

## **COUNCIL**

### **Interim Chief Executive and Registrar's report**

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**Meeting:** 11 July 2018

**Status:** for noting

**Lead responsibility and paper author:** Adam Sampson (Interim Chief Executive and Registrar)

### **Recommendation**

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1. Council is asked to **note** the contents of this report.

### **Overall**

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2. On my appointment as interim Chief Executive and Registrar, I was given three key objectives: to ensure we continue to deliver our core regulatory functions and protect the public; to deliver our three key regulatory projects of the Education Strategic Review, Continuing Education and Training Review and Business Standards Review; and to continue examining ways of changing the organisation to improve its operational and financial performance.
3. In order to preserve the organisation's ability to deliver to the first two of these objectives, and following on from Council's decision on 1 June 2018, we notified the staff that the consultation on a new operating model and structure was discontinued. We have also begun the process of recruiting to posts which had been frozen during the consultation process. However, given the third objective, we also made clear that since the underlying pressures which led to the change proposals being made remained, organisational transformation would continue to be a strategic theme for the GOC.
4. We are considering the responses received to the staff consultation exercise, and will continue to work closely with the staff teams to devise a revised approach to delivering improvements in performance in the future. Given the feedback from staff that communication and consultation was not as thorough as it might have been during the previous process, we are looking to improve these mechanics over the next iteration of the change process.
5. However, the focus over the next few months will remain firmly on the first two objectives: delivering our core regulatory functions and completing the three strategic reviews. This report describes our progress in relation to these in greater detail.

**Fitness to Practise**

6. The Clarke appeal decision was delivered on 25 June. The Court of Appeal allowed the GOC's appeal against the High Court's setting aside of the FTPC finding of impairment against M. Clarke, agreeing with us that the key issue is whether the registrant is *fit* to practise not *intending* to practise. This addresses regulators' concerns that registrants might be able to avoid adverse findings by offering to retire from the register.
7. In May, the Fitness to Practise team completed its work on the Consensual Panel Disposal policy by publishing the policy and guidance documents on the GOC website. Fitness to Practise staff, in conjunction with external lawyers, are now engaged in reviewing cases to identify cases that may be suitable for disposal via the new policy.
8. The Fitness to Practise Case Progression team has been engaged in reviewing the findings of the PSA audit of Fitness to Practise cases that was carried out earlier this year, and in providing feedback regarding these findings. The team also met with the PSA to discuss the audit findings and now awaits the final PSA report.
9. In June, we held the latest Defence Stakeholder meeting. Arising from this, the group committed to work together to produce an agreed policy as to the documents to be included in interim order review bundles.
10. A number of parallel events have been successfully held at external venues - a practice which has speeded up a number of hearings. We have further hearings booked externally including a four day event at the General Dental Council (GDC).

**Registration**

11. Following the intense activity of the recently closed annual renewal season and the subsequent removal of c600 registrants, work has been focused on progressing the final outstanding recommendations from the Internal Audit and QA reviews. Detailed planning has also been carried out for the student renewal, newly qualified and new student registration season (July-September).
12. Michelle Norman, Head of Registration, left the GOC on 17 May. Due to the organisational transformation it was not appropriate to advertise for a replacement. In the interim, the two managers have been taking on the extra workload and will continue for the short term. Staffing levels have also been reviewed in anticipation of additional work around non EU applications, given that the new process is now live.

13. A follow up work plan has been developed to build on the work of the additional information requested from registrants. This was presented to and approved by Registration Committee in May. The key points were:
- communication to registrants around how the data captured will be used and what follow up activities can be expected;
  - agreement that where registrants did not respond to the additional information request, this information would be gathered at next year's renewal as part of a mandatory process rather than chasing registrants; and
  - planning of an audit of 2-5% of responses during the summer period by contacting registrants and/or education establishments to receive confirmation of their education history. We also intend to audit other information we hold for registrants such as contact information and insurance details. This audit will become part of the department's annual work cycle.

## IT

14. The IT domain is now stable and service reliability and availability are slightly improved. We have had a number of meetings with Celerity to plan the next steps, and have agreed a work plan for delivery by the end of August that will upgrade a number of our current platforms to an acceptable base level and migrate the organisation to Office 365. This should address all the remedial issues that Celerity have encountered during their tenure and will finally put the GOC in a position where the basic SLA's with Celerity will be enforceable.
15. Work is being carried out to continue to improve the CRM system.
16. A project is in its early phase to assess the requirements for an appropriately automated approach to case management within Fitness to Practise.

