

General Optical Council
Fitness to Practise Annual
Report 2010/11

General Optical Council Fitness to Practise Annual Report 2010/11

Presented to Parliament pursuant to Section 32A (2) of the Opticians Act 1989 as amended by the Health Care and Associated Professions (Miscellaneous Amendments) Order 2008/SI 2008 1774

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Foreword by Anna Bradley, Chair of Council

This is the General Optical Council's second annual fitness to practise report.

We aspire to lead the way in health regulation and this requires us to monitor our work carefully and learn from our experiences. Our aim, in producing this report, is to share our fitness to practise (FTP) statistics openly and transparently with all our stakeholders. In this we include registrants, professional bodies, patient and public interest groups, and the wider public, whose safety we exist to assure.

During the year, the number of complaints we received remained stable. Fewer than one per cent of our registrants were subject to a complaint, a very small number of cases from which to draw conclusions. Our ambition is to establish trend data from one year to the next, which will help us to see where there may be a need for change in the future. In doing this we want to draw on as many sources of information as we can, including the views and experiences of those involved in investigating and hearing FTP cases, those raising complaints and those prosecuting and defending them.

We do not believe that there is any point in tracking such information unless we find ways to learn from it, and to act on what it tells us. So in the years to come, our aim is not only to understand trends, but to engage in active and productive discussion with our stakeholders about targeted and proportionate ways of addressing the implications. This might sometimes imply regulatory changes, but sometimes other tools will be preferable and/or more appropriate. For example, there might be a need for behavioural change led by the professional bodies in our sector.

It is a testament to the work of all those involved in delivering our fitness to practise functions – staff, Investigation Committee members, hearings panellists - that we received another positive review in the initial stages audit this year from the Council for Healthcare Regulatory Excellence (CHRE), which stated that their audit showed the GOC has 'a good initial-stages risk assessment and investigation system leading to safe decisions', and that our decisions 'were communicated to interested parties in a thorough, helpful and articulate way'.

Despite this praise, we think that there is much more we can do. We believe that efficient, quick and joined up processes are an integral part of effective regulation. For that reason, we have spent considerable energy and effort over the last year developing new fitness to practise rules. These new rules are designed to streamline and speed up the whole process from start to finish, without compromising quality or equity. It will take some time to implement them, but we are confident it will be worth it.

Anna Bradley
Chair of Council

Introduction

The purpose of this report is to provide statistical information about the fitness to practise (FTP) process and where possible provide analysis of trends. We hope that in future years the analysis will be more detailed as we will have more data available to us.

We are committed to looking for ways of improving our FTP process and have undertaken work in the last year to develop our FTP rules. We are required to work within the overarching legislation of the Opticians Act 1989 (as amended) and have sought to provide more modern and efficient ways of processing a case within this framework. We hope to put these amendments into effect over the next 12 months.

I hope that you find this report to be a useful explanation of FTP process. If you would like to contact the FTP team please email us at ftp@optical.org.

Fitness to practise – what does it mean?

The statutory function of the GOC is to protect, promote and maintain the health and safety of members of the public. The FTP team's role within this is to 'investigate and act where a registrant's fitness to practise, train, or carry on business is impaired'.

The GOC must maintain its independence during the course of its work – we do not act as a complaints resolution organisation nor do we mediate between the registrant and the patient, although the majority of our investigations are triggered by complaints from members of the public. We conduct a thorough and independent investigation in order to ensure that the decision making committees are able to determine the appropriate action to take, whilst always having the GOC's statutory function in mind.

The role of the FTP Committee is to determine whether the past behaviour of the registrant means that their current fitness to practise is impaired. During the course of our investigation we look to a registrant's past, current and future practice to assess whether we should take action.

All professionals will make mistakes during the course of their practice. At the decision making stages of the FTP process the relevant committees are required to undertake an assessment of whether that error, course of conduct or behaviour will reoccur or indeed whether that error was so serious that the GOC ought to take action to restrict a registrant's practice.

This year we have seen a small decrease in the number of complaints we have received. There has also been a small decrease in the number of cases heard by the FTP Committee (the final hearing). Only 0.74% of those registered with us are subject to complaints about their fitness to practise, and of that an even smaller number are referred for a formal hearing.

During the course of our investigations this year, a particular theme has been a lack of communication between the registrant and the patient which has resulted in a complaint to the GOC.

We would encourage our registrants to explain the purpose of the examination, whether a sight test or a contact lens after care appointment, why there needs to be a fitting period when prescribing contact lenses, and the sometimes subjective assessments used to determine a patient's spectacle prescription. Although good communication may not necessarily prevent a complaint, it can mitigate misunderstanding.

Kisha Punchihewa

Head of Fitness to Practise
kpunchihewa@optical.org

About us

The GOC regulates optometrists, dispensing opticians, students training to be optometrists or dispensing opticians, and optical businesses in the UK. There are currently around 24,000 registrants.

Individual optometrists and dispensing opticians must be registered with us before beginning to practise. Student optometrists and student dispensing opticians must be registered with us in order to undertake training.

We get our powers from an Act of Parliament called the Opticians Act 1989 (as amended) (the Act). The ways in which we use these powers are set out in statutory rules.

Our main functions

We are one of nine regulators of the healthcare professions. Regulators protect the public by restricting who can practise a profession. We are independent of the Government and our work is reviewed by a separate organisation – the Council for Healthcare Regulatory Excellence (CHRE).

We have 12 Council members: six are registrants and six are lay members (not optometrists or dispensing opticians). Council members oversee the work of the whole organisation and are responsible for making strategic decisions.

Staff based at our office in London put the strategic Council decisions into practice, assisted by several committees, including the two independent committees involved in the fitness to practise process – the Investigation Committee and the FTP Committee.

Our mission and values

We want to be seen as leading the way in regulation. The GOC is determined to respond effectively to the considerable pressure for change in the way health professions are regulated. We do not plan to wait to be told what to change and how. Instead we want to get there first, building on good practice around us and taking the initiative where we can, to become an example of good practice that is recognised by others in our field.

We have identified four key strategic aims that we believe will ensure that we address the internal and external challenges and opportunities, and move closer to our vision over the next three years:

- excellent strategic capacity
- strong stakeholder relationships
- integrated and streamlined processes
- shared culture and identity

If you would like read our strategic plan, go to www.optical.org/goc/filemanager/root/site_assets/strategic_documents/goc_strategic_plan_2011-2014_final.pdf

How do we protect the public?

1. Setting standards for optical education, training, performance and behaviour

Optometrists and dispensing opticians who want to register with us must meet our standards of knowledge and skill which are referred to as the standards in competence.

In addition, individuals who want to register with us must meet our standards in behaviour, which can be found in the Code of Conduct for Individual Registrants. Optical businesses who want to register with us must meet our standards of behaviour, which can be found in the Code of Conduct for Optical Businesses.

Copies of the Codes and standards are available from our website **www.optical.org**.

Student optometrists or student dispensing opticians must satisfy the Council that they are fit to undertake training, and qualified registrants must satisfy the Council that they are fit to practise.

2. Approving the qualifications that lead to registration

Individuals need training to deliver good standards of eyecare. We assess and approve the education given to optometry and dispensing optics students who will wish to register with us to practise in the UK to make sure that the training meets our standards.

