

General Optical Council response to the Consultation on CHRE's revised Performance Review Process and Standards of Good Regulation

The General Optical Council (GOC) welcomes the opportunity to comment on the CHRE's Consultation on its revised Performance Review Process and Standards of Good Regulation

The GOC is one of 13 organisations in the UK known as health and social care regulators. These organisations oversee the health and social care professions by regulating individual professionals. The GOC is the regulator for the optical professions in the UK. The GOC currently registers around 23,500 optometrists, dispensing opticians, student opticians and optical businesses.

The GOC's mission is to protect the public by promoting high standards of education, conduct and performance amongst opticians. Our work is built on a foundation of six core values. These values are based on the Better Regulation Commission's criteria for good regulation: Proportionality; Accountability; Consistency; Transparency; Targeted and Organisational Excellence.

The following is the GOC's responses:

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2.1 – it is correct that our main objective as set out in the Act is to protect, promote and maintain the health and safety of the public, however it is also true that the function of the regulators includes other public interest elements i.e. upholding professional standards and maintaining public confidence in the profession. Is it appropriate to limit this to public protection. This point applies throughout the document.

Page 2

4.1 – CHRE refer to having established benchmarks: *We are beginning to get some useful comparative information and to have established benchmarks for quality.* It is not clear to us what these benchmarks are, if they are anything other than the standards themselves and/or the minimum requirements set out in CHRE's matrix.

Page 4

What work have we done so far?

We question the statement in the document at point 4 under this section:

'We have considered whether we could take a more risk based approach to the performance review. However, at this time, we do not believe that we have

sufficient information on the regulators' performance to focus only on particular regulators or functions. This may change over time and we reserve the right to take this approach in the future. Instead we will continue to take a targeted approach to the performance review by focusing only on what we need to know to ensure that public protection is prioritised, but for the moment we will review all regulators every year and all of their functions.'

Given the amount of information CHRE on each of the regulators, what more is needed before CHRE feel they do not have to consider all functions every year?

This is a general point that occurs several times in the document – what is meant by “How far the regulators have met the Standards of Good Regulation”? Either each standard/requirement has been met, or it has not been met – We do not see that there is any scope for degrees of compliance. Would CHRE want to ask for evidence demonstrating that each standard/requirement has been achieved?

Similarly, throughout, we disagree with the inclusion of ‘continuously improving’ as part of the core standard. Whilst this may be an internal goal, it is arguable that once a regulator has achieved the other criteria, any further improvement would not be proportionate.

It would be helpful if each point was numbered rather than carrying a bullet point – for easier reference.

Annex A

Page 7

1.3 CHRE have referred to changing the evidence which may be required each year. We reiterate that if standards/minimum requirements/evidence change from year to year, regulators need to be given sufficient advance warning, otherwise they are being judged against criteria that were not in place at the time which is unrealistic given that we all have to adhere to budgets that are fixed for the year several months in advance.

1.4 1st bullet – *checking how effectively the regulators are carrying out their functions*: It is not clear how CHRE carry out this “check”.

Last bullet – *comparing the performance of each of the regulators*

Detailed comparisons between the regulators are not included within CHRE’s reports. Should CHRE also be considering whether such comparisons are possible/appropriate in relation to some issues where there may be good reasons for significant divergence between different regulators?

2. Section 1: Executive Summary

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Although CHRE have removed the governance section, which we agree with, the executive summary repeats a fair bit of this and is a fairly substantial section for completion. We would welcome some reassurance that by completing this in the new format, we would not be receiving the kind of extensive supplementary questions we have had in previous years.

2.1 “Response to last year’s performance review”

1st bullet – We think this is vague and unnecessary given the two bullet points that follow.

2nd and 3rd bullets – We think these are the wrong way round in terms of order. There is an argument that regulators should be prioritizing addressing any recommendations made specifically to them, over and above looking across at areas of “good practice” identified in relation to the other regulators to see which we may be able to adopt.

5th bullet – it is not clear to us whether the “areas for concern” are meant to be those identified by the GOC staff, by CHRE, and/or by other stakeholders. It is also not clear the extent to which this would catch improvements made (rather than “concerns” as such). Which categories of operational changes would CHRE wish to be informed about?

6th bullet – similar comment i.e. who is making the judgment about “areas of excellence” (isn’t that for CHRE to do?)

Under “Principles of good regulation”

Do the questions CHRE are asking necessarily divide neatly into the principles? For example, learning from fitness to practise complaints and reflecting these in standards and guidance would be more about being targeted and proportionate than about transparency and accountability.

One suggestion could be to open this section with a reminder of the principles, then simply ask the questions as they have them, but not necessarily directed towards evidence of meeting particular principles.

