

## **Investigation Committee guidance: consultation**

The GOC is seeking feedback on the guidance used by its Investigation Committee when deciding whether to refer complaints to the Fitness to Practise Committee.



## About the General Optical Council

### Introduction

The General Optical Council (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. We are the regulator for the optical professions in the UK. The Council currently registers around 23,500 optometrists, dispensing opticians, student opticians and optical businesses.

### Mission and values

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.

#### **Proportionate:**

We will identify and target the issues of greatest risk to public safety.  
We will remove unnecessary bureaucracy.

#### **Accountable:**

We will seek, and respond to, the views of stakeholders and partners.  
We will consider and review the consequences of our actions.

#### **Consistent:**

We will work in collaboration with UK health regulatory bodies and other partners to develop consistent policies and procedures.

#### **Transparent:**

We will explain and publicise decisions, and make public, wherever possible, Council information, activities and proceedings.

#### **Targeted:**

We will ensure that our activity is focused on the areas of greatest risk, or where there is most benefit to public health and safety.

#### **Organisational Excellence:**

We will provide good value for money.  
We will pursue high standards of customer service.  
We will ensure that the Council is a good place to work, particularly through developing and training our staff and members.  
We will promote and develop equality and diversity in all our work.

### Contact details

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email: [goc@optical.org](mailto:goc@optical.org)

tel: 020 7580 3898  
web: [www.optical.org](http://www.optical.org)

## Responding to the Consultation

### Respond to

Please send your responses to **Rosalyn Hayles**, Director of Legal and Fitness to Practise, no later than **9 November 2009**.

Post: 41 Harley Street, London, W1G 8DJ

Email: [rhayles@optical.org](mailto:rhayles@optical.org)

We are asking some specific questions that we would like feedback on but you are welcome to offer any comment you wish on the proposals.

Please include contact details so that we can follow-up any relevant aspect of your response. Unless you state otherwise (and an automatic disclaimer generated by your IT system will not be taken as such), we will assume you are happy for us to publish your response and to share it with other appropriate bodies and stakeholders.

### Further information

Where possible, please provide evidence to support your response. If you are a representative group, it would be helpful if you could include a summary of the people and organisations that you represent.

If you have any queries about the consultation then please contact **Simon Grier** on 020 7307 3478 or [sgrier@optical.org](mailto:sgrier@optical.org).

### The GOC's commitment to consultation

The General Optical Council believes it is important that the people affected by our work have a say in how we deliver it. We believe it is vital to consult with all the groups with an interest in the GOC; patients, the public, our registrants, optical organisations, healthcare organisations, employers, other regulators, staff and other stakeholders.

Effective consultation is valuable to help us improve the way we work. It informs us and helps us to achieve our mission of protecting the public through promoting good eye care.

Feedback on the consultation process itself would be welcome. If you have any comments then please contact **Simon Grier** using the details above.

## Consultation summary

### Key Facts

**Start date:** 10 August 2009

**End date:** 9 November 2009

**Results published:** Guidance to be published following a review of consultation responses.

**Contact:** Simon Grier. 020 7307 3478, [sgrier@optical.org](mailto:sgrier@optical.org)

### What is the Investigation Committee?

When a complaint is made about one of our registrants, the Council's Investigation Committee considers whether the case should be referred for a Fitness to Practise hearing.

The Committee considers the evidence about the complaint and can take one of the following courses of action:

- Taking no further action (including issuing an advisory letter to the registrant);
- Referring the case for a formal hearing by the Fitness to Practise Committee
- Inviting the registrant to attend a voluntary performance review;
- Directing that further investigation is required, including directing that either a health assessment or a performance assessment is carried out;
- Issuing the registrant with a formal warning

### The purpose of this consultation

The guidance is a document to assist the Investigation Committee when it considers what action to take, if any, when considering Fitness to Practise complaints against GOC registrants. While individual cases have to be decided on their own merits, the purpose of the guidance is to encourage consistent decision-making.

We are consulting on this guidance in order to make sure that the views of all the stakeholders in the GOC's Fitness to Practise processes (including complainants, registrants, professional and representative bodies, and healthcare regulatory organisations) have been taken into consideration. We welcome all views on the proposed guidance.

