) [Collaborating for safer care for all \(professionalstandards.org.uk\)](https://professionalstandards.org.uk)

- imposing uncapped financial penalties supported by updated sanctions guidance; and
- introducing a power to visit a business as part of the fitness to carry on business process.

*Proposal 1: Power to impose an uncapped financial penalty on business registrants*

140. Currently, we can impose a financial penalty up to a maximum of £50,000. The upper limit is specified in the Opticians Act, but the sum dates back to the 1958 legislation when it was set with reference to the fines available to magistrates<sup>29</sup>. In line with our legislation, our main reason for imposing any sanction, including a financial penalty, is not to penalise, but to support our overarching statutory objective to protect the public. The pursuit of this overarching objective involves the pursuit of other objectives specified in the Act, including to promote and maintain public confidence in the professions, and to promote and maintain proper standards and conduct for business registrants.

141. In order to continue to meet our statutory objectives and ensure our approach is fit for purpose and future proof, we intend to replace the £50,000 cap as set out in legislation with an uncapped financial penalty. As now, we would consider the size and financial resources of the business when setting the amount in line with our [Hearings and Indicative Sanctions Guidance](#). We would update this guidance to promote consistency of decision-making, provide transparency and explain how financial penalties would be calculated to ensure they are proportionate to the size of the business and seriousness of the breach. The guidance would address issues relating to size and financial resources, such as relationship to turnover (discussed further below), which we appreciate are complex.

142. The reasons for the proposed change are:

- looking at the wider context, business models have changed significantly in the last 30 years or so and it is important that financial penalties are set at a level capable of exceeding the gains resulting from a breach of our standards. For example, it is estimated:
  - 75% to 80% of care is now delivered by large corporates<sup>12</sup>;
  - 23% of independent practices have annual turnover of £500,000-£1 million and 10% have annual turnover in excess of £1 million; and
  - 27% of multiples have annual turnover between £500,000-£1 million and 64% have annual turnover in excess of £1 million<sup>30</sup>;

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<sup>29</sup> Section 1 of the Opticians Act 1989

<sup>30</sup> [goc-business-registrant-survey-report-final.pdf \(optical.org\)](#)

- an uncapped amount would be future proof and avoid the need to seek further legislative change should a revised cap prove too low over time;
  - business registrants are diverse in size and structure ranging from small independent family practices to multinational household names. Business registrants have a range of structures including franchises and joint venture partnerships. Uncapped powers would offer the greatest flexibility to set appropriate financial penalties on a case-by-case basis;
  - we have a track record of using financial penalties sparingly. Financial penalties would be calculated based on published guidance and imposed by independent fitness to practise panels. These arrangements should give businesses, insurers and others confidence that this powers will be appropriately used; and
  - other regulators have the power to impose uncapped financial penalties – see appendix.
143. One alternative policy option is to specify a higher maximum financial penalty in legislation. For example, £50,000 in 1958 recalculated in today's prices is nearly £1 million<sup>31</sup>. However, any maximum figure is arbitrary and could quickly become outdated limiting our ability to impose an appropriate sanction proportionate to the seriousness of the breach and requiring new legislation to reset the amount.
144. Another model is to link the financial penalty to a set percentage of turnover, which would be specified in legislation. This is likely to fall between five to ten per cent based on models used in other sectors. In such a system, the financial penalty would be proportionate to the size of the business and on most occasions the maximum available is likely to exceed the financial gains of non-compliance. This policy option is future proof and avoids the need to update legislation since the maximum available financial penalty would increase as businesses grow.
145. However, this raises a series of challenges around calculation of the financial penalty, for example, should it be linked to turnover from optical goods and services only (which may not be reported in accounts) or total business turnover, based on global or UK turnover, turnover of the parent company or individual franchises and joint ventures etc. There may also be circumstances when a business has significant financial means beyond their turnover, which may change annually, and so a maximum financial penalty linked to turnover may be insufficient to protect the public. There is also a risk that businesses

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<sup>31</sup> Using the Bank of England's online inflation calculator, £50,000 in 1958 is equivalent to £988,104.71 in June 2024.

may restructure themselves to pay a reduced financial penalty, in the event of a sanction being imposed.