We decide on the content of all courses and qualifications that lead to full registration with us. We carry out quality assurance visits to check that education and examination bodies are keeping to our standards.

3. Publishing registers of optometrists, dispensing opticians, students and optical businesses in the UK

Optometrists and dispensing opticians must be registered with us to practise in the UK. We keep registers of all optometrists, dispensing opticians, student opticians and optical businesses who are qualified and fit to practise, train or carry on business.

4. Investigating and acting on concerns about our registrants

We can take action if we have reason to believe that a registrant's fitness to practise, fitness to undertake training or fitness to run a business as an optometrist or dispensing optician may be impaired (ie if it is negatively affected).

If an optician is described as 'fit to practise' it means that they meet the standards of health, character, knowledge, skill and behaviour that are necessary for them to do their job safely and effectively.

If a registrant is not fit to practise, fit to undertake training or fit to run a GOC-registered business, we can stop them from working in the UK or we can restrict the work they are allowed to do or make their practice conditional.

These powers are all set out in the Act.

Complaints about a registrant's fitness to practise

Who can complain?

Anyone can complain to us if they have a concern about one of our registrants. When we receive complaints it is our job to determine whether the complaint relates to fitness to practise issues or whether the concern is a contractual or consumer issue. A complaint that a GOC registrant may not be fit to practise can be as a result of one or more different factors including:

- poor professional performance
- physical or mental health problems affecting their work
- inappropriate behaviour
- being under the influence of alcohol or drugs at work
- fraud or dishonesty
- a criminal conviction or caution
- a finding by another regulatory body

How can complaints be made?

We ask anyone who wants to make a complaint about one of our registrants to fill in an investigation form and send it to us. The investigation form can be downloaded from our website www.optical.org, obtained from within our 'How to complain about an optician' booklet, or sent to a potential complainant by post on request.

What happens when a complaint is received?

If the complaint raises a question about a registrant's fitness to practise, the FTP team will gather the information (for example, optical records, witness statements, information from the police or primary care trust) the Investigation Committee needs before it can consider the case. Every complaint about a registrant's fitness to practise is considered by the Investigation Committee.

This process can take between three and nine months depending on the complexity of the case and the ease of obtaining the documentary evidence the GOC requests from third parties.

The details of the process are set out in the FTP Rules 2005. The registrant who is the subject of the complaint is provided with an opportunity to respond to the case against him/her before the case is considered by the Investigation Committee. Any response received from the registrant is shared with the complainant.

Complaints received in 2010-11

Between 1 April 2010 and 31 March 2011, we received 148 complaints about the fitness to practise of GOC registrants.

In this section there is information about:

- the number of complaints received
- the category of registrants subject to the complaints
- the source of the complaint

- the type of complaints received

During the course of the year, we receive a number of enquiries that we do not consider to be FTP complaints. These may be complaints about the price of spectacles or enquiries about NHS vouchers. We will direct the individual to an appropriate alternative organisation if we cannot assist. These types of queries do not form part of the statistics included in this report.

Table 1 – Number of complaints received in the period 1 April 2010 - 31 March 2011 and the number of GOC registrants

Year	Number of complaints	Total number of registrants
2009-10	158	24,295
2010-11	148	24,656

Registration figures are correct as of 1 March 2010 and 1 March 2011.

There was a decrease of 6% in relation to the number of cases that the GOC dealt with in 2010-11 compared with 2009-10.

Table 2(a) – Number of registrants who were the subject of complaints in the period 1 April 2010 - 31 March 2011

Year	Number of registrants	Total number of registrants	% of registrants subject to complaints
2009-10	191	24,295	0.78
2010-11	184	24,656	0.74

The figures show that less than 1% of our registrants have been subject to complaints. There will be a small number of instances where a registrant has been the subject of more than one complaint.

There was a decrease of 4% in the number of registrants investigated by the GOC in the year 2010-11. We take the view that these slight decreases are not significant and as such the number of FTP investigations has remained static over the last two years.

Table 2(b) – FTP complaints made against each GOC registrant category

	2009-10	%	2010-11	%
Optometrist	108	56.5	122	66.3
Dispensing optician	29	15.2	30	16.3
Student optometrist	15	7.9	12	6.5
Student dispensing optician	20	10.5	4	2.2
Business registrant	19	9.9	16	8.7
TOTAL	191		184	

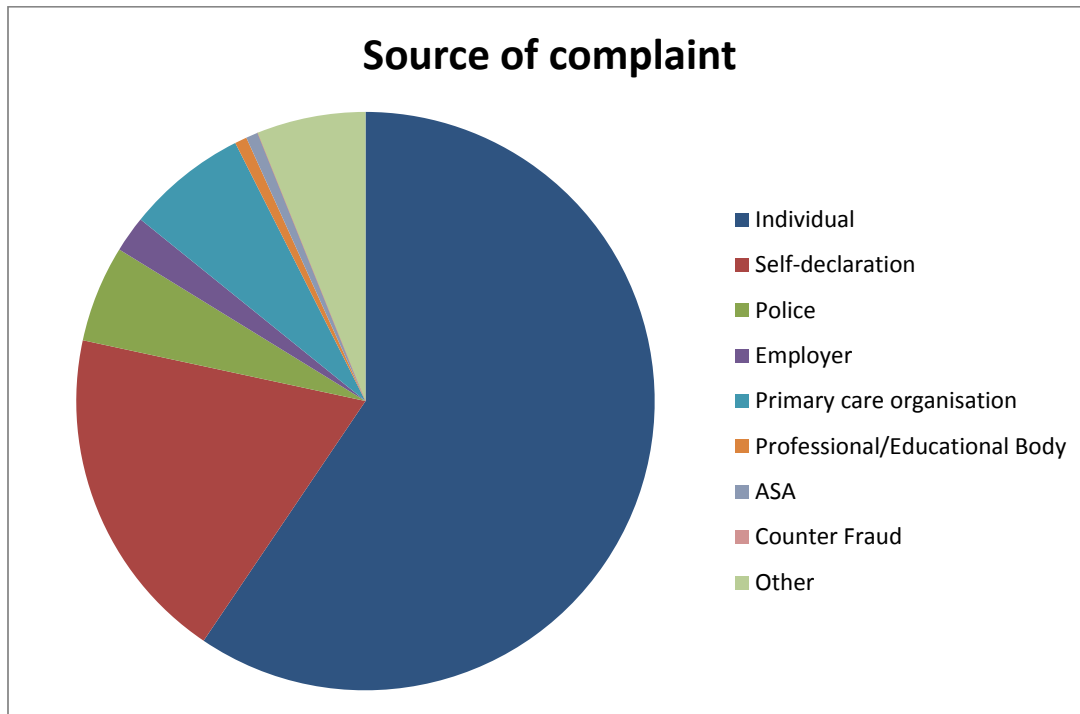
Note: Three complaints were withdrawn before the GOC could identify the registrant.