2nd bullet – We don’t understand what “.how have you addressed information that you may have received from a variety of sources on possible failures in performance or organizations or individuals” is meant to be a reference to. Is this intended to be a reference to complaints about the GOC, and/or complaints about our registrants?

3rd bullet – why are we being asked for evidence of being agile? Is it not for CHRE to show “agility” as one of its principles, not us. We understand that “agility” is a good thing for regulators to have, but it is not part of our values, and it is not something that CHRE has the remit to assess our performance on specifically.

Similar comments re “right touch regulation” – this is a CHRE initiative, not part of the individual regulators’ mission statements or values.

Under “Liaison with other bodies”

Sharing of intelligence, the GOC is only able to do so where permitted by statute. This limitation does not appear to be reflected in the wording of CHRE's document. We are not sure it is one of our statutory functions to ensure that cross-regulatory learning is shared, so we are not clear why CHRE are asking for evidence of that from us although clearly it is a good idea.

Section 2: Guidance and standards

We have no comment in relation to the Standards section – the standards seem reasonable.

Section 3: Education and Training - Page 11

We are generally content with the standard in this area although the following statements might benefit from rewording to make the meaning clearer:

In the evidence section:

“The standards to be met by education and training providers and how they reflect patient centred care and link to standards of competence and conduct for registrants.”

We are not clear what CHRE expectation is in terms of the education standards – in the GOC's case - the competencies & Handbook requirements– would ensuring protection of the public be more appropriate than 'patient centred care'?

4.2 – 2nd bullet. This bullet is vague. If this suggests that if anyone is ever erased, that is the result of some failing in the education and training system, we do not think this should be a standard for education and training. However it may be to suggest that the regulator should have systems in place to enable registrants to maintain their competence (such as statutory CET), which is reasonable. Perhaps the wording could be amended for greater clarity.

3rd bullet – We are not sure we know what is meant by “...increases trust, confidence and knowledge of health professional regulation”. Whose trust, confidence and knowledge is being increased? The public's? The professional's? or all stakeholders? If the regulators are to be judged against their performance with specific stakeholder then CHRE needs to be more specific.

4.4 – 2nd bullet - It is not clear to us which “student fitness to practise outcomes” are referred to here – presumably those of university/training institution disciplinary procedures (?). What is the CHRE's expectations? [a] that regulators have a mechanism in place to be aware of action taken by training establishments against students on conduct and a system for learning from these outcomes; and/or [b] whether there is a suggestion of a direct correlation between the occurrence of such action and the effectiveness of our education and training function?

Final bullet –this is a point that crops up several times in the document – who are “they” in this context; each regulator presumably? This bullet suggests that each regulator should be actively monitoring itself against each and every one of the preceding bullets. Is this something that is currently being done by the majority of regulators?

Again we question whether the various references to “continuous improvement” helpful or should it be more important to encourage each regulator to prioritise its activities to areas where it is not meeting the standards/has further to travel in terms of good practice, than to be trying to demonstrate it has continuously improved even on areas already regarded as excellent.

Section 4: Registration

5.1 – 3rd bullet – May we please have clarification on “everyone can easily access information...”? Does it mean that anyone (including the public) should have access to all the information, including any present (and past?) FTP Committee sanctions, interim orders, and/or warnings?

4th bullet – We do not believe this is appropriately worded. All the regulator can do is to disseminate information about the importance of checking registration.

5th bullet –with reference to “proportionate and risk based” might we enquire: proportionate to what? To other similar complaints? Or to fitness to practise complaints? Or proportionate in terms of costs to the organization? What risk is relevant here – risk of harm to the public/risk of damage to public confidence in the profession?

Registration - Evidence

We would make the comment that regulators may do more or less work in these areas depending on their own assessment of the importance of the issues in each case. For example, the GMC is aware of serious patient safety issues arising from language competence of foreign doctors and is therefore doing a great deal of work in this area. The HPC might do a lot of work on protected titles if they are aware of a large number of ‘charlatans’ using these. If the GOC does not have any evidence of risk to public safety in optics resulting from either of these areas, we may focus on other areas where we believe there is greater public benefit.

5.3 – 4th bullet – the reference to “activities undertaken to identify non-registrants ...” concerns us as it suggests CHRE expect the regulators to pro-actively look for that evidence as opposed to responding to complaints. This was also referenced in the recent CHRE report that suggested regulators check the various directories. Most regulators (bar the RPSGB) do not have an inspectorate. Again the reference to “proportionate and risk based action” is vague.

5th bullet – is it part of our core role to influence the development of EU and international regulation?

6th bullet – same point as made previously re evaluation of performance/continuous improvement.

Section 5: Fitness to Practise

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“fitness to practise” is mis-spelled in various places. Similarly “practice” has been mis-spelled as “practise” in various places within the document.