*Proposal 2: Introducing a power to visit a business as part of the fitness to carry on business process*

146. In our response to our [call for evidence](#) (2022), we said that we did not think a comprehensive programme of regular or routine inspections was necessary. However, we are exploring the option of visiting a business when a concern is raised as part of the fitness to carry on business process.
147. As optical businesses expand their clinical remit and increasingly adopt technology and artificial intelligence as part of their services, we think that this power could help us better protect patients and the public. [Research](#) we recently commissioned shows that over the next two years businesses are expecting to double their provision of glaucoma and independent prescribing services to patients and nearly a quarter expect to use artificial intelligence (AI).
148. We have set out two examples of how we might use this power.

*Example scenarios: powers to visit an opticians / optometrist practice once a concern has been raised*

**Scenario 1**

A concern has been raised regarding an opticians / optometrist practice. The concern has been raised by a member of staff that there are unmanageable workloads within the practice. They have outlined that they have too many patients scheduled and are often pressured to rush elements of the sight test / eye examination. They believe that they are unable to perform comprehensive sight tests / eye examinations and are putting patients at risk of inaccurate prescriptions and/or missed diagnosis. They have raised this internally and no action has been taken. The Director of the business does not believe there is a concern, and that the member of staff needs to work more efficiently as other members of staff are able to see the amount of patients without delay. The Director has responded to initial enquiries by the GOC, but outlined that it is a competency issue for the person raising the concern.

Relevant GOC standards which may have been breached:

- Standard 2.3: You have a system of clinical governance in place;
- Standard 3.1.3: Makes sure that operational and commercial pressures do not unreasonably inhibit the exercise of professional judgement; and
- Standard 3.1.4: Allows staff sufficient time, so far as possible, to accommodate patients' individual needs within the provision of care.

How we might use a power to visit during the investigation: This power would allow the GOC to obtain documentation and observe the practice first hand. The GOC

would have access to records and diary entries to assess whether the workload being organised is safe and effective. In addition, it would enable the GOC to assess patient flow and to ensure comprehensive sight tests / eye examinations are being performed. Examinations could be observed by other staff to ensure that they are complete, and that any techniques to improve efficiency are not at the detriment of patient care.

#### Scenario 2

A concern has been raised regarding ABC Opticians by a member of the public. The patient attended for a routine sight test / eye examination. The patient has outlined that they have a complex medical history. On arrival at the practice, the patient outlined that the practice didn't have a consulting room, rather a curtained-off area on the shop floor. The patient was concerned that others could hear the confidential nature of the examination and their medical history. The patient complained and asked for the business complaint procedure, and they were advised there was not a formal complaints procedure. The GOC made initial enquiries and the Director of the business advised that they have an acoustically private space for consultations and always responded to complaints in writing.

Relevant GOC standards which may have been breached:

- Standard 1.2: Patient care is delivered in a suitable environment;
- Standard 2.4: Confidentiality is respected; and
- Standard 2.1.4: Establishes a clear complaints protocol and makes patients aware of their channels of complaint. These include the business, the Optical Consumer Complaints Service (OCCS), the GOC, the NHS or ombudsman services where relevant.

How we might use a power to visit during the investigation: This power would allow for the assessment of the premises to ensure that GOC standards are adhered to. It would allow the GOC to assess whether the optical business provides an environment which facilitates the respecting of confidentiality. In addition, the GOC would be able to review the complaints protocol (or lack thereof) and how previous complaints have been managed.

## Appendix to annex 5: Fining powers at other regulators

149. In developing our approach, we have looked at how financial penalties are applied in a range of other regulated sectors.
150. The Solicitors Regulation Authority (SRA) takes into consideration the annual domestic turnover with the maximum set at five per cent, however, in rare cases they can impose a higher fine or depart from this metric. The level of fine depends on the type of practice or firm, so the fine can range from a maximum of £25,000 for some businesses, to a maximum of £50 million for an individual or £250 million for 'alternative business structures'<sup>32</sup>. They can also refer cases to the Solicitors Disciplinary Tribunal which can impose an unlimited fine. The SRA will also look at, for example, any aggravating or mitigating factors. The SRA has recently been given unlimited fining powers for certain breaches involving economic crime and has made representations to government to grant it unlimited fining powers in relation to all breaches of its rules<sup>33</sup>.
151. The Financial Reporting Council (FRC) can impose unlimited fines. It takes into account the size/financial resources and financial strength of a firm, for example, as indicated by the total turnover. However, again there is some flexibility and if revenue is not appropriate, other measures can be used, for example, the level of profitability of its partners or market share. They can also consider other factors, for example, seriousness of the breach, intentionality, impact of the breach, whether it was a one-off event or repeated/on-going and if so, the duration, previous breaches and likelihood of reoccurrence<sup>34</sup>.
152. The Environment Agency can now impose unlimited financial penalties on companies that pollute the environment. In 2023, the previous cap of £250,000 on Variable Monetary Penalties was abolished, allowing the Environment Agency to hold water companies and other offenders accountable for a broader range of offences. The penalties issued are proportionate to the company's size and the nature of the offence, in line with Sentencing Council guidelines<sup>35</sup>.
153. The Information Commissioner's Office can fine up to £17.5 million or four per cent of total annual worldwide turnover in the preceding financial year, whichever is higher. It looks at turnover as one part of determining the level of fine, but also takes account of the seriousness of the infringement, aggravating or mitigating factors, and whether the level is effective, proportionate and dissuasive<sup>36</sup>.