Table 2 (c) – Number of registrants in each GOC category and percentage of complaints made against these registrant groups

	2009-10	%	2010-11	%
Optometrist	12,526	0.9	12,841	1
Dispensing optician	5,747	0.5	5,849	0.5
Student optometrist	2,768	0.5	2,808	0.4
Student dispensing optician	1,753	1.1	1,640	0.2
Business registrant	1,501	1.3	1,518	1
TOTAL	24,295		24,656	

Table 3 – Source of complaints made to the GOC

Type of complainant	2009-10	% of cases	2010-11	% of cases
Individual	82	51.9	88	59.4
Self-declaration	47	29.7	28	18.9
Police	3	1.9	8	5.4
Employer	7	4.4	3	2
Primary care organisation	7	4.4	10	6.7
Professional/educational body	5	3.2	1	0.7
ASA	2	1.3	1	0.7
Counter fraud	1	0.6	0	0
Other	4	2.5	9	6.1
TOTAL	158		148	



In 2010-11 individuals (members of the public) continued to be the largest single complainant group making up over 59% of complaints. Self-declarations make up the next largest category: 26 of the 28 self-declaration cases are in connection with criminal matters.

There has been a 40% decrease in the number of self-declaration cases – these are cases where a registrant brings information (usually criminal investigations, prosecutions or health conditions) to the attention of the GOC.

We consider that this decrease is as a result of changes in the way declarations to the Registrar are now processed during the retention process. In the past declarations would automatically trigger an FTP investigation but this is no longer the case.

The GOC Codes of Conduct require registrants to advise the GOC immediately if they:

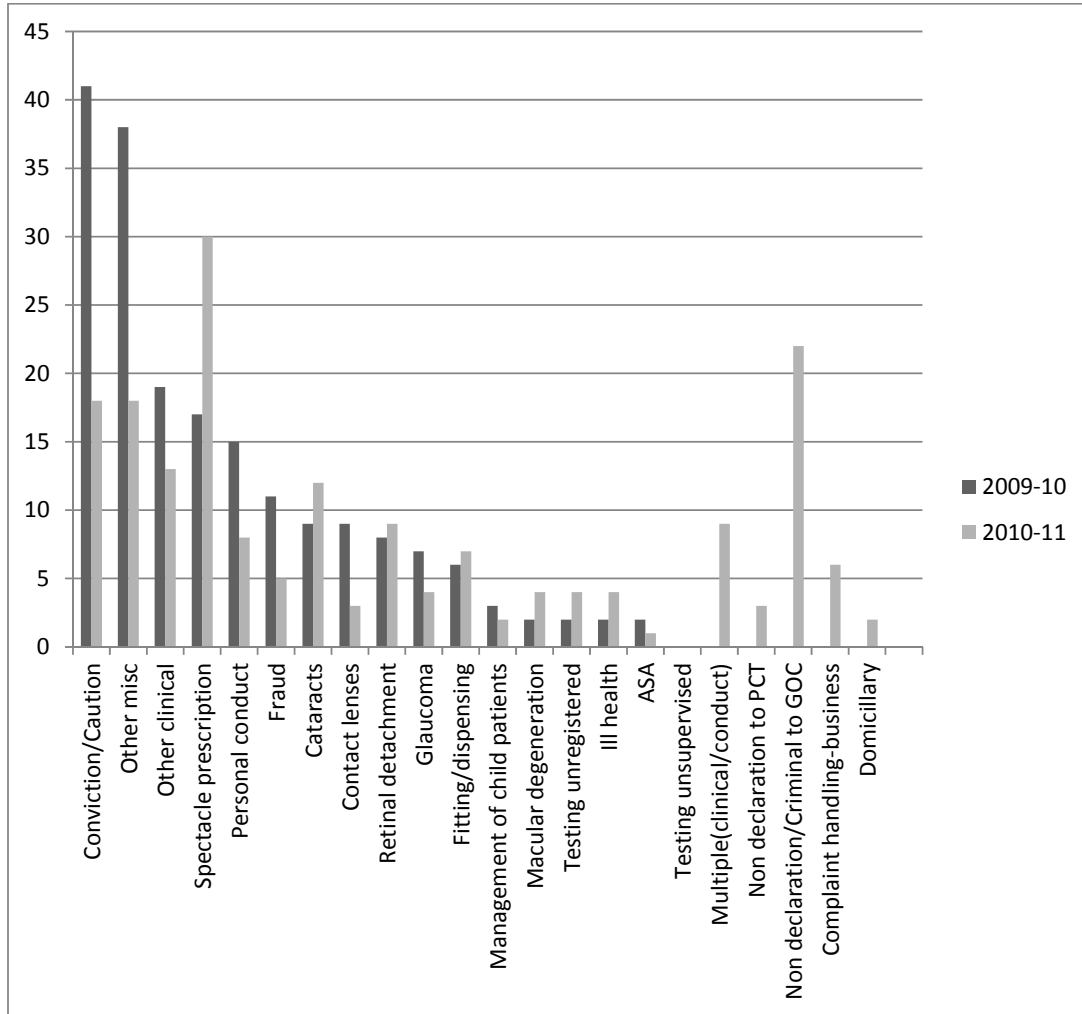
- have been convicted of a criminal offence
- have been convicted of a criminal offence resulting in a conditional discharge
- have accepted a police caution
- have been disciplined by any organisation responsible for regulation or licensing a health or social care profession
- are barred from working with children or vulnerable adults
- have been suspended or placed under a practice restriction by an employer or similar organisation because of concerns about their fitness to practise
- have a health condition which a reasonable person would think may impair their fitness to practise

The Codes of Conduct are available at
www.optical.org/en/our_work/Standards/Standards_in_conduct.cfm

Table 4 – Types of complaint received by the GOC

Type of complaint	2009-10	% of cases	2010-11	% of cases
Conviction/caution	41	21.5	18	9.7
Other miscellaneous	38	19.9	18	9.7
Other clinical	19	9.9	13	7.1
Spectacle prescription	17	8.9	30	16.3
Personal conduct	15	7.9	8	4.3
Fraud	11	5.8	5	2.7
Cataracts	9	4.7	12	6.5
Contact lenses	9	4.7	3	1.6
Retinal detachment	8	4.2	9	4.9
Glaucoma	7	3.7	4	2.1
Fitting/dispensing	6	3.1	7	3.8
Management of child patients	3	1.6	2	1.1
Macular degeneration	2	1	4	2.1
Testing unregistered	2	1	4	2.1
Ill health	2	1	4	2.1
ASA	2	1	1	0.5
Testing unsupervised	n/a	n/a	0	0
Multiple (clinical/conduct)	n/a	n/a	9	4.9
Non declaration to PCT	n/a	n/a	3	1.6
Non declaration/criminal to GOC	n/a	n/a	22	11.9
Complaint handling – business	n/a	n/a	6	3.3
Domiciliary	n/a	n/a	2	1.1
TOTAL	191		184	

We have included a more detailed breakdown than last year so there will be some cases where we cannot make a direct comparison. These figures do not include the three cases which were withdrawn before a registrant was identified.



Investigation Committee

Its role

The Investigation Committee considers all complaints (or allegations) opened by the GOC that a registrant's fitness to practise, train or run a GOC-registered business may be impaired.

