

COUNCIL

Governance Review

Meeting: 10 July 2019

Status: for decision

Lead responsibility and paper author: Nicola Ebdon (Head of Governance)

Council Lead: N/A

Project Board: SMT

Purpose

1. To enable Council to consider and agree interim changes to its governance structure to improve the ability of advisory committee members to provide timely and effective advice.

Recommendations

2. It is recommended Council **note** the feedback on the proposals from the advisory committees and **agree** to:
 - change the approach of holding separate advisory committee meetings to form a central Advisory Panel, from which task and finish groups will be formed in line with business needs;
 - delegate to the Registrar functions Council had previously delegated to the statutory advisory committees; and
 - revised Advisory Committee Terms of Reference (**Annex 3**).

Strategic objective

3. These recommendations support our strategic objective of organisational transformation – to deliver high quality, efficient services to the public and registrants underpinned by a culture of evaluation and continuous improvement.

Risks

4. There is a risk of dis-engagement by members if they feel unable to make contributions in a bigger forum. This will be mitigated by use of smaller groups to enable forum members to get to know one-another and through people being invited to feed in their thoughts in a variety of ways including on-line.

Background

5. A Governance review was included in the 2019/20 business plan to identify the most efficient and effective governance structure to meet Council's needs. There are currently 30 members of the advisory committees (not counting Council members who chair/sit on the committees).

6. The Registration, Standards, Education and Companies Committees are established by statute. Part 1 of the Opticians Act (“OA”) sets out that the GOC has to have the four advisory committees with their core purpose being: *“giving advice and assistance to the Council (whether or not in response to a reference from them)”*. Part 2 of the Act (section 12(4)) also sets out that the Education Committee should: *review of requirements as to the content and standard of education and training and advice as to the necessity of changes to those requirements*. Part 2 of the Act (section 12(4)) also sets out that the Standards Committee should: *review competencies for qualification and provide advice as to the necessity of changes to those competencies*.
7. The [Committee Constitution Rules](#) specify the number and type of committee members. The usual procedure for amending GOC Rules is through Section 60 of the Health Act 1999 (“HA”): Section 60 Orders permit changes by an affirmative procedure, with the draft Rules being debated and approved by both Houses of Parliament before being presented to the Privy Council. Schedule 3 Paragraph 9 of HA requires consultation on all draft statutory instruments, and Section 3(3) of OA requires consultation on draft Companies Committee Rules with *“organisations appearing to the Council to represent the interests of substantial numbers of business registrants”*. Therefore, it is unlikely we can change the constitutional requirements relating to these advisory committees, including the current requirements for number and type of members in advance of legislative change.
8. The [Allocation of Roles and Responsibilities](#) (March 2013) sets out the statutory roles and responsibilities of the different committees – which are supplemented by more detailed Terms of Reference agreed by Council relating to the frequency and format of meetings. In addition to the statutory role of each committee, Council has set out additional responsibilities for each committee in the Allocation of Roles and Responsibilities (**Annex 1**) and delegated the following other statutory responsibilities to its advisory committees:

Section	Function	Delegated to
13(1)	To keep themselves informed as to the instruction at each approved establishment and the assessment which leads to the approved qualification	Education Committee
13(2)	To appoint visitors to visit approved training establishments	Education Committee
13(4)	To specify matters to be addressed by visitors	Education Committee
13A(4)	To keep under review guidance issued under sections 13A(1)(a) and (2)(a)	Standards Committee

9. In May 2019 Council considered the advantages and disadvantages of the current advisory committee structure (**annex one**) and four options for change.

Council agreed that it would be preferable for its advisory governance structure to have the following **principles**:

- the advisory structure should be established to meet the needs of the organisation;
- advisors should be used as a source of advice to the Executive for consultation and engagement in developing proposals for Council (but not formally reporting to Council);
- there should be assurance to Council whenever a matter is brought to it that appropriate advice has been sought, and Council leads should be sufficiently sighted to be able to verify that advice;
- the use of a core group of advisors should be actively managed to ensure they come from diverse backgrounds (from a range of different stakeholder groups and reflecting minority groups – not England/London centric);
- closed appointments of specialists should be encouraged to supplement the advice on specific issues where needed;
- core advisors should be appointed on as flexible a basis as possible to ensure the group of advisors can be easily refreshed, and supported to ensure they are able to make an effective contribution; and
- costs of management, communication and meeting costs should be kept as low as possible.