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<sup>32</sup> [SRA | Approach to financial penalties | Solicitors Regulation Authority](#)

<sup>33</sup> [Financial Penalties- further developing our framework consultation \(sra.org.uk\)](#)

<sup>34</sup> [Sanctions Policy \(AEP\) January 2022 \(frc.org.uk\)](#)

<sup>35</sup> [Unlimited penalties introduced for those who pollute environment - GOV.UK \(www.gov.uk\)](#)

<sup>36</sup> [Calculation of the appropriate amount of the fine | ICO](#)

154. Ofwat can impose a financial penalty of up to ten per cent of annual turnover but will also consider for example, the seriousness and duration of the breach, repeated failures, cooperation with the investigation and notification of the breach, any cover ups, any steps to address the failing and provide redress to customers<sup>37</sup>.
155. Ofgem can impose a financial penalty of up to ten per cent of annual turnover. They will also, for example, assess the seriousness of the failure, aggravating and mitigating factors, the impact on consumers or others, and whether the penalty should act as a deterrent against future breaches<sup>38</sup>.

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<sup>37</sup> [Our approach to enforcement - Ofwat](#)

<sup>38</sup> [THE GAS AND ELECTRICITY MARKETS AUTHORITY'S STATEMENT OF POLICY WITH RESPECT TO FINANCIAL PENALTIES AND CONSUMER REDRESS UNDER THE GAS ACT 1986 AND THE ELECTRICITY ACT 1989 \(ofgem.gov.uk\)](#)

## Annex 6: Consumer redress

### Background

156. We want to ensure that consumers have access to appropriate means of redress outside the court system so that their concerns are addressed and businesses are supported to manage those issues.
157. Section 32(1)(a) of the Act gives us the power to allocate money to any person or body “set up to investigate or resolve consumer complaints into the supply of goods and services by registrants”. Since 2014, the Optical Consumer Complaints Service (OCCS) has provided a free and independent mediation service for consumers and businesses.
158. The OCCS is a respected service that operates very successfully by offering a quick and informal route to redress at relatively low cost. Over the last decade it has handled over 14,000 enquiries<sup>39</sup> and consistently performed well. However, we need to consider whether the existing arrangements remain optimal given our proposed changes to the business regulation landscape and current expectations of what a consumer redress scheme should deliver.
159. This paper considers two key choices which are interrelated but should also be considered independently: whether participation by optical businesses in OCCS should be mandatory; and whether OCCS should be able to make binding decisions. Options on governance and funding are also considered.

### *The spectrum of dispute resolution models*

160. Alternative dispute resolution (ADR) is the process of resolving a dispute, normally between two parties, outside of the court system. ADR models sit along a spectrum and include:
- conciliation – where an independent third party makes active suggestions or gives their opinion on how to resolve the case<sup>40</sup>;
  - mediation – an independent third party helps the parties in dispute to come to a mutually acceptable outcome. The decision will not be legally binding and therefore cannot be imposed on either party, although the parties can decide to sign a settlement agreement to confirm a legally binding outcome;
  - adjudication – this is usually carried out through an ombudsman service<sup>41</sup>, of which there are many for both the private and public sectors.

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<sup>39</sup> Figure provided by OCCS

<sup>40</sup> [models-alternative-dispute-resolution-report-141031.pdf \(legalombudsman.org.uk\)](#)

<sup>41</sup> [Complaining to an ombudsman - Citizens Advice](#)



Ombudsman schemes vary but are usually based on an inquisitorial approach where they would collect information, investigate the concern and reach a binding decision on the trader (the decision on the consumer would not be binding and so the consumer could still go to a small claims court). They may also provide advice and attempt to “resolve, conciliate or mediate disputes”<sup>42</sup>, rather than moving straight to an adjudication, in order to encourage participants to reach an agreement. Ombudsman schemes generally have a wider role beyond solving disputes, including helping to raise industry standards by using complaints to highlight systemic issues in a sector; or

- arbitration – an independent third party considers the facts and takes a decision that is legally binding on one or both parties. This would be enforceable in the same way as a court judgment<sup>43</sup>.