The Investigation Committee decides whether a complaint should be referred to the FTP Committee for a formal hearing. If the Investigation Committee decides that a particular complaint ought not to be referred, it must then consider whether the registrant should be given a warning, or whether some other outcome is appropriate. Further information about potential outcomes is provided below.

The Investigation Committee also has to decide whether an application should be made for an interim order suspending or placing conditions on the registrant's practice. Further information about the interim order process is provided below.

The options

The Investigation Committee may decide that it needs further information before it can decide whether or not a particular complaint ought to be referred to the FTP Committee. The Investigation Committee has legal powers to direct further investigation, including directing the registrant to undergo a health assessment or an assessment of their professional performance.

Further information about these processes is available in the Investigation Committee's guidance (and in our guidance about performance assessments) at www.optical.org/en/about_us/policies_procedures_and_protocols/index.cfm

Once the Investigation Committee has all the information it needs about a particular complaint, it will decide on the appropriate outcome for that complaint.

Further information about each of these outcomes is available in the Investigation Committee's guidance (see box above). We have also published additional guidance about warnings, which is also available from our website.

In the majority of cases the Investigation Committee decides that there is no need for any further action to be taken, or that the complaint can be appropriately dealt with by giving the optician a warning, by providing the optician with a letter of advice, or by asking them to attend a voluntary performance review.

In the period 1 April 2010-31 March 2011 the Investigation Committee met ten times.

Table 5 – Outcomes decided by the Investigation Committee for the period 1 April 2010 - 31 March 2011 for all cases considered in this period (including those where cases were opened before 1 April 2010)

Outcome	2010-11	%
No further action	98	34.6
No further action with advice	2	0.7
Voluntary performance review	4	1.4
Warning	45	15.9
Minded to issue a warning	45	15.9
Referral to FTP Committee	36	12.7
Direction for a health assessment	16	5.6
Direction for a performance assessment	4	1.4
Withdrawn by complainant	7	2.5
Further investigation required	13	4.6
Review of decision not to refer to FTP	3	1
Termination of referral to FTP	10	3.5
TOTAL	283	

There are a number of cases where the Investigation Committee will consider a case twice; for instance where an assessment is directed, the Committee will first decide to direct that an assessment ought to take place and then consider the case again when the reports are placed before it.

This also applies to cases where the Investigation Committee is minded to issue a warning; the Investigation Committee must first notify the registrant that it is minded to issue a warning and set out the terms of the draft warning. The registrant is then provided with time to respond before the Investigation Committee makes its final decision about whether or not to issue the warning.

Of the 148 complaints received during the period covered by this report, 34 are still open. A total of 13 complaints are listed to be considered by the Investigation Committee in August and September 2011 (correct as of preparing this report) and seven complaints are still at the investigation stage. The remaining 14 include those cases where the Investigation Committee will be asked whether it will issue a warning (see above) and to receive the further investigation it directed ie by way of additional documentation or reports into a registrant's performance or health.

Interim Orders

The Investigation Committee also has the ability to refer a registrant to the FTP Committee if it considers that the FTP Committee should impose an interim order on the registrant.

An interim order is an immediate order which is used where the FTP Committee is satisfied it is necessary to restrict the registrant's practice for the protection of members of the public; or otherwise in the public interest; or in the interests of the registrant.

In the period covered by this report, the Committee directed us to apply for an interim order in five cases. Four of those applications were successful.

Fitness to Practise (FTP) Committee

In reaching a decision the FTP Committee considers not only whether it is necessary to take action to protect individual members of the public, but also whether it is necessary to take action in the wider public interest, for example to maintain public confidence in the profession, or to declare and uphold proper standards of conduct and behaviour.

The procedure before the FTP Committee follows a four stage process:

1. The Committee must decide whether the factual allegations set out in the notice of inquiry are proved by reference to the civil standard of proof.
2. If the factual allegations are proven the Committee must decide, using their judgement, whether the facts amount to on the grounds of impairment established by the Opticians Act 1989 (as amended):
 - a. misconduct
 - b. deficient professional performance
 - c. conviction or caution
 - d. adverse physical or mental health
 - e. an adverse determination by another regulatory body
3. If the Committee finds one or more of the grounds of impairment is established then it must consider whether the registrant's fitness to practise is currently impaired. Again this is a matter of judgement.
4. If the Committee finds that the registrant's fitness to practise is currently impaired, one of the following sanctions is available to it:
 - a. erasure
 - b. suspension
 - c. conditional registration
 - d. payment of a financial penalty
 - e. no action

Removal of the registrant's name from our register

This is sometimes referred to as 'erasure' or 'striking off'. The registrant's name is taken off the register, which means that they cannot work as an optometrist or dispensing optician (or train or run a GOC-registered business) in the UK. If they want their name to be put back on the register in future there is a separate process that they have to go through, which includes considering the reasons for their removal from the register.

Suspension from our register

The registrant's name is temporarily taken off the register, and they cannot work (or train or run a GOC-registered business) in the UK for a fixed period of time.

Conditional registration

The registrant can stay on the register provided that they comply with certain conditions, such as doing extra training or being supervised while they work.

Payment of a financial penalty

The Fitness to Practise Committee can impose a financial penalty in conjunction with any other directions which it has imposed. The fine can be up to a maximum of £50,000.

If the Fitness to Practise Committee decides that a registrant is fit to practise they can still warn them about their future behaviour or performance.

In the period covered by this report the Fitness to Practise Committee considered cases involving 22 registrants.

