Guidance on Fitness to Practise
Rule 16: consultation

We are seeking feedback on new guidance - Rule 16 of our Fitness to Practise Rules

May 2013
About the General Optical Council

The General Optical Council (GOC) is one of 12 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. We currently register around 26,000 optometrists, dispensing opticians, student opticians and optical businesses.

Our Mission

Our statutory function is ‘to protect, promote and maintain the health and safety’ of members of the public. We interpret this in our Mission as ‘Assuring the health and protection of those who use the services of optometrists and dispensing opticians’.

Our Vision

The GOC is to be seen as leading the way in regulation. That is, to deliver our Mission in a manner that is innovative and exemplary.

We are 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 how and what to change. Instead we want to get there first, building on good practice around us and taking the initiative where we can.

We are keen to ensure that our Vision is clearly understood, by all our stakeholders, as an aspiration to be an exemplar; in essence, to develop, adopt and share exemplary practice in public protection, working collaboratively with our stakeholders.

Our Values

We are responsible, forward thinking and principled:

Responsible

We inspire confidence because:

- We make clear, well-reasoned, evidence based decisions
- We account for our actions and are open to scrutiny
- We apply our resources in a targeted and proportionate manner
Forward thinking

We make a difference because:

- We pursue defined goals and measure our results
- We are progressive, innovative and agile in our ways of working
- We achieve and deliver more by working collaboratively
- We are a learning organisation committed to continuous improvement

Principled

We build trust because:

- We gain respect through our credibility, integrity and high standards
- We listen openly, act responsively and communicate honestly
- We behave consistently and fairly to everyone
- We foster a positive and productive culture
Responding to the consultation

Respond to

Please send your responses to Julian Carpenter, Head of Fitness to Practise (Interim) no later than **Monday 19 August 2013**.

A consultation response form is attached to this document. Responses should be sent to:

General Optical Council
41 Harley Street
LONDON
W1G 8DJ.

Email: rule16consultation@optical.org

Please include your 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.

A copy of this consultation has been sent to a large number of stakeholder groups representing our registrants, patients, partner organisations and other groups. If you have any queries about the consultation then please contact Julian Carpenter on 020 7307 3452 or email jcarpenter@optical.org

Our commitment to consultation

We believe 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.

How we consult with our stakeholders is set out in our *Consultation Framework*, available in the consultation section of our website. Feedback on the consultation process itself would be welcome. If you have any comments then please contact **Simon Grier** on sgrier@optical.org
GOC Guidance to Rule 16 of the Fitness to Practise Rules

**Start date:** Tuesday 21 May 2013  
**End date:** Monday 19 August 2013

**Results published:**

- In a paper to the GOC Council at its meeting scheduled for 14 November 2013
- Incorporated in the Investigation Committee guidance, already published on the GOC website

**About this consultation**

Our Fitness to Practise Rules define how we deal with reports that a registrant may not be fit to practise. Published guidance is already available to the Investigation and the Fitness to Practise Committees. This consultation supplements the Investigation Committee guidance.

The guidance does not describe a new rule nor does it introduce new methods of handling cases; it simply sets out what we consider current good practice. However, we want to take this opportunity to gather feedback from stakeholders, including patients, registrants, professional membership bodies and their legal representatives, and other healthcare regulators.

**About the guidance to Rule 16**

The Opticians Act provides the legal framework for considering reports that a practitioner may not be fit to practise. The Act also requires the GOC to provide guidance on fitness to practise matters. This draft guidance supplements that already used by the Investigation Committee.\(^1\) The guidance is available in annex 1.

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\(^1\) Investigation Committee Guidance. General Optical Council, November 2010.
Introduction

The fitness to practise work of the Council is governed by statutory rules\(^2\), one of which (numbered 16) is entitled *Termination of referral*. This is a common ‘checks and balances’ provision for healthcare regulators that enables the Investigation Committee to review and possibly cancel a referred case in light of an application from any of the involved parties.

The work of the Investigation Committee (IC) is to consider reports about registrants fitness to practise and decide, in the light of information gathered from an initial investigation (together with health or performance assessments where relevant), whether the matter should be referred for a full investigation and hearing before the Fitness to Practise Committee (FTPC).

After the IC has referred a case to the FTPC, it may consider an application, from the registrant or the Council, as to whether the investigation should be terminated. This guidance is intended to assist those making or determining applications for review, by describing the procedure used by the General Optical Council.

We have drafted the guidance in order to ensure transparency of process which is in the public interest. The guidance describes the process of making and considering an application to terminate an investigation by the Investigation Committee under Rule 16. The guidance does not propose any new provisions or practices that are not already in existence.

Once the consultation has concluded we will draft a report which will include the number and quality of responses, whether new or helpful suggestions were made and the extent to which the draft guidance was amended as a result. The consultation report with finalised guidance (taking into account feedback) will be presented for consideration and approval by Council at the meeting scheduled for 14 November 2013.

The draft Rule 16 Guidance is provided as an annex. The following questions are designed to help capture your view. If you wish to make other comments not covered by the questions, please do so.

\(^2\) General Optical Council (Fitness to Practise Rules) Order of Council 2005/1475
Response form

Please send your responses to Julian Carpenter, Head of Fitness to Practise (Interim) no later than Monday 19 August 2013.

A consultation response form is attached to this document. Alternatively, you can use the response form in the consultation section of our website. Responses should be sent to:

General Optical Council
41 Harley Street
LONDON
W1G 8DJ.