6.1 – 2nd bullet – We do not understand the reference to “local arbitrators”. Similarly the majority of optical practices do not come within the purview of the CQC as the “system” regulator and so is this relevant to the GOC’s work?

6th bullet –The sentence “delays do not impact on public protection” may need some clarification/deletion.

7th bullet – Should the reference be to regular updating? This bullet raises an interesting issue about whether the allegation once it proceeds to a hearing can properly be described as the complainant’s “complaint” or not. The reference to “individual need” being “met” is vague and too broad – complainants’/other witnesses’ needs may go far wider than it would be appropriate for a regulator to attempt to meet.

Final bullet – May we have clarity on what is meant by “securely retained”. This could have implications for the GOC if the current filing/IT access arrangements are not regarded as “secure”.

Under “How does good regulation through fitness to practise ...” should there be a bullet referring to ensuring that those whose fitness to practise is impaired are not able to continue practising (or practising unrestricted)?

3rd bullet – It is not clear what a “joined up approach to fitness to practise ...” is intended to refer to in this context. Is it a reference to the GOC telling other regulators of concerns about their registrants?

6. 3- 4th bullet (Page 16) – there is no reference here to confidentiality/Data Protection restrictions.

6th bullet – is it not clear if this is meant to refer to an electronic (or non-electronic) case management system. Such a system cannot prevent delay – it can only facilitate monitoring/intervention etc. We believe the reference should be to parties being regularly updated as to progress. It is not clear to us what is meant here by “prevents discrimination” –

is this a reference to equality and diversity monitoring of registrants who are the subject of fitness to practise complaints, and taking any actions arising from any apparent inequality of treatment? That is not something for a case management system to do by itself, albeit it might be used as the means for recording that information. Does it go wider and apply to discrimination issues that relate to complainants, witnesses, panel members, staff etc?

7th bullet – same comment as above re the inappropriateness of wording referring to meeting the needs of individual parties. What is the “outcomes of this work” meant to refer to? Is it intended to refer to us asking witnesses etc for feedback post-hearing?

8th bullet – is it appropriate for CHRE to be provided with any feedback given to GOC staff members?

Arguably some of the feedback we might provide to panel members would not be something we would wish to share with CHRE, and if we are obliged to do so that might limit its usefulness. This bullet seems to us to be not very “outcome focused” – is the relevant outcome the quality of the FTP Committee’s decisions, as assessed by CHRE?

9th bullet – We believe this bullet point would be more “outcome focused” if it referred to evidence of steps taken to mitigate risks identified as arising from FTP decisions, rather than on the existence of a quality assurance process.

10th bullet – insufficient detail has been provided as to the type of disclosure being referred to here (it could be pre-hearing inter-partes disclosure, or disclosure of FTP information to third parties – if the latter then it should not fall solely in the FTP section as many requests for information will come into other parts of the GOC). Similarly, information security policies are not relevant only to FTP.

Final bullet – same point made above re the lack of clarity about “evaluation” and “continuous improvement”.

Annex B

2.8 – 2 – CHRE have not explained the mechanism to be used to “take account of risk”.

2.8 – 9 At which point will CHRE share the areas of excellence?

2.9 – CHRE have not provided an indicative timetable for anything other than the first step in the process. See comment to para 2.25 below.

2.17 – We do not believe CHRE should be looking only for regulators to innovate, but first of all for them to demonstrate that they are carrying out their functions to the required threshold, whether they do so innovatively or not. We also believe that in order for CHRE to reach an assessment of whether/not a regulator are meeting the required threshold there should be some indication of the expected threshold, particularly as CHRE are intending to make comparisons between different organizations. It may not be necessary to set “specific marking

criteria” but there is need to provide regulators with sufficient certainty about the standards against which they are going to be assessed, particularly if the process is intended to be more “outcome focused” – i.e. where subjective judgments are going to play a larger role in the overall assessment, rather than it being a tick-box exercise as to whether/not certain processes are in place.

We are also not sure that it is relevant to include as part of “Displayed excellence” the element referring to continuous improvement – if a regulator has already achieved excellence then clearly it should not rest on its laurels, but equally it would probably be more appropriate for it to immediately refocus its priorities on any areas in which excellence has not already been achieved.

We question whether the paragraphs on “the investigation process” sit well where they currently are. Could this be a separate annex?

2.25 – We would reiterate our objection, on the grounds of fairness, for the format of the performance review or the report to change at short notice – CHRE need to ensure they give regulators sufficient warning of any major change. Changing the format of the reports is also likely to make it more difficult to compare one report against the report from the previous year(s).

The GOC has incorporated the current Performance Review standards into our planning and assessment for this year. If CHRE is going to ask for our assessment in December for the year just gone, then this should be in respect of the current standards. If the new standards are approved this summer, they can be incorporated into our planning for 2011/12.

General Optical Council
14 April 2010.