## Consultation questions

- 1 Do you agree that the guidance will help to ensure decisions made by the Investigation Committee are consistent?
- 2 Do you agree that the guidance will help those who are making a complaint about a GOC registrant, to understand the factors that the Investigation Committee will take into account when reaching a decision?
- 3 Do you agree that the guidance will help GOC registrants who are the subject of a complaint to understand the factors that the Investigation Committee will take into account when reaching a decision?
- 4 Do you agree that when considering a complaint, the Investigation Committee should take into account the fact that the Registrar generally presumes that registrants with certain types of criminal convictions should not be allowed entry onto the GOC's registers? If you think it is **not** appropriate for the Investigation Committee to take this into account, please explain why.  
[The types of convictions are listed on page 9 of the consultation document.](#)
- 5 Do you agree that when considering a complaint, the Investigation Committee should take into account the factors that might lead to the Fitness to Practise Committee ordering a registrant's removal from the GOC's register? If you think it is **not** appropriate for the Investigation Committee to consider these factors please explain why.  
[The factors are listed on page 10.](#)
- 6 Do you agree that when considering a complaint, the Investigation Committee should take into account the factors that would be regarded by the Fitness to Practise Committee as either aggravating or mitigating the seriousness of a case? If you think this is **not** appropriate, please explain why.  
[The factors are listed on page 10.](#)
- 7 Do you have any other comments on the draft guidance?

## Guidance on the consideration of complaints by the Investigation Committee

### Introduction

1. The purpose of this document is to assist the Investigation Committee when it considers what action to take, if any, in respect of fitness to practise complaints against GOC registrants.
2. The document is guidance only. It is intended that the Guidance will encourage consistent decision-making, but every decision that the Investigation Committee makes will be based upon the facts of the particular case being decided upon. The Guidance is intended to be a living document: it will be amended as and when appropriate, to take into account the growing experience of the Investigation Committee in dealing with fitness to practise allegations and legal developments such as amendments to legislation and new case law.
3. This Guidance is a public document and available on the GOC website. Investigation Committee meetings are held in private and neither the complainant nor the registrant, or their representatives, are permitted to attend the meeting. It is important that complainants, registrants, professional and representative organisations and the wider public are aware of the basis upon which the Committee approaches its task of considering complaints against registrants.
4. References within this document to allegations that a registrant's fitness to practise is impaired should be taken to include allegations that a student registrant's fitness to undertake training is impaired or that a business registrant's fitness to undertake business is impaired. The term fitness to practise is used in its broad sense to apply to all types of GOC registrant.

### Legislation

5. Section 13D of the Opticians Act 1989 applies where an allegation is made against a registrant that his or her fitness to practise is or may be impaired. Subsection (5) of that section states:

“The Investigation Committee shall investigate the allegation made against the registrant and decide whether it ought to be considered by the Fitness to Practise Committee.”

6. Rule 13 of the Fitness to Practise Rules 2005 states:

“The Investigation Committee shall, taking into account any report of an assessment carried out under Part 3 [of the Rules, namely a health

assessment or a performance assessment], decide whether or not an allegation ought to be referred to the Fitness to Practise Committee”.

7. When considering whether to refer cases to the Fitness to Practise Committee, the Investigation Committee should keep in mind the terms of section 1(2A) of the Opticians Act 1989, which states:

“The main objective of the Council in exercising such of the Council’s functions as affect the health and safety of members of the public is to protect, promote and maintain their health and safety.”

#### The public interest

8. The Committee should always take into account the public interest. The wider public interest includes not just the protection of members of the public, but the maintenance of public confidence in the professions and the declaring and upholding of proper standards of conduct and behaviour.

#### Equality and Diversity

9. The Investigation Committee must be aware of and apply the GOC’s Equality and Diversity Scheme.

#### The options open to the Investigation Committee

10. When considering allegations against a registrant, the Investigation Committee has seven options, as follows:
  - To take no action against the registrant (this can include the issuing of an advisory letter to the registrant);
  - To invite the registrant to attend a voluntary performance review (conducted by one of the optical professional bodies);
  - To direct that further investigation is required (this includes the following two options) – a final decision on what to do about the allegation will be taken after that further investigation has been undertaken;
  - To refer the registrant for a performance assessment under Rule 7 of the Fitness to Practise Rules 2005 - a final decision on what to do about the allegation will be made after a report has been received;
  - To refer the registrant for a health assessment under Rule 7 of the Fitness to Practise Rules 2005 - a final decision on what to do about the allegation will be made after the reports have been received;
  - To issue a formal warning against the registrant, in accordance with the procedure set out in Rule 14 of the Fitness to Practise Rules 2005;
  - To refer the case to the Fitness to Practise Committee.

11. The sections below provide guidance to be taken into account when the Committee is considering any of these seven options. The ultimate question for the Committee, as set out both in the Opticians Act and the Fitness to Practise Rules, is always whether the case ought to be referred to the Fitness to Practise Committee.
12. In considering whether the case ought to be referred to the Fitness to Practise Committee, the Investigation Committee will almost always have to consider the matters set out below.