Table 6 – Breakdown of registrants who appeared before the FTP Committee

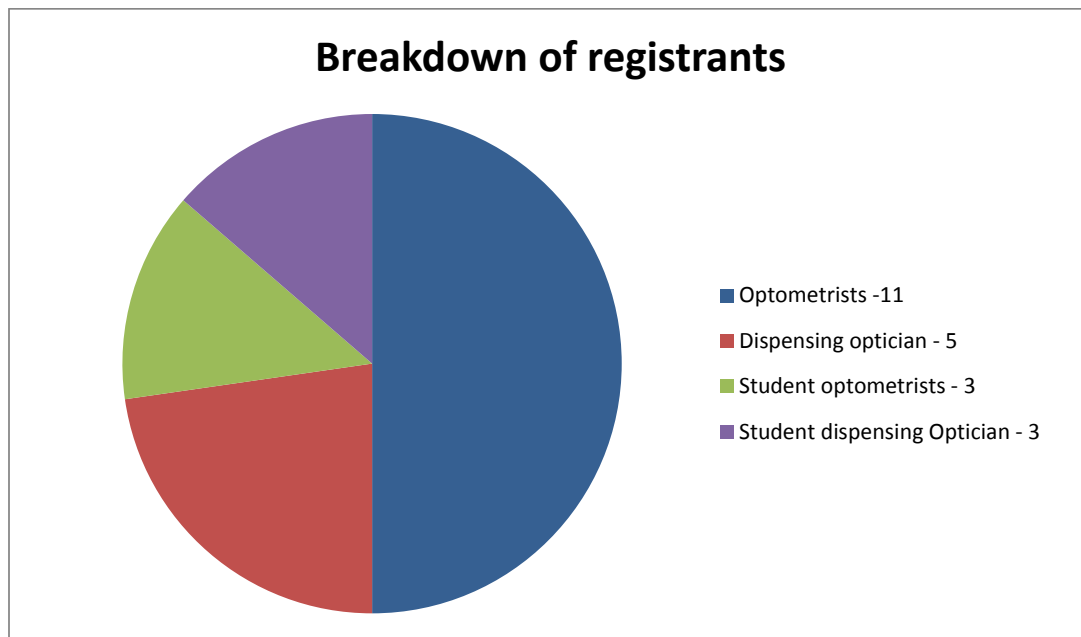


Table 7 – Outcomes decided by the FTP Committee

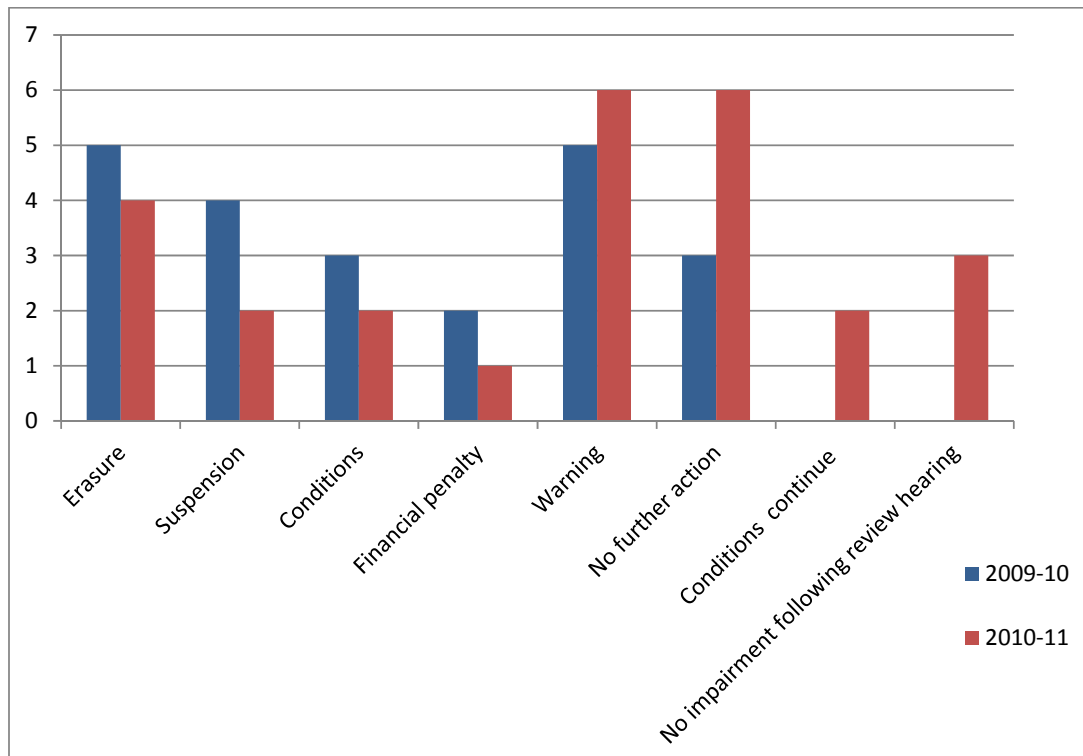
Outcome	2009-10	%	2010-11	%
Erasure	5	22.7	4	15.3
Suspension	4	18.2	2	7.7
Conditions	3	13.6	2	7.7
Financial penalty	2	9.1	1	3.8
Warning	5	22.7	6	23
No further action	3	13.6	6	23
Conditions to continue following review hearing	-	-	2	7.7

No impairment following review hearing	-	-	3	11.5
TOTAL	22		26	

Of these 26 cases, 20 cases were concluded. When a case is concluded, the registrant has been erased, a financial penalty was imposed, a warning has been issued or there has been no finding of impairment.

During the course of this period, four cases were adjourned. Three of these cases have now been concluded and one is subject to a review hearing.

The FTP Committee also sat on 18 procedural hearings. The rules governing the fitness to practise process require there to be a procedural hearing at which further directions (or a timetable) for the hearing is set. This includes setting the date for the final hearing as well as when each side should disclose evidence and agree the hearing bundle.



As stated previously, the FTP Committee hears the GOC’s application for an interim order. During this period the FTP Committee heard five new applications for an interim order to be imposed (four orders were imposed), and reviewed 14 interim orders which were already in place.

Registrations Appeal Committee

Where a registrant is erased from the register, any application for restoration is heard by the Registration Appeals Committee. The applicant cannot make an application until 22 months have passed since the order for erasure took effect and the restoration hearing cannot take place until 24 months have passed. Prior to making the application, the applicant must have acquired the required number of continuing education and training points.

During this period, the Registration Appeals Committee heard two applications for restoration to the register. One application was successful.

We publish all outcomes from FTP hearings on our website www.optical.org for a period of 12 months. If you would like access to a transcript or decision which is not listed on the website, please contact the Hearings Manager.

FTP Committee guidance

We have published guidance to be used by the FTP Committee when deciding what sanction to impose on a registrant whose fitness to practise/train/run a GOC-registered business has been found to be impaired. That guidance was reviewed in December 2009 and is available from our website at www.optical.org

FTP Committee members

We recognise that, in order for the public and registrants to have confidence that our fitness to practise processes are fair, it is necessary to make sure that we keep our policy-making and investigation functions separate from our process for making decisions about individual complaints. We have therefore taken steps to ensure that the adjudication function is kept separate from our standards-setting and investigation functions, including:

- Appointing the FTP Committee members following a public recruitment campaign. Members of our staff or our Council are not permitted to be members of the FTP Committee.
- Ensuring the administration of hearings is carried out completely separately from the work of the FTP Department (by our Hearings Manager).
- Arranging for each panel hearing a case to receive impartial legal advice from an independent and experienced Legal Adviser (the Legal Adviser's role is set out in the legislation that governs what we do and how we do it). The Legal Adviser's role is to advise the FTP Committee and also to ensure that the hearing is conducted fairly.
- Arranging for the FTP Committee to receive training from a lawyer who is independent of the FTP Department, and who is not one of the lawyers we instruct to present cases to the FTP Committee at hearings.

High Court Appeals

Two cases in relation to decisions of the FTP Committee were considered by the High Court in the period covered by this report.

Duddy v General Optical Council QBD (Admin) [8 Nov 2010]

Mr Duddy sought to appeal against the FTP Committee's decision to erase his name from the register of optometrists. The appeal hearing took place on 8 November 2010. Mr Duddy failed to attend the appeal hearing and the appeal proceeded in his absence. The Court noted that Mr Duddy had failed to communicate with the GOC and concluded that it was likely that Mr Duddy had known that the Court was likely to uphold the decision of the FTP Committee. The Court held that the appeal had no merit and should be dismissed.

In R (on the application of Vali) v General Optical Council [2011] EWHC 310 (Admin)

Miss Vali sought to appeal against the decision of the FTP Committee of the GOC to restrict her registration by means of an order of conditional registration. In this case, the Court held that the FTP Committee had been wrong to find deficient professional performance, because it had found misconduct on the same set of facts. It was necessary to keep some distinction between the two. The Court also concluded that a finding of impairment was not justified. This was a one-off incident, albeit serious. The error had not been repeated and the registrant was progressing in her career and, accordingly, the appeal was allowed.