Email: rule16consultation@optical.org

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 contacted in this way about the GOC’s consultations: ☐
Questions

1. Is the guidance clear on the background and reasons for of Rule 16 Guidance?
   If not, please provide your comments:

2. Does the guidance clearly explain how the GOC will process applications made under Rule 16?
   If not, please provide your comments

3. Do you agree that the guidance will help ensure the decisions made by the Investigation Committee are consistent?
   If not, please provide your comments
4  Do you agree that the guidance will help those who are making or determining Rule 16 applications understand the factors that will be taken into account when reaching a decision?

   If not, please provide your comments

5  Do you have any other comments on the draft guidance?

Closing date for responses is **Monday 19 August 2013**.

Send to:

Julian Carpenter  
Head of Fitness to Practise (Interim)  
General Optical Council  
41 Harley Street  
LONDON  
W1G 8DJ.

Email: rule16consultation@optical.org
Investigation Committee - draft Rule 16 guidance

Introduction

1. Rule 16 of the General Optical Council (Fitness to Practise Rules) 2005 states that where an allegation against a registrant has been referred to the Fitness to Practise Committee the Investigation Committee may review the referral.

2. The purpose of this guidance is to assist those making and determining applications for review by understanding the procedure that will be adopted by the General Optical Council (GOC).

Human Rights

3. The Council is a public authority for the purposes of the Human Rights Act 1998. Promoting equality is also a requirement under current and emerging equality legislation – everyone who is acting on behalf of the Council is expected to adhere to the spirit and letter of this legislation.

Revision of the Guidance

4. This guidance is intended to be a living document. It will be amended as and when appropriate, taking into account the growing experience of the Investigation Committee in dealing with applications for termination under Rule 16, as well as legal developments, including the amendment/introduction of legislation and new case law. The GOC will review this guidance periodically and at least annually.

5. The GOC will highlight any significant amendments to this guidance by publishing the amended version on the GOC's website, www.optical.org at least one month before the amended guidance will be used by the Investigation Committee.

Who can make an application for termination?

6. Rule 16 (1) states simply that "The Investigation Committee may review the referral". It does not define those who can make an application. It may reasonably be inferred that:

   (a) the registrant may make an application
   (b) the Council may make an application
   (c) the Investigation Committee of its own motion may terminate a referral
How should an application be made?

7. Any application for a termination of the referral under Rule 16 should be made in writing, supported by any documentary evidence upon which the applicant wishes to rely.

8. The application should be sent to the Registrar for the attention of the Investigations Manager. Upon receipt of the application, the Investigations Manager will list the application for consideration by an Investigation Committee. In listing the application, the Investigations Manager will take into account the need to seek comments upon the application from the following before the application can be considered by the Investigation Committee:

   (a) The complainant
   (b) The registrant
   (c) The registrar
   (d) Any other person who may reasonably be expected to have an interest in the application

The Investigations Manager should record and give reasons for any decision not to seek comments from those listed at (a) to (c) above.

9. In seeking comments upon the application, the Investigations Manager will send to those listed in paragraph 8 (from whom it has been decided that comments will be sought) above, a copy of the application and supporting documents indicating the timescale within which any representations must be received to allow the consideration of them by the Investigation Committee.

10. Any comments requested by the Investigations Manager in accordance with paragraph 9 above should be made within 28 days of the request for comments. The person making the Rule 16 application will then have 14 days to respond to any comments received from any other party. No further comments will be sought after the receipt of further comments, if any, from the person making the Rule 16 application. For the avoidance of doubt, the applicant has the final opportunity to comment before the application is considered by the Investigation Committee. In exceptional cases, the deadlines referred to above may be extended by the Investigations Manager.

11. The Investigations Manager will prepare and submit to the Investigation Committee copies of the application and any comments received in response to it.
Consideration of the application by the Investigation Committee

12. Upon receipt of an application for termination, the Investigation Committee must consider whether, in the light of all the evidence available and after considering any written representations made to it, the allegation ought still to be referred to the Fitness to Practise Committee.

13. In considering the application, the Investigation Committee should follow the guidance set out in the Investigation Committee Guidance and, in particular the test and criteria set out in that guidance. The Investigation Committee must consider whether there remains a realistic prospect of proving the facts alleged and, if those facts are proved, are they so significant to indicate that the fitness to practise of the registrant is, or may be, impaired to a degree that justifies action being taken against their registration.

14. When considering an application under Rule 16, the Investigation Committee may:

a) Terminate the referral with no further action.
b) Terminate the referral and give advice to the registrant.
c) Terminate the referral and be minded to issue the registrant with a warning (having considered any representations received by the registrant in relation to the proposed warning).
d) Continue with the referral.
e) Continue with the referral, with a direction for the matter to be passed to an FTP Committee for consideration of whether or not an interim order should be imposed.
f) Continue with the referral, with a direction for the matter to be passed to an FTP Committee for consideration of whether or not an Interim Order should be imposed, and/or a direction for a Performance Assessment to be carried out.
g) Continue with the referral, with a direction for the matter to be passed to an FTP Committee for consideration of whether or not an Interim Order should be imposed, and/or a direction for a Health Assessment to be carried out.
h) Adjourn its decision pending the receipt of further information.

Reasons for decision

15. In all cases, the Investigation Committee must give reasons for its decision so that those affected by it understand why the Investigation Committee made the decision they did. Reasons should be clear and detailed. If any legal advice was given in relation to the application, such advice should be recorded with an indication as to whether or not it was accepted by the Investigation Committee.