### Referral to the Fitness to Practise Committee

13. When considering whether a case ought to be referred to the Fitness to Practise Committee, the Investigation Committee should ask itself the following question: is there a realistic prospect of establishing that the registrant's fitness to practise is impaired to a degree that justifies action being taken against their registration?
14. This involves consideration of two issues.
  - Firstly, is there a realistic prospect of being able to prove the factual allegations made against the registrant?
  - Secondly, if the allegations against the registrant were proved, are they so significant as to indicate that the registrant's fitness to practise is or may be impaired?
15. This does not involve the Investigation Committee deciding whether the registrant's fitness to practise is impaired: that is a decision for the Fitness to Practise Committee.
16. When considering the realistic prospect test the members of the Investigation Committee should consider the following:
  - The Investigation Committee should bear in mind the standard of proof applicable to factual allegations brought by the GOC before the Fitness to Practise Committee, namely the civil standard of proof. In other words, an allegation will be proved if the GOC can establish, by calling evidence, that it is more likely than not to be correct.
  - It is not the function of the Investigation Committee to decide between competing evidence. Equally, it is of course essential for the Committee to weigh the written evidence that is before it.
  - The Investigation Committee will not make findings of fact on the substantive issues arising from the allegation.
  - The Investigation Committee will adopt a cautious approach, and where there is any element of doubt, the Committee should

make a referral. It is not part of the Investigation Committee's function to refer to the Fitness to Practise Committee allegations that are simply fantastic, or supported by no credible evidence. Where there is a plain conflict between two accounts, either one of which may realistically be correct, and on one account the matter would call into question the registrant's fitness to practise, the conflict should be resolved by the Fitness to Practise Committee, not the Investigation Committee.

- The Investigation Committee should proceed with caution in reaching a decision to not refer a case where the decision may be perceived as inconsistent with a decision made by another public body with input from optical professionals or an NHS body for instance, in relation to the same or substantially the same facts. If the Committee does reach such a decision, it should give reasons for any apparent inconsistency.
- The Investigation Committee should bear in mind that there is a public interest in the ventilation of complaints before the Fitness to Practise Panel in public where there is a realistic prospect of establishing impaired fitness to practise.
- Where relevant to the allegation under consideration, the Investigation Committee will consider the statement within the GOC's Protocol on the handling of criminal convictions disclosed by registrants that the Registrar will generally presume against registration, restoration or retention on the GOC Register where an applicant discloses a conviction for an offence included in Schedule 4 of the Criminal Justice and Court Services Act 2000, namely:

[\[Question 4 of the consultation relates to these offences.\]](#)

1. An offence against a child
2. Murder
3. Manslaughter
4. Kidnapping
5. False imprisonment
6. Wounding and causing grievous bodily harm
7. Assault, including actual bodily harm
8. Rape
9. Procurement of women
10. An offence under Section 128 of the Mental Health Act 1959
11. An offence under the Sexual Offences Act 2003
12. An offence under Section 4(3) of the Misuse of Drugs Act 1971.

- Where relevant to the allegation under consideration, the Investigation Committee will consider the factors that are identified within the FTP panel members' guidance as indicating that erasure is likely to be the appropriate sanction, namely:  
[\[Question 5 of the consultation relates to these factors.\]](#)
  1. Serious departure from the relevant professional standards as set out in the code of conduct for registrants and business registrants.
  2. Doing serious harm to individuals (patients or otherwise) either deliberately or through incompetence and particularly where there is a continuing risk to patients.
  3. Abuse of position/trust (particularly involving vulnerable patients) or violation of the rights of patients.
  4. Offences of a sexual nature, including involvement in child pornography.
  5. Offences involving violence.
  6. Dishonesty (especially where persistent and covered up).
  7. Persistent lack of insight into seriousness of actions or consequences.
  
- Where relevant to the allegation under consideration, the Investigation Committee will consider the factors that are identified within the FTP panel members' guidance as generic mitigating/aggravating factors:  
[\[Question 6 of the consultation relates to these factors.\]](#)
  1. Impact on victim – to include both harm and potential harm.
  2. Whether offence at work or outside work.
  3. Whether the actions involved an abuse of trust.
  4. Whether or not the registrant has shown insight or remorse.
  5. Whether the offence was premeditated or spontaneous.
  6. Whether the conduct was a one-off or repeated.
  7. Whether the registrant attempts to cover up wrongdoing.
  8. Whether the offending has occurred in the light of previous warnings.
  9. Whether the registrant has complied with any previous assessment or conditions.