## Human Resources

17. The HR department went through a challenging period in April / May as they were the focal point of the organisational transformation project, tasked with facilitating the individual and group consultations. This necessitated drafting in additional staff. With the closure of the project, focus has now returned to business as usual with the emphasis on rebuilding staff engagement in operational delivery and change creation.

## Finance

18. The Finance department successfully completed the annual external audit and the production of the draft annual report and accounts to the required standard and timeline. This is reflected in the clean audit report and a positive audit findings report presented to Audit & Risk Committee at its recent meeting. Work is now focused on updating the budget in light of the revised business plans.

**Annual Report and Accounts**

19. The Audit and Risk Committee considered an early draft of the Annual Report and Accounts at its meeting on 29 June and recommended that Council consider approval of the Annual Report and Accounts at the Council meeting scheduled for 12 September 2018.

**Business Standards**

20. We have now published a public consultation on our draft *Standards for Optical Businesses*. The draft *Standards* are intended to supersede the current *Code of Conduct for Business Registrants* and be used as a tool to both make clear our expectations of businesses registered with us, as well as being used as part of the fitness to practise process. We will be promoting the draft *Standards* as codifying good business practice that should be followed by all businesses, whether they are currently registered with us or not.
21. The drafting of the business standards follows the update and publication of standards relating to our individual registrants – namely, the Standards of Practice for Optometrists and Dispensing Opticians and the Standards for Optical Students – in April 2016.
22. The consultation opened on 14 June 2018 and will close on 30 August 2018. We are using our new online consultation hub, which can be accessed here: <https://consultation.optical.org/>
23. We had an article published in Optometry Today in March this year and the following quote encapsulates what we are seeking to achieve:  
  
*“...the new business standards will bring together in one place, and in an easy-to-digest format, all the information that businesses need to understand what we expect of them. They will also make it much easier for individual registrants and patients to understand what they can expect from a business. And just like with the standards for individuals, the business standards will not be a rule book. Business owners will be able to use their professional judgement to apply the standards within the context of their business.”*

**Quarterly performance report**

24. Due to the timing of this Council meeting being earlier in the quarter than usual, our quarterly reports to Council on performance, including financial performance have not been provided for consideration. We will provide these reports for Council's consideration at the additional Council meeting scheduled for mid-September.

**Governance**

25. In 2017/18 Q4, there were five data breaches (Hearings, CET, Legal, 2 x Fitness to Practise). All five breaches involved information being disclosed in error and were due to human error. None of the five breaches met the threshold

to be reported by the ICO. The breaches have been managed internally in compliance with our policies and actioned appropriately. There have been no reported data breaches in 2018/19 Q1.

### **Education Strategic Review**

26. The Education Strategic Review (ESR) continues to be delivered in line with the timetable agreed by Council in July 2017. Following the publication of the report summarising the responses to the recent Concepts and Principles Consultation we are continuing with the policy development phase of the Review.<sup>1</sup> This involves drafting new standards for education providers and new learning outcomes for students.
27. We are testing the new standards and learning outcomes with a wide range of internal and external stakeholders in preparation for a public consultation in the autumn. This is a change to the approach that we discussed with Council in May, when we were planning to carry out a public consultation over the summer, and follows discussion with the Chair and Council Champions. Given the importance of ensuring that the new standards and learning outcomes can be applied in practice and enable us to achieve our policy objectives, we felt that there would be benefit in carrying out further informal engagement before holding a public consultation. However, this change in approach will not affect our ability to meet the overall timetable for the project.
28. In testing the standards and learning outcomes, we have sought further input from the ESR Expert Advisory Group, Education Committee, Standards Committee and Companies Committee and are 'user-testing' with education providers. We are also developing a quality assurance framework to accompany the new education standards and support a more outcomes-based approach to carrying out our education function, and are testing this quality assurance framework informally with stakeholders too.
29. We intend to continue with our stakeholder engagement during the summer. We will then be producing revised versions of the draft education standards and learning outcomes, taking into account the feedback received. At the Council meeting in mid-September, we will then be asking Council to approve the documents for consultation in the autumn. This should still enable Council to make a decision early in the new year on whether to proceed with implementation of the new system of education, with provision for 'early adopters' to potentially begin delivering new programmes from autumn 2019 and full rollout of the new system from autumn 2020.