161. Governments have long encouraged businesses to use ADR to resolve disputes with consumers and a variety of ADR schemes sitting on the spectrum above operate in the UK across regulated sectors<sup>44</sup>.

162. The Digital Markets, Consumers and Competition Act 2024 will revoke and replace EU legislation and aims to improve ADR services through quicker resolution without the need for litigation. In future, providers of consumer dispute resolution will need to be accredited (unless exempt or subject to special arrangements) by the Secretary of State against specified criteria<sup>45</sup>. OCCS will fall within scope of this regime once the legislation is implemented.

#### *The current system of consumer redress*

163. The OCCS is a free and independent mediation service which can assist with complaints about the goods received (glasses, contact lenses, etc) and/or the service provided. Key features of the scheme, include:

- the OCCS is entirely impartial and considers each complaint fairly;
- the OCCS listens to complaints, gathers information and works with both parties to reach a fair resolution. The service is designed to prevent unnecessary escalation – it provides the opportunity for parties to clearly communicate their complaints and engage in a dialogue that is focussed on reaching a mutually satisfactory resolution;
- resolution can include apology, remedial treatment, a refund or referral to another professional. The OCCS does not have any formal powers to force

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<sup>42</sup> [models-alternative-dispute-resolution-report-141031.pdf \(legalombudsman.org.uk\)](#)

<sup>43</sup> [What is Alternative dispute resolution \(ADR\)? - Which?](#)

<sup>44</sup> [Alternative dispute resolution for consumers - GOV.UK \(www.gov.uk\)](#)

<sup>45</sup> [Strengthening consumer enforcement and dispute resolution: policy summary briefing - GOV.UK \(www.gov.uk\)](#)

a settlement and consumers can still pursue litigation if they are not satisfied with the proposed solution; and

- our relationship with the OCCS ensures that all mediations are governed and informed by the latest regulations.

164. The [OCCS 2023-24 annual report](#) records that the service dealt with 1,675 complaints within its remit and 85% of these were resolved or concluded within its process. 51% of all cases were concluded in 0-45 days, and 76% were concluded within 90 days, with an average resolution time of 19 days. Of the 349 complaints that progressed to mediation, 275 (79%) were concluded with a mediation. The average time to mediate a complaint was 58 days<sup>46</sup>.
165. The GOC commissions the OCCS via a regular competitive tender exercise. Nockolds Resolution was reappointed as the OCCS provider earlier this year. The current contract runs until 31 March 2027 with a value of approximately £840,000 over three years. There is no charge to use the scheme, so it is wholly funded by individual and business registrant fees.
166. While it is not mandatory for business registrants to use the OCCS or accept suggested outcomes, our Standards for Optical Businesses require registrants to make consumers aware of their channels of complaint, including the OCCS. Businesses not registered with the GOC may not use the OCCS.

#### *Other consumer redress schemes in healthcare regulation*

167. The General Dental Council funds a free and impartial [Dental Complaints Service](#) for the purposes of consumer complaints about private dental care, services or treatment that do not fall within the fitness to practise remit. They can assist with complaints from treatment provided in the last 12 months and can assist complainants in seeking an explanation/apology, a full or partial refund, remedial treatment and/or a contribution towards remedial treatment.
168. None of the other healthcare regulators appear to fund consumer redress schemes. The General Chiropractic Council refers members of the public to Citizens Advice for any complaints that fall outside fitness to practise.

## **Analysis**

### *Should it be mandatory for GOC business registrants to participate in the OCCS?*

169. We need to consider whether:

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<sup>46</sup> In the 2022-23 annual report, of the 6% of cases that concluded without a resolution, it was suggested that this related to consumers being more committed to a financial resolution and commercial decision-makers in practice being reluctant to offer or increase financial resolutions.

- it should continue to be optional for businesses to participate in the OCCS; or
- move to a system where it is mandatory for businesses to participate in the OCCS. A requirement to participate would be specified in legislation, as well as referenced in the GOC's Standards for Optical Businesses. As now, the business would be required to signpost to the scheme following the conclusion of the first-tier<sup>47</sup> consumer complaint process.

170. We consider that legislation, rather than our professional standards, would be the most appropriate route to mandate participation if this is our preferred model. A mandatory scheme would need to be on a statutory footing, as they are in other sectors. We would be unlikely to be able to enforce a standard on mandatory participation where the scheme is not on a statutory footing.