### Closure of the case

17. The Investigation Committee should close a case if it considers that:

- The allegation demonstrates no issue that could call into question the registrant's fitness to practise;

- The allegation, if proved, may demonstrate a shortcoming on the part of the registrant but not to an extent that would lead to the conclusion that the registrant's fitness to practise is impaired and justify action being taken against their registration; or
- The allegation, if proved, may demonstrate that the registrant's fitness to practise is impaired, but there is no realistic prospect of being able to prove the allegation for evidential reasons.

### Issuing an advisory letter

18. The Investigation Committee may direct that an advisory letter is issued to the registrant if the case is to be closed. Such a letter has no formal status: it is simply advice. Such letters may contain (but are not limited to) advice regarding: future conduct; matters that the Committee considers to have been errors on the part of the registrant that he or she should reflect upon or learn from; advice on the appropriate handling of dissatisfied patients.

### A performance review

19. The Committee may invite a registrant to attend a voluntary review with either the College of Optometrists, or the Association of British Dispensing Opticians, as appropriate. A review is an informal discussion between the registrant and a relevant representative of the College or the ABDO, addressing an aspect of the registrant's practice that the Committee considers would be of benefit to the registrant and the standard of his or her practice. This is not an outcome set out in the legislation. It should be only be considered by the Investigation Committee if they are confident that there are no public safety issues. The case will not be closed until the registrant has attended the review meeting.

20. The availability of such a review depends upon the capacity of the professional organisation to accommodate it. Non-members of the organisations may have to pay a fee. The registrant can only be invited to attend a review: they cannot be required to do so. However, should a registrant decline to attend such a review, the Committee should reconsider their decision regarding the complaint. Such a refusal may call into question the registrant's insight into the importance of maintaining proper professional standards. There will be a presumption where a registrant refuses to attend a review that the matter will be referred for a formal performance assessment under Rule 7 of the Fitness to Practise Rules.

### Further investigation

21. If the Committee considers that it does not have sufficient information on which to make a decision, and that it is practical for the GOC to obtain that information, then it may under Rule 6 of the Fitness to Practise Rules determine that further investigation is required. Save for

circumstances where the Committee directs that a health assessment or a performance assessment is to be undertaken (see below) there is no obligation on the part of the Committee to inform the complainant or the registrant of the nature of the further investigation that it wishes to be undertaken.

### Performance Assessment

22. The Committee may consider that the allegations before them raise broad questions as to the adequacy of the registrant's standard of work in certain areas of practice and that their decision-making would be assisted by a formal assessment of the standard of the registrant's work in those areas. If so, they may direct that a performance assessment be undertaken. Separate guidance has been published by the GOC for registrants who are required to undergo a performance assessment and for assessors.

### Health Assessment

23. The allegations made against a registrant, or the registrant's response to those allegations, may raise questions as to whether the registrant's fitness to practise is impaired as a result of their ill-health (including any addiction to drugs or alcohol). If so, the Committee may direct that a health assessment be undertaken.

### Formal warning

24. The GOC has published separate guidance on warnings issued by the Investigation Committee. In brief, a warning issued by the Investigation Committee is not a formal sanction. It is not held on the public register but it is recorded by the GOC for a period of four years. It is a record of a concern on the part of the Investigation Committee which, while not requiring referral to the Fitness to Practise Committee, is potentially significant. If, within the four-year period, a further complaint is made against the registrant, which is or may be of a similar nature to the subject matter of the warning, the warning may be taken into account by the Investigation Committee in deciding what to do about the new complaint.

### Review of this guidance

25. This document will be the subject of a regular review to reflect developments and changes in the Investigation Committee's practices and procedures. Once reviewed this document will be re-published in its revised format.

## How to respond

Please send your responses to **Rosalyn Hayles**, Director of Legal and Fitness to Practise, no later than **9 November 2009**.

Post: 41 Harley Street, London, W1G 8DJ

Email: [rhayles@optical.org](mailto:rhayles@optical.org)

Alternatively, visit [www.optical.org](http://www.optical.org) where you will find an electronic version of this form.

## Response form template

### Your Details

Name:

Address:

Telephone number:

Email:

### Are you replying on behalf of an organisation?

Name of the organisation:

Your position:

Nature of the organisation's work:

### Keeping in touch

Because we value your input, we would like to contact you occasionally to let you know when we launch consultations and to invite you to future events. We will not pass your data on to any third party. Please tick here if you do not wish to be contacted in this way about the GOC's consultations:

- 1 Do you agree that the guidance will help to ensure decisions made by the Investigation Committee are consistent?



- 5 Do you agree that when considering a complaint, the Investigation Committee should take into account the factors that might lead to the Fitness to Practise Committee ordering a registrant's removal from the GOC's register? If you think it is **not** appropriate for the Investigation Committee to consider these factors please explain why.  
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