Section 29 referrals

The CHRE has the power to refer a decision of the FTP Committee to the High Court where it considers that the decision of the Committee is considered to be unduly lenient as to findings in relation to fitness to practise or the penalty imposed or that a decision should not have been made and that it would be desirable for the protection of members of the public for the CHRE to take action. The CHRE has not referred any of the decisions of the GOC's FTP Committee under this process.

Key developments

The FTP department continues to make progress to modernise and maintain an efficient, effective, open and fair process.

Consultation on amendments to the FTP Rules

In February 2011, the GOC opened its consultation on proposals to amend the FTP Rules. The consultation was open for three months and we are pleased to have received a healthy response from our stakeholders. We will now review the responses and report to Council later this year. The consultation documentation can be found on our website www.optical.org

Office of the Health Professions Adjudicator (OHPA)

In our first FTP annual report, available at www.optical.org/en/news_publications/Publications/annual_reports_archive.cfm, we referred to collaboration with OHPA, the Department of Health and the GMC with regard to establishing OHPA.

The Department of Health opened its consultation on 'Fitness to Practise Adjudication of Health Professionals Assessing Different Mechanisms for Delivery' on 7 August 2010. Following the consultation, the government decided to abolish OHPA. More information is available at www.ohpa.org.uk

Criminal prosecutions

In early 2010, the GOC put forward proposals on how it might want to investigate and prosecute offences under the Opticians Act 1989. The main offences are:

- pretending to be an optometrist or dispensing optician (including falsely claiming to be registered or enrolled with the GOC)
- carrying out a sight test when not legally allowed to do so
- fitting contact lenses when not legally allowed to do so
- selling optical appliances or cosmetic contact lenses when not legally allowed to do so

We do not have statutory prosecution powers and consider allegations of suspected offences as part of our remit to protect, promote and maintain the health and safety of the public.

In May 2011, the Council approved a new protocol for criminal investigations and prosecutions, which is available on the GOC website. One of our solicitors is now conducting this work so that prosecutions can be managed in-house.

Stakeholder engagement

- Attending Citizens Advice conferences to meet staff and volunteers to increase awareness about how we can help people who have concerns about an optometrist or dispensing optician
- Presenting key proposals about the amendments to the FTP Rules to our Stakeholder Reference Groups
- Meeting the NHS Business Services Authority Counter Fraud and Security Management Service
- Publishing guidance

Key Performance Indicators (KPIs)

One way by which the effectiveness of the fitness to practise function is measured is by a set of KPIs. Our KPIs are as follows:

- **Progressing 80% of cases to first consideration by the Investigation Committee within nine months of receipt of the investigation form**

During the period covered by this report the GOC has achieved its target.

This achievement represents continuous improvement in the work of the investigation function. The target has been achieved because of the quality of the investigations conducted by the GOC team and continued good case management.

- **Serving the Notice and other documents on the Hearings Manager in 80% of cases within seven months of the referral of the case by the Investigation Committee**

During the period covered by the report the GOC has achieved this target in 71% of cases.

We maintain a constant review of the cases and are confident that all of them, including those which fall outside the KPI, are progressed in good time. We are pleased to have made major improvements in the time we spend preparing a case for a hearing.

The median time between referral of the case by the Investigation Committee and service on the hearings manager is 21 weeks. This improvement is as a result of growth in the team and close working with our external solicitors.

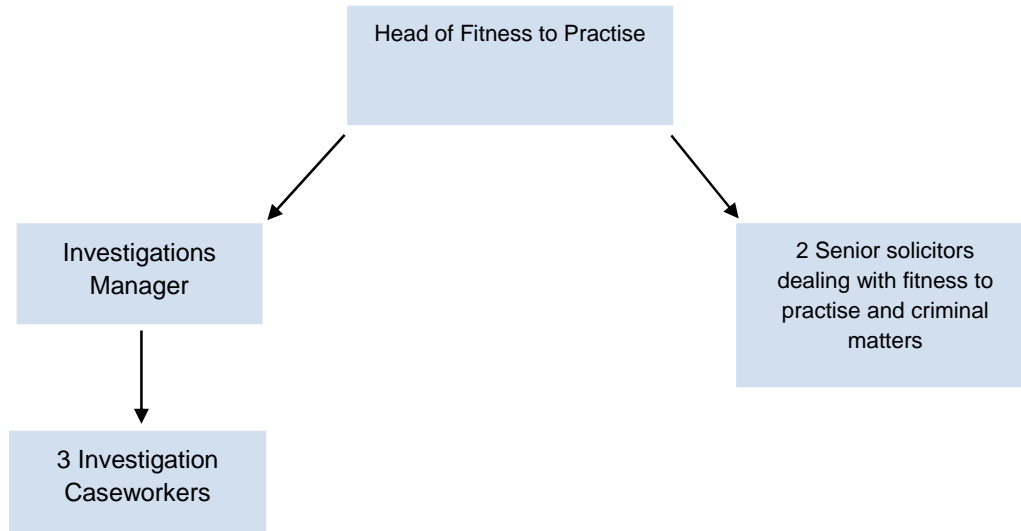
Looking forward

In January 2011, we presented a paper to Council setting out proposals on the eradication of unnecessary delay in the FTP process. Our aim is to reduce the time taken in investigating cases from three months in respect of simple cases; six months in respect of standard cases; and nine months for complex cases. Our aim is to apply this target to cases commencing on or after 1 January 2013. It is our view that this can be achieved by the introduction of new rules governing the FTP

process; the introduction of a fast track system for simple cases; an electronic case management system; and additional resources.

Changes to the FTP team

In this period, the GOC has been through a period of change in terms of personnel and organisation structure. The FTP team is now structured as follows:



The FTP team reports to the Director of Regulatory Services.

CHRE annual initial stages audit

The CHRE's second annual audit of the initial stages of the FTP process of the nine healthcare regulators was published on 31 March 2011. The audit was in connection with those cases the regulators had closed without referral to a final stage FTP hearing. The CHRE looked for evidence of risks to public protection or public confidence as a result of each regulator's case-handling procedures and standards.

The CHRE reviewed 75 cases that the GOC had closed between 1 February 2010 and 31 July 2010. This represented all the cases the GOC had closed without being referred to a final FTP panel hearing.

The CHRE commented that the 75 cases they reviewed in the audit showed that the GOC has a good initial stages risk assessment and investigation system leading to safe decisions and that these decisions were communicated to interested parties in a thorough, helpful and articulate way.

The CHRE comment that their audit found a well-managed current system of casework, and that in nearly all cases the GOC dealt well with the risks to patients and the maintenance of public confidence.

In three cases the CHRE found evidence of weaknesses in case management, or in co-ordination between GOC departments. The CHRE noted that the GOC has, since these incidents, put in place monitoring measures to ensure that cases are efficiently investigated and proactively progressed through the investigation process.

We are confident that the three cases (out of 75) referred to in the audit are not reflective of our current work and practice, and as noted we have introduced measures to ensure that the risk of such matters arising again are reduced.