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<sup>1</sup> You can read the independent report summarising the responses on our website: [http://www.optical.org/filemanager/root/site\\_assets/education/education\\_strategic\\_review/supplementary\\_reading/goc\\_esr\\_concepts\\_and\\_principles\\_high\\_level\\_findings.pdf](http://www.optical.org/filemanager/root/site_assets/education/education_strategic_review/supplementary_reading/goc_esr_concepts_and_principles_high_level_findings.pdf)

30. We have also completed and published new research into newly qualified practitioner and employer perceptions of our current education requirements, the findings of which included the fact that 60 per cent of newly qualified optometrists felt that the amount of clinical experience they received during their degree course was insufficient; only 26 per cent of newly qualified dispensing opticians felt as though the clinical experience received during their studies was insufficient; and 58% of newly qualified optical practitioners were either unsure or did not agree that their education and training had adequately equipped them to work in a hospital setting.<sup>2</sup> These research findings support the emphasis in the draft education standards on the need for improved clinical experience to be an important feature of the new education system.

### **Education accreditation and quality assurance**

31. Work is continuing to clarify and restate the existing requirements that education providers must meet, pending implementation of the Education Strategic Review and we are intending to complete this work by the end of July, drawing on the stakeholder workshops that we have been holding. We will then test and roll out the new guidance.
32. We have developed a new process for annual monitoring and reporting and will be rolling this out from the autumn. We have also developed a new framework for tracking the conditions that providers must meet and managing the associated risks.
33. The education team have also been working closely with the ESR project team to ensure that the changes we are making to our quality assurance system in the short term are in line with the longer term direction of travel and to test the new education standards and related quality assurance framework that we are developing through the ESR.

### **Continuing Education and Training Review**

34. Since the May Council meeting, we have been preparing for the first public consultation relating to the Continuing Education and Training (CET) Review, including working with Claremont, an external communications agency, to develop a communications plan to ensure we keep stakeholders updated and engage with them effectively throughout the review.
35. We will be launching the consultation in July and will be asking stakeholders for their views on the current CET scheme and on our proposed changes to the CET scheme. As agreed with Council in May, we will be consulting on changes to the scheme's underlying principles, such as a stronger emphasis on continuing professional development and reflective practice, and on creating an

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<sup>2</sup> You can read the research report on our website:

[http://www.optical.org/filemanager/root/site\\_assets/education/education\\_strategic\\_review/supplementary\\_reading/perceptions\\_of\\_uk\\_optical\\_education\\_-\\_june\\_2018.pdf](http://www.optical.org/filemanager/root/site_assets/education/education_strategic_review/supplementary_reading/perceptions_of_uk_optical_education_-_june_2018.pdf)

expectation that dispensing opticians will carry out peer review. We will also be seeking views on the planned timeframe for, and impacts of, the proposed changes, including a transitional year in 2019 followed by a new CET (CPD and Revalidation) scheme from 2020.

36. In parallel with the public consultation, we will be commissioning research to help ensure we have an up to date understanding of risk and that the new scheme that comes into effect in 2020 targets risks in practice in a proportionate and pragmatic way.
37. Subject to the outcome of the first consultation, we are planning to carry out a second consultation on the new scheme from March to May 2019. This will be informed by a cost benefit analysis and will cover in more detail the changes that we intend to make to the scheme.
38. At the May 2019 Council meeting, we will be able to share the findings of the risk research and, at the July 2019 meeting, will be asking Council to approve our final proposals for the new scheme that will come into effect in January 2020.

#### **Safe contact lens use**

39. We ran another successful awareness week in March for the Love Your Lenses campaign, with the focus being on encouraging contact lens patients to wash their hands before touching their lenses. A wide range of stakeholders engaged in the campaign and we were pleased with the breadth of coverage, including an article in 'The Sun', BBC radio interviews and nearly two million people seeing tweets using the #LoveYourLenses hashtag. We really appreciate the support of all stakeholders who took part, including large numbers of businesses.
40. We are continuing to work on designing interventions for registrants to use with the aim of improving registrants' delivery of aftercare messages to contact lens patients. We are working with our PR agency, Claremont Communications, to develop these resources and expect to trial different approaches in optical practices over the summer before communicating the findings more widely.
41. A fuller update on our Safe Contact Lens Use project is provided in the separate paper we have prepared for the meeting and Claremont will be presenting an evaluation of the Love Your Lenses campaign.

