

## RULE 16 GUIDANCE

### Introduction

1. Rule 16 of the General Optical Council (Fitness to Practise) Rules Order of Council 2013 states that where an allegation against a registrant has been referred to the Fitness to Practise Committee the case examiners may review that referral.
2. Such a review may be appropriate where, for instance, new evidence has come to light that indicates the original concerns no longer meet the realistic prospect test (see para 13).
3. The purpose of this guidance is to assist those making and determining applications for review to understand the procedure that will be adopted by the General Optical Council (GOC).

### Human Rights

4. 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 bound by the duties placed upon public authorities to comply with this legislation.

### Revision of the Guidance

5. This guidance is intended to be a living document. It will be amended as and when appropriate, taking into account legal developments, including the amendment/introduction of legislation and new case law. The GOC will review this guidance periodically and at least annually.

### Who can make an application for termination?

6. Rule 16 (1) states simply that "*The case examiners 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; or
- (c) the case examiners may review a referral of their own motion.

### **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 Head of Case Progression. Upon receipt of the application, the Head of Case Progression will list the application for consideration by case examiners. In listing the application, the GOC will first write to the maker of the allegation giving that person the opportunity to submit any comments within a period of 28 days, starting from the date of the letter.
9. Although not a requirement of the Rules, it is the practice of the GOC that a copy of the Rule 16 application is sent to the respondents (Council or registrant) and any other person who may reasonably be expected to have an interest in the application. These parties will also be given 28 days to respond starting from the date of the letter. This will ensure that all relevant documentation is available to the case examiners prior to their consideration of the application.
10. In seeking comments on the Rule 16 application from those listed in paragraphs 8 and 9 (apart from the applicant), a copy of the application and supporting documents will be sent, indicating the timescale within which any representations must be received to allow for consideration by the case examiners.
11. The Council will prepare and submit to the case examiners copies of the application and any comments received in response to it. The registrant will be provided with all information submitted to the case examiners.

### **Consideration of the application by the case examiners**

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

13. In considering the application, the case examiners should follow case examiner guidance and, in particular, the test and criteria set out in that guidance. The case examiners must consider whether there remains a realistic prospect of proving the facts alleged and, if those facts are proved, are they sufficiently 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 case examiners may:

- a. terminate the referral with no further action;
- b. continue with the referral

### **Reasons for decision**

15. In all cases, the case examiners must give reasons for their decision so that those affected by it understand how they reached their decision. 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 case examiners.