The CHRE has made the following recommendations to each regulator:

- i. Consider whether its key performance indicators that relate to the timescales between receipt of a complaint and closure of the case, are sufficiently demanding.
- ii. Where this does not already exist, actively consider introducing a computerised casework management system that links into the regulator's computerised registration system. The CHRE considers that this is especially important for the larger regulators.
- iii. Ensure that investigation committees, and equivalent decision makers, have relevant previous fitness to practise history available to them, to help in risk assessment. Such information may assist the committee in any finely balanced decision about whether or not to require further investigation. Information about previous history may also be relevant when the Investigation Committee considers whether or not it should authorise an application for an interim order.

We are considering these recommendations as part of our work plan for this year.

Performance review

The CHRE's annual review of our performance for 2010 was published on 29 June 2011 and is available at www.chre.org.uk

The CHRE commented that patient and public protection continues to be the GOC's primary focus and it acknowledged that the GOC has performed as an effective regulator across the four regulatory functions.

With specific reference to fitness to practise, CHRE stated that we had performed well by continuing to move forward with plans to use case examiners rather than refer every case to the Investigation Committee in the initial stages of the fitness to practise process. The CHRE said that this is a good example of cross regulatory learning.

It was noted in the report that:

- we continued to undertake activities to improve patients', registrants' and employers' understanding of the fitness to practise process
- we published our first stand-alone fitness to practise annual report
- improvements to the quality of Investigation Committee decisions had taken place at the same time as a new committee began its work with the GOC and that this was achieved without any major disruption to our fitness to practise function
- we are seeking to improve the throughput of cases by means of an electronic case management system and shorter service standards.

Equality and diversity monitoring results – fitness to practise investigations

Introduction and methodology

The data for this report were received through equality and diversity monitoring forms which were sent to all GOC registrants as part of the 2009-10 annual retention round, and expanded as part of 2010-11 retention. The information requested in the forms covered gender, age, ethnic origin and any disabilities. We received returned forms from 68% of all full registrants and 26% of all student registrants.

That equality and diversity data has been cross-referenced with the list of individual registrants who were the subject of formal complaints regarding their fitness to practise in the 2010-11 retention year. This enables us to aggregate equality and diversity statistics for those registrants who have been the subject of fitness to practise investigations. This section sets out the findings of the analysis of these data.

Tracking equality and diversity data of GOC registrants facing fitness to practise investigations over time will enable us to identify any patterns that may emerge in relation to complaints about registrants. This may help us to identify any particular areas of concern or in which additional training or information might be made available for registrants and/or the public, or other steps that should be taken.

As illustrated below, many fitness to practise investigations do not result in a sanction being applied against the registrant. A higher proportion of investigations being conducted in relation to a particular group of registrants does not represent evidence of poor performance among members of that group.

Individual registrants' equality and diversity information has been handled on a confidential basis within the GOC Policy team, and has not been made available to staff responsible for investigating fitness to practise complaints.

Response rates – fitness to practise

We received a total of 168 complaints regarding individual registrants. Of these, 152 complaints related to full registrants and 16 were related to student registrants. In addition, 16 complaints related to bodies corporate, four complaints were withdrawn and one registrant was not identified. These are not considered in this report.

Equality and diversity monitoring data was available for 81 (53%) of the 152 individual full registrants. Data were available for only four of the 16 student registrants who were the subject of a complaint (and as a result, analysis of student data has not been conducted).

Note: due to the small sample of registrants subject to a fitness to practise complaint in 2010-11 relative to the total population of registrants, there are large margins for error in the fitness to practise data. As a result it is not possible to draw conclusions

from the data in this section of the report, and the findings are presented for illustration only. In future years, as more data becomes available, we hope to identify trends with more confidence. Due to the very small number of forms for student registrants subject to an investigation, analysis of equality and diversity data has not been conducted for this group.

Results of investigations

The GOC's Investigation Committee meets at least 10 times a year to consider complaints regarding the fitness to practise of registrants. At the time of writing, the Investigation Committee had reached decisions with regard to 122 of the 168 complaints regarding individual registrants received throughout the 2010-11 retention year.

In 64 of those 122 decisions, it was decided that no further action should be taken in relation to the complaint. Of the remainder, with regard to final decisions of the Investigation Committee, 32 warnings were issued and 12 complaints were referred to the GOC's FTP Committee for a decision.

Given the small sample sizes involved, analysis has not been conducted of the equality and diversity data for the results of investigations. Over time, as more Investigation Committee decisions become available and more equality and diversity monitoring responses are received from registrants, it will be possible to conduct this analysis.

Gender

Table 1 below gives the equality and diversity monitoring data for gender for those individual full registrants who were the subject of a GOC fitness to practise complaint in 2010-11.

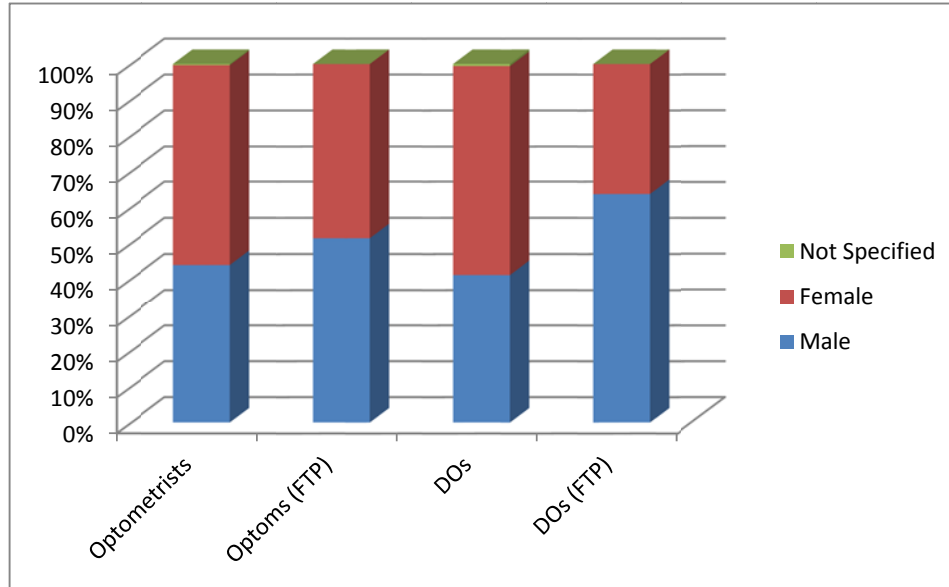
	Male	Female	Total
All full registrants	43	38	81
Optometrists	36	34	70
Dispensing opticians	7	4	11

Table 1: Gender results – full registrants subject to a FTP complaint in 2010-11

Of those individual registrants subject to a fitness to practise complaint in 2010-11 for whom equality and diversity monitoring data is available, the majority were male. This applies to both optometrists (51%) and dispensing opticians (64%).

As illustrated in the Figure 1 below, the gender distribution of those subject to a fitness to practise complaint differed somewhat from that of all registrants in each professional group. For both optometrists and dispensing opticians, a higher proportion of males were the subject of a fitness to practise complaint relative to the overall gender distribution of the profession.