171. The main benefits of moving to a system where it is mandatory for optical businesses registered with the GOC to participate in the scheme include:

- ensuring all consumers can access redress outside the court system would enhance public protection and increase public confidence;
- making it mandatory for all businesses providing specified restricted functions to register with the GOC while at the same time making it optional for them to participate in the sector's redress scheme is counterintuitive and would be confusing for consumers;
- while there is a high level of voluntary participation by GOC registered businesses in the OCCS now, this might not be replicated, at least to the same degree, for businesses currently sitting outside of GOC regulation;
- ensuring consistency and a fair trading environment across the sector since all optical businesses would be subject to the same requirements and contribute financially to the running of the scheme;
- creating strong incentives for good market behaviour and effective first-tier complaint handling systems across all optical businesses; and
- providing a sector-wide overview of consumer issues and trends enabling a stronger basis for regulation to improve industry-wide practice, in line with the GOC's strategy of preventing harm through agile regulation.

172. The main disadvantages of moving to a system where it is mandatory for businesses to participate in the OCCS, include:

- changing a scheme that works well could have unintended consequences. For example, it could make the OCCS more adversarial in nature,

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<sup>47</sup> First-tier complaints handling refers to businesses resolving a complaint locally within the business.

potentially moving businesses away from a culture of learning and improvement;

- making mediation mandatory arguably goes against the essence of mediation as a process with which parties engage voluntarily and constructively to resolve a dispute. This could lead to a lower proportion of cases being resolved and undermine public confidence in the system;
- there could be an increase in referrals for fitness to carry on business with associated costs if businesses do not participate, although we expect the likelihood of a business breaching our standards (and the law) by failing to participate to be rare given the possibility of sanctions; and
- businesses may decrease their internal complaints handling resource to make more use of the mandatory scheme. However, it will remain the case that consumers must exhaust the first-tier route before accessing the OCCS and our professional standards address standards of first-tier complaint handling. Businesses will continue to have reputational incentives to resolve complaints informally without recourse to the OCCS.

173. Our provisional view is that participation in the OCCS should be mandatory for all business registrants. This would enhance public protection and provide the fairest trading environment for businesses. We consider risks relating to creating a more adversarial scheme are more relevant to issues around the scheme's decision-making powers. While voluntary participation in the current scheme is high, it is unclear whether this will remain the case when more businesses are brought within the scope of regulation.

*Should the OCCS have powers to make binding decisions?*

174. After resolving the issue of participation, we need to consider whether to:

- continue with a mediation-based system where businesses can choose to comply with the recommended outcome; or
- move to a system where the OCCS can make decisions which are binding on businesses – an adjudication scheme. As above, the ability of the OCCS to make binding decisions would be placed on a statutory footing and consumers could only access the OCCS once the first-tier route had been exhausted. The OCCS would still attempt mediation to resolve disputes and only carry out investigations and make decisions where this fails.

175. The main benefits of a scheme which can make binding decisions include:

- consumers will be better protected because an independent body has investigated their dispute and can impose a legally binding outcome;

- confidence in the OCCS could be undermined if businesses are required to participate in the scheme but can disregard its recommended outcome;
- consumers are more likely to access a redress scheme if they know it can make binding decisions thus removing a barrier to making complaints;
- ensuring consistency across the sector since a situation could no longer exist where some businesses provide redress and others not; and
- it would keep consumer disputes out of the courts, providing a faster, cheaper and more private alternative for consumers and businesses.

176. The main disadvantages of such a scheme include:

- changing a scheme that works well could have unintended consequences leading the OCCS to be perceived as punitive and adversarial in nature, altering how businesses engage in the scheme and respond to findings;
- blurring the lines between dispute resolution and fitness to practise, since it would require the OCCS to reach a judgement on the evidence provided;
- experience suggests that adjudication schemes are slower, more formal and costlier given the time an investigation would likely take to gather and consider evidence within a framework of scheme rules. Even though the OCCS would first attempt mediation, some consumers may insist on a full investigation and decision despite low probability of a different outcome;
- there could be an increase in referrals for fitness to carry on business if businesses do not comply with decisions made by the scheme, although we expect non-compliance to be low given the risk of sanctions; and
- as above, businesses could decrease their internal resource in complaints handling at the first-tier stage and rely on the OCCS to make a decision. However, for cost and reputational reasons, the best interests of businesses would be to resolve complaints at first-tier, wherever possible.