#### **Non-EEA route to registration for optometrists**

42. The revised non-EEA route to registration for optometrists was approved by Council in May 2018 and was introduced as planned on 4 June 2018.

43. The new route includes:
- completion of an application form and supporting documents;
  - mapping of the applicant's qualifications and experience against the GOC's stage 1 and stage 2 competencies and an interview with the applicant to explore the information given in the application form;
  - completion of further academic training if the applicant does not meet the stage 1 competencies;
  - completion of the College of Optometrists' Scheme for Registration; and
  - entry to the register.
44. We have also worked with the College of Optometrists to agree a statement clarifying our respective roles and responsibilities.
45. This new route to registration is more consistent with the route taken by UK applicants and does provide some flexibility in that the time it takes for applicants to complete the scheme will vary depending on their knowledge and experience.

#### **Vision and safe driving**

46. We have been developing guidance for registrants on vision and safe driving. This is designed to support registrants in relation to the assessment and referral to the DVLA (and DVA in Northern Ireland) of visually impaired patients who do not meet minimum driving standards. Our position is that registrants should continue to use their professional judgement on a case by case basis in relation to vision and safe driving. However, the guidance is designed to more clearly outline registrants' responsibilities in relation to protecting the public (standard 11), as well as patient confidentiality (standard 14). This approach would be consistent with the General Medical Council's (GMC) updated guidance.
47. We had originally planned to consult on this guidance in the first quarter of 2018/19 but, as we indicated to Council in May, in setting our planned public consultations for this year it is has been necessary to postpone the consultation on the guidance until Q4 2018/19 so that we can focus on consultations in relation to the business standards, CET and education. In the meantime, we will promote and signpost registrants to the DVLA's guidance and helpline via our website and other communication channels such as the e-bulletin.

#### **Regulatory Reform**

48. We have identified our priorities for legislative reform, which include changes to speed up our fitness to practice process and enabling us to register all businesses carrying out restricted functions.
49. In responding to the Department of Health's consultation on regulatory reform earlier in the year, we made clear the need for legislative reform and will be continuing our engagement with the Department to discuss how this might be achieved.



50. We are also exploring other ways in which we might be able to achieve our policy objectives and have had an initial discussion with NHS England about how we could encourage more businesses to register with us, pending a change in primary legislation that would make business registration mandatory for all businesses carrying out restricted functions, such as testing sight.

### **Williams Review**

51. The Government recently accepted the recommendations of the Williams Review into Gross Negligence Manslaughter which took place following the high profile High Court decision in the Bawa-Garba case.
52. The review (conducted by Professor Norman Williams) recommended among other things that there should be clearer guidance covering those patient deaths which involve healthcare professionals and, in particular, when such incidents meet the threshold for criminal investigation. This is intended to draw a firmer distinction than currently exists between what is a criminal matter and what is a fitness to practise matter. The GOC has publicly welcomed the government's commitment to take forward this recommendation.
53. The review also recommended that the GMC lose its powers to appeal decisions taken by the Medical Practitioners Tribunal Service. This decision was taken in the light of the review and the circumstances which led up to the Bawa-Garba High Court case where the GMC chose to appeal a decision to appeal the MPTS decision not to strike-off Dr Bawa-Garba despite the fact that she had been found guilty in the criminal court of gross negligence manslaughter.
54. The High Court overturned the MPTS decision but an appeal against this decision has subsequently been lodged in the Court of Appeal. The PSA will continue to have powers to appeal decisions by Fitness to Practise panels including the MPTS.
55. The review also found that there was significant concern among the medical profession about the potential for any individual self-reflections on their practice to be used against them in either the criminal court or in fitness to practise proceedings. Both the GMC and the GOC currently have statutory powers to request such information as part of a fitness to practise investigation. In order to ensure consistency with other regulators and to alleviate any ongoing concerns about how reflective practice statements might be used in fitness to practise proceedings, the Review recommended that both the GOC and GMC lose these statutory powers. Along with the GMC, we have welcomed this recommendation, making clear that we have not used these powers and do not intend to do so. We would not want registrants to be deterred from reflecting practice by concern that any statement they make might be used as part of a fitness to practise case.