Figure 1: Comparison of fitness to practise (FTP) gender results – full registrants



Age

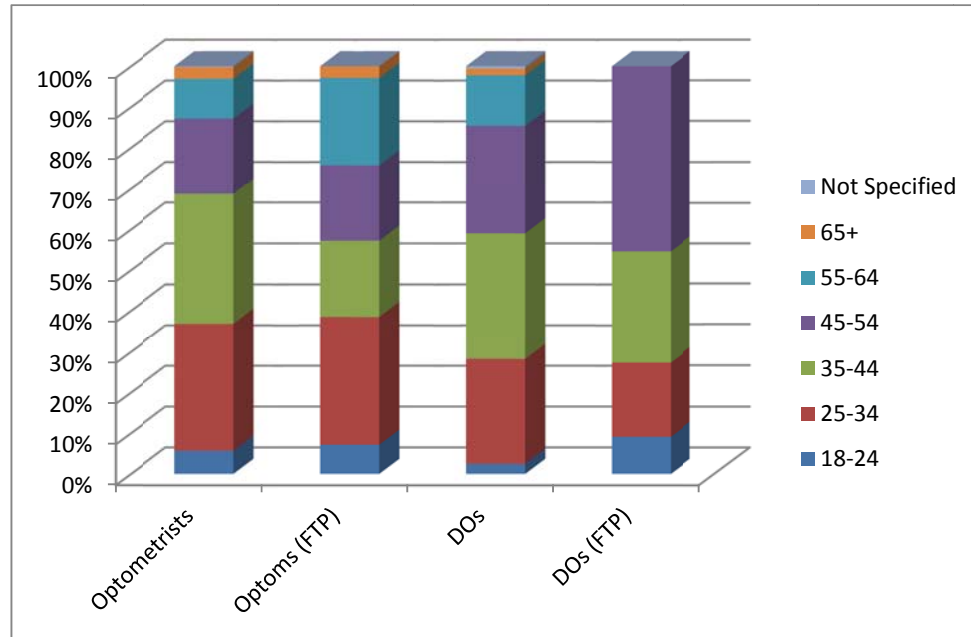
Table 2 gives the equality and diversity monitoring data for age ranges for those individual full registrants who were subject to a GOC fitness to practise complaint in 2010-11.

	18-24	25-34	35-44	45-54	55-64	65+	Total
All full registrants	6	24	16	18	15	2	81
Optometrists	5	22	13	13	15	2	70
Dispensing opticians	1	2	3	5	0	0	11

Table 2: Age results – full registrants subject to a FTP complaint in 2010-11

As noted above, the sample size of individual full registrants subject to a fitness to practise complaint in 2010-11 is very small. However, as illustrated in Figure 2 below, the age range distribution of these registrants was similar to the age range distributions for all registrants in each professional group.

Figure 2: Comparison of FTP age results – full registrants



The most significant difference from the general registration data was the somewhat higher proportion of optometrists in the 55-64 age range who were subject to a fitness to practise complaint in 2010-11. This was 21% of the responses, while that age group made up only 10% of all optometrists.

Additionally, 45% of dispensing opticians who were subject to a fitness to practise complaint in 2010-11 were in the 45-54 age range, against 12% of the total population. However, the very small amount of data available for dispensing opticians means that this finding is not significant.

Ethnic origin

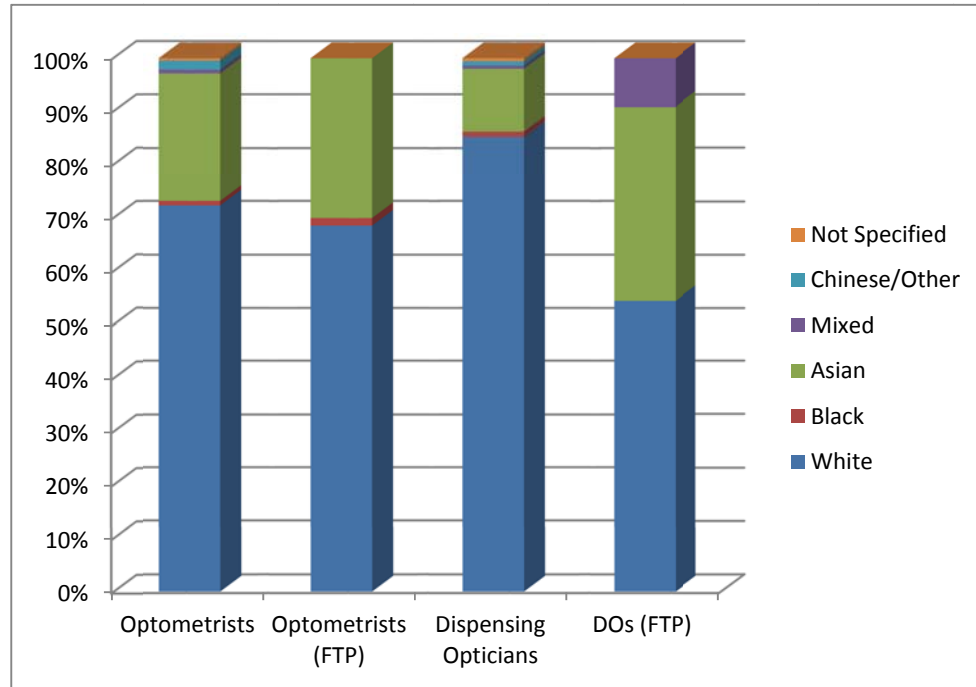
Table 3 below gives the equality and diversity monitoring data for ethnic origin for those full individual registrants who were subject to a GOC fitness to practise complaint in 2010-11.

	White	Black	Asian	Mixed	Chinese/Other	Total
All full registrants	54	1	25	1	0	81
Optometrists	48	1	21	0	0	70
Dispensing opticians	6	0	4	1	0	11

Table 3: Ethnic origin results – Full registrants subject to a FTP complaint in 2010-11

As illustrated in Figure 3 below, the ethnic origin distributions for full registrants facing a fitness to practise investigation closely matched those for all full registrants. For optometrists in particular, the results for those subject to a FTP complaint were very consistent with the overall ethnic breakdown for all optometrists.

Figure 3: Comparison of FTP ethnic origin results – full registrants



The most significant result from this data was the higher proportion of Asian dispensing opticians among those who were subject of an investigation. Dispensing opticians reporting Asian ethnic origin comprised 36% of the responses from dispensing opticians against only 14% of all dispensing opticians. However, the very small amount of data available for dispensing opticians means that this finding cannot be treated as being significant or indicative of any wider trend.

Disability

As shown in Table 4 below, one full individual registrant responding to the equality and diversity monitoring who was the subject of a fitness to practise complaint in 2010-11 reported having a disability.

	Yes	No	Total
All full registrants	1	80	81
Optometrists	1	69	70
Dispensing opticians	0	11	11

Table 4: Disability results - full registrants subject to a FTP complaint in 2010-11

This document is available to view online from the General Optical Council's website,
www.optical.org

Contact us

Write to:

General Optical Council

41 Harley Street

London

W1G 8DJ

Phone: 020 7580 3898

Fax: 020 7436 3525

email: goc@optical.org

twitter: www.twitter.com/goc_uk