10. Following discussion of various options, Council agreed that it would be most beneficial to establish an **Advisory Panel** – meeting routinely, and from which **task & finish groups** would be created as required, with additional specialists and end-users invited as necessary to meet the needs of the specific project. In addition, the Advisory Panel members would be able to be contacted individually, or as a group, to provide advice in person, on-line or via tele- or video-conference between meetings. It was felt this option would result in a good depth and quality of debate on key issues, meet the principles and replicate all the advantages of the current advisory structure, while addressing many of the disadvantages.

11. Council agreed in principle that the Advisory Panel should:

- be constituted from the members of the four advisory committees – which will remain established (documented on our website), with the required level and type of membership and a Council member as committee chair;
- with supplementary members appointed by closed invite according to skills/knowledge/experience to reflect the full range of stakeholders the GOC needs to work with – not classed as committee members;
- meet two or three times a year;
- be chaired by the Chief Executive & Registrar, with one or two Council Members in attendance;
- run in a workshop style to consider strategic issues, progress against the strategic plan and issues benefitting from panel consideration; and

- have a record of the discussion recorded and reported to Council.
12. Council agreed in principle that the task & finish groups should:
- be established as and when required in a variety of different formats to meet a specific purpose;
 - have membership identified from current committee members and supplemented with attendees appointed by closed invite according to skills/knowledge/ experience as needed;
 - be chaired by the relevant Director;
 - have relevant Council members invited to participate in the meetings; and
 - have their advice included in relevant Council papers.
- The Advisory Panel will play an important role in helping to identify what groups might be necessary and in suggesting other appropriate members.
13. Council considered the following core legislative requirements of the advisory committees and how these would be met when operating in line with the Advisory Panel structure:
- give advice and assistance to the Council whether or not in response to a reference from them (facilitated by inviting members to suggest agenda items and ensuring notes of panel meetings go to Council);
 - review the requirements as to the content and standard of education and training and provide advice as to the necessity of changes to those requirements (fulfilled by asking members to provide continued advice on the ESR project);
 - review the competencies for qualification and provide advice as to the necessity of changes to those competencies (fulfilled by asking members to provide continued advice on the ESR, CET and business/individual standards); and
 - be established in line with constitutional requirements (fulfilled by keeping four advisory committees with required memberships meeting in an alternative format).

Analysis

Advisory Committee feedback

14. In June 2019 all advisory committee members considered an update on the Governance review and provided feedback on the impact of the changes.
15. In general, members felt that providing advice in a panel and task & finish group format would impact positively on the degree to which they are able to participate and provide advice. The majority of those who provided feedback fully understood and supported the need for increased flexibility, to enable more timely advice - especially in a fast moving social/public/political climate. Comments included:
- there will be added value from members being able to provide advice on a wider range of strategic issues affecting the GOC, enabling more

- proactive and constructive engagement and being able to see their specific interests in a broader context;
 - the creativity/innovation used to find a more flexible and value for money approach that works better for the organisation within that existing statutory committee construct is applauded;
 - holding a single meeting with all committee members will facilitate better debate and engagement with the Chief Executive & Registrar;
 - it will provide an opportunity for senior staff to learn from lay members' experience in wider sectors;
 - the use of task and finish groups will enable more flexible and frequent engagement on specific projects resulting in a more concrete contribution from committee members by working on specific tasks, as part of a collaborative small group;
 - it is sensible to make more use of available technology to supplement the basic legislative structure/model; and
 - some members have felt underused and are happy to contribute more widely/be approached to provide advice on a flexible basis as needed.
16. Members agreed with the view of Council that a single diverse advisory panel will enable the Chief Executive & Registrar to have direct access to advice from a range of stakeholders and so reduce duplication of effort in committee and wider stakeholder engagement. It was noted that it would enable stakeholders to hear each other's points of view directly. Feedback recommended the panel include representatives from all areas of the UK, from all registrant groups, including Independent Prescribing Optometrists, and individuals with experience of the education sector.
17. There were some areas in which members felt there was a risk of the changes resulting in a reduction in the quality of advice provided, which required mitigating, including:
- some members may find it harder to share their views in a larger group due to group dynamics, which could be mitigated by enabling engagement in smaller task and finish groups;
 - a large panel could be harder to manage, which could be mitigated by effective planning and facilitation and in the longer-term appointing members who can contribute to more than one area/represent different minority and/or stakeholder groups; and
 - the absence of prescheduled meeting dates for task and finish groups could impact on some members who were not as flexible with availability to be able to engage, which could be mitigated by planning ahead and publishing meeting dates in advance where possible or where meetings were smaller, canvassing for availability beforehand.
18. The Companies committee members were of the firm view that providing advice in a panel format could limit their participation. In its current format the