177. We consider the choice of redress scheme is finely balanced. While a scheme that can make binding decisions would deliver stronger public protection, all scheme users (consumers and businesses) would lose out if disputes take longer to resolve and are costlier to manage. The relationship between an OCCS decision and our fitness to practise processes needs to be carefully weighed. We offer no preferred proposal at this stage and wish to hear stakeholder views before deciding what to recommend to government.

*How should any consumer redress scheme be delivered?*

178. Whatever our system of consumer redress, it could be delivered in the following ways:

- creation of a statutory organisation (such as an ombudsman) – this would require government being convinced of the need to create such an organisation as it would require legislation and potentially a separate funding scheme. However, the creation of a statutory organisation may be disproportionate given the relatively low number and value of complaints;
- a single provider through a competition *for* the market model (separate to the GOC, whereby we would advertise an open tender and select a provider based on a set of criteria) – this is the basis for our current model and means that all businesses would be required to use the appointed organisation. The benefits of this model relate to incentivising good performance by the provider and achieving value for money; or
- multiple providers through a competition *in* the market model (separate to the GOC, whereby we would advertise an open tender and approve a range of organisations that could provide a service and the business would choose one in which to participate) – this would create the most choice for the business but it is not clear whether more than one provider would be necessary given the relatively low number of complaints (in comparison with other industries that might consider tens of thousands of complaints) currently considered by the OCCS. It is also not clear what benefit this might have for patients, as it could be confusing for patients (as they would need to be signposted to more than one provider), creates risks of inconsistency and would be more complex to administer.

179. Our provisional view is that we should continue to operate a competition for the market model, which has served the sector well for a decade.

*How should any consumer redress scheme be funded?*

180. We will need to consider how any scheme would be funded (and appropriately reflect this in updated legislation), the main options being either:

- every business contributing through the registration fee;
- a pay per use/case fee model whereby the business pays for any complaint made against them that is considered by the scheme; or
- a combination of the above two models – the GOC would need to decide on a target allocation of income between registration fees and case fees.

181. We would not consider a model whereby the consumer had to pay for a scheme, as we consider this would be a significant barrier to redress for consumers and the industry is not known to experience frivolous claims.
182. Every business contributing through the registration fee would be the easiest model to deliver, funding is predictable and it reflects current arrangements. Whether they use the scheme or not, all businesses benefit from the added consumer confidence that a route to redress provides.
183. An advantage of the pay per use model is that it incentivises good behaviour which avoids disputes in the first place and encourages first-tier dispute resolution. However, since consumers have a right of access and the service is free to them, this can unfairly penalise businesses who have done nothing wrong yet receive complaints against them. Businesses may take a commercial decision to compensate a consumer at first-tier rather than risk an adverse outcome by the redress scheme. Some redress schemes seek to overcome this by not charging fees when the business is not at fault, but this means fewer businesses pay (and so the cost per case is more expensive) and makes it more difficult and predictable for the scheme to administer.
184. There is an argument that if we are registering all businesses providing specified restricted functions, since the OCCS is a business-to-consumer service, all its costs should be funded via the business registrant fee, rather than from a mixture of individual and business registrant fee income. There is concern from some businesses already registered with the GOC that their registration fee could increase if the OCCS expands. However, the issue of apportionment aside, the cost of running the OCCS per business is likely to reduce due to economies of scale. We will consider the issue of apportionment of fees further as part of wider planned work on our overall approach to registrant fees.
185. We asked Europe Economics to look at the costs of participation in a mandatory mediation scheme. Their 2023 report on [Mapping of optical businesses](#) estimated that regulating all optical businesses providing specified restricted functions would not result in businesses incurring additional costs. They considered that: “Whilst businesses would incur some costs related to resolving complaints brought through the OCCS, they would most likely have had to dealt with the complaints regardless. In fact the OCCS mediation service may reduce the time businesses spend dealing with complaints because the service provides support to both the customer and the business with the aim of coming to a quick resolution.”
186. Europe Economics anticipated that the ongoing increased service costs to the OCCS would be very small (a ten per cent increase in caseload costed at £24,000), as most of the additional businesses registering with the GOC would

already involve optometrists and dispensing opticians, and therefore already fall within the remit of the OCCS.

187. Our provisional view is that we should continue with current funding arrangements for the OCCS. This is the simplest system to administer, and our standards are the best lever to address any variability in first-tier complaint handling by businesses. As above, we will consider these issues further in our planned wider work on a fairer fees model for all registrants.