**Independent panel report into Gosport War Memorial Hospital**

56. The report of the Independent panel into Gosport War Memorial Hospital was published in June 2018. The Panel's analysis demonstrates that the lives of over 450 people were shortened as a direct result of prescribing and administering opioids at the hospital and that probably at least another 200 patients were similarly affected. The panel identified that a single doctor (Dr Barton) had been responsible for the practice of prescribing which prevailed on the wards. This Doctor was subject to Fitness to Practise proceedings at the GMC although she was not struck off.
57. The Panel raised serious questions about the culture in the hospital: in particular a disregard for human life, a culture of shortening the lives of a large number of patients and an institutionalised regime of prescribing and administering "dangerous doses" of medication.
58. The Panel found that one group of nurses did raise concerns about the hospital's prescribing practices between February 1991 and January 1992, but their "warnings went unheeded" which resulted in more patients dying. Those nurses subsequently felt "ostracised".
59. The Panel also found that the failure to heed the nurses' warnings meant that, for many years, there was no effective challenge to what was happening at the hospital. When that challenge did come it was from the families, although the wider system did not focus on their concerns or effectively address them.
60. In terms of the wider system response, the Panel found that regulators and healthcare providers and commissioners failed to identify the nature of the underlying problem or to deal with it effectively. The Panel commented that this might have been because each organisation might have acted in its own interests and those of its leaders, motivated by reputation management, career self-preservation and taking the path of least resistance.
61. The GOC will reflect on the findings of this report, in particular the issues regarding raising concerns and whistleblowing and the wider system response to dealing with concerns that are raised.

**Communications and engagement**

62. We are examining how we can improve our use of digital communications to support our regulatory activities, including supporting registrants in applying our standards. We are working with a specialist agency, Helpful Technology, which will be making recommendations to us about how we could, for example, improve our website and the way in which we use social media.
63. We have introduced a new consultation platform, Citizen Space, in order to make our public consultations more accessible and broaden the range of input

we receive. We have used this for the first time in launching our consultation on the proposed new business standards and will be using it for all our public consultations in future.

### **Stakeholder engagement**

64. Given that I am only an interim rather than permanent appointment, it has been agreed with the Chair that stakeholder meetings with Chief Executives will be conducted with alongside the Director of Strategy, stakeholder meetings with both Chairs and Chief Executives will be conducted with the Chair and myself and, as a general rule, regular meetings such as the Chief Executive Steering Group (CESG) and the Chief Executive Legislative Group (CELG) will be attended by the Director of Strategy who has an overall view of these areas. These stakeholder meetings are supported by internal briefings from our Comms team which allow them to be meaningful conversations regarding current and future issues.
65. Prior to me attending the Chief Executive Steering Group (CESG) in July, I have met with my counterpart at the General Pharmaceutical Council to discuss general areas of interest.
66. Accompanied by the Director of Strategy, I have met with my counterpart at the Association of Optometrists (AOP).
67. Together with the Chair, I have had a bilateral meeting with our counterparts at the Association of British Dispensing Opticians (ABDO).
68. Since taking up the post, I have met with the Director of Scrutiny and Quality at the Professional Standards Authority (PSA) to discuss general areas of interest.
69. I have met with Mazars LLP, our internal auditors, for the purpose of assisting them to gather views to help develop the internal audit strategy and annual plan. Other SMT members, a Council member and various individuals from the Governance team have previously met with them to give them a wide overview to develop their plan.
70. I have also attended the Westminster Health Forum Keynote Seminar where the subject of 'Next steps for professional healthcare regulation' was on the agenda, with speeches by the Professional Standards Authority (PSA), General Medical Council (GMC), Nursing and Midwifery Council (NMC) and Health and Care Professions Council (HCPC) as well as the Deputy Director, Professional Regulation, Department of Health and Social Care, the President of the Faculty of Physician Associates, the Chair of the Professional Standards Sub-Committee, Royal College of Physicians and the Chair, Council of Deans of Health UK.