members had developed personal relationships with other members and felt comfortable providing advice, which was often of a commercially sensitive nature. They felt that the advantages of the current committee format outweighed the disadvantages and suggested that Council consider other ways in which it could ensure appropriate advice from business representatives, including keeping the current Companies Committee format or a strengthened business forum.

19. In relation to how these arrangements could be improved upon or thoughts about how they might be implemented, responses received included:
- care may need to be taken in ensuring members are treated fairly in terms of opportunity for additional tasks/work;
 - effort and the right behaviours will be required from all to get the anticipated and desired benefits from the changes; and
 - a key advantage of the current structure is that members specialise in providing advice on one specific aspect of the GOC's role, however this may affect their ability to comment authoritatively to all panel discussions. This could be mitigated by providing relevant induction in issues where advice from the panel is sought.
20. Following consideration of the feedback it is recommended Council proceed with the proposal to establish a central Advisory Panel, from which task and finish groups will be formed in line with business needs. It is also recommended that the recently established Business Forum be continued and that senior business representatives are brought together by the Chair from time to time at his or their request.

Scheme of Delegation

21. It is recommended Council removes the following delegated functions from the advisory committees by changing the Scheme of Delegation to delegate these to the Chief Executive & Registrar and updates the Allocation of Roles and Responsibilities to remove the references to delegated responsibilities:

Section	Function	Delegated to
13(1)	To keep themselves informed as to the instruction at each approved establishment and the assessment which leads to the approved qualification	Education Committee
13(2)	To appoint visitors to visit approved training establishments	Education Committee
13(4)	To specify matters to be addressed by visitors	Education Committee
13A(4)	To keep under review guidance issued under sections 13A(1)(a) and (2)(a)	Standards Committee

Allocation of Roles and Responsibilities/Terms of Reference

22. It is recommended Council replace the separate committee Terms of Reference with a combined Terms of Reference (**Annex 3**). It is recommended the Terms

of Reference refer only to the committees' statutory purpose as specified in the Opticians Act to give advice and assistance to Council (whether or not in response to a reference from them), specifically including the:

- review of requirements as to the content and standard of education and training (including practical experience) required for the purpose of achieving those competencies and changes to those requirements
- review the competencies for qualification and provide advice as to the necessity of changes to those competencies.

Widening this purpose to include giving advice to the Chief Executive & Registrar – so that the Chief Executive & Registrar can ask the panel to provide advice on any areas required. In addition, give the Advisory Panel a role in helping to identify what task and finish groups might be necessary and in suggesting other appropriate members.

23. It is recommended Council updates the Allocation of Roles and Responsibilities to remove the additional responsibilities (**Annex 1**), on the basis that it is the responsibility of the Chief Executive & Registrar to seek advice from the Advisory Panel as required in developing recommendations on these areas for Council's consideration.

Impacts

24. There are no impacts on reserves, human rights or sustainability. The following implications have been identified:
- budget – in the short term, the suggested changes are likely to be cost neutral as all current advisory committee members will still be invited to attend two meetings a year with associated fees and expenses to be paid in accordance with the current member fees and expenses policies;
 - legislation – these changes can be made without changing our legislation – however it is preferable to update our detailed Committee Constitution Rules in the longer term to ensure Council can change the advisory framework when needed to meet the changing needs of Council;
 - resources – there will be a significant positive impact on the resources required to prepare for and manage the meetings – due to the change in format and reporting requirements, and due to staff having to take issues to one panel rather than several committees. We hope there will be an improvement in the effectiveness of our decision-making processes – ensuring timely and high-quality advice – with appropriately managed interests; and
 - equality, diversity and inclusion – there is the potential for a positive impact in improving diversity by being able to supplement membership to address gaps, particularly by improved diversity of advice from patients and practitioners as part of policy making.

Devolved nations

25. The proposed structure is clear on the importance of ensuring representatives from all four nations of the UK are on the Advisory Panel.

Communications

26. If approved by Council all advisory committee members will be informed of the changes in July 2019 and updated in relation to the dates of future Advisory Panel meetings.

Timetable

27. The current intention is to hold the first meeting in September 2019 to enable members to provide input as part of the development of our next strategic plan.

Attachments

Annex 1 – Additional responsibilities for each committee in the Allocation of Roles and Responsibilities

Annex 2 - Advantages and disadvantages of current advisory committee structure

Annex 3 – Draft Advisory Panel Terms of Reference

Additional responsibilities for each committee in the Allocation of Roles and Responsibilities

Education Committee

- advise the Council as to the making, or revision, of rules under section 11A(1) (rules providing for a continuing education and training scheme);
- advise the Council as to approvals under sections 12(7) and 12(9) (approval of establishments, qualifications and tests of language; approval of establishments providing partial education and training and qualifications which meet only some requirements);
- advise the Council as to the commissioning of advice under section 12(8) (commission of advice regarding establishments or qualifications);
- advise the Council as to the withdrawal of approvals under section 13(7) (withdrawal of approval from a training establishment or of a qualification);
- keep under review the provisions of Part 2 of the Opticians Act (registration and training) and subsidiary rules relating to the work of the committee and propose revisions, as appropriate;

Standards Committee

- advise the Council as to the need for provision, or revision, of guidance for individual registrants under sections 13A(1)(a) and 13(4);
- advise the Council as to the need for provision, or revision, of guidance for business registrants under sections 13A(2)(a) and 13(4);
- advise the Council as to the making, or revision, of rules under section 24(3) (testing of sight by persons training);
- advise the Council as to the making, or revision, of rules under section 25(3) (fitting of contact lenses by persons training);
- advise the Council as to the making, or revision, of rules under section 27(3C) (specifying arrangements for aftercare);
- advise the Council as to the making, or revision, of rules under section 31(1)(b) (carrying on of practice or business under names other than those under which they are registered);
- advise the Council as to the making, or revision, of rules under section 31(1)(c) (prescription, sale, supply and administration of drugs);
- advise the Council as to the making, or revision, of rules under section 31(1)(d) (practice of orthoptics);
- advise the Council as to the making, or revision, of rules under section 31(1)(e) (prescription, sale, supply and fitting of contact lenses);
- advise the Council as to the making, or revision, of rules under section 31(3) (requirements to be met if prescribing, fitting, supplying or selling contact lenses);
- advise the Council as to the making, or revision, of rules under section 31(5) (taking of prescribed steps to refer where person suffering from injury or disease of the eye);

- keep under review the provisions of Part 4 of the Opticians Act (criminal offences) and subsidiary rules and propose revisions, as appropriate.
- keep under review the provisions of sections 31 and 31A of the Opticians Act (professional rules) and propose revisions, as appropriate.

Registration Committee

- advise the Council as to the making, or revision, of rules under sections 10(1) and 10(1A) (form and keeping of registers, registration and entry of specialties);
- advise the Council as to the making, or revision, of rules under section 10A(5) (rules specifying types and amounts of adequate and appropriate insurance);
- advise the Council as to the publication of the registers under section 11;
- advise the Registrar as to the exercise of his powers set out in rules 5(2), 8(3), 9(3) and 18(2) of the Registration Rules (information which may additionally be sought from applicants for registration, retention or restoration);
- keep under review the provisions of Part 2 of, and Schedule 1A to, the Opticians Act (registration and training / registration appeals) and subsidiary rules relating to the work of the committee and propose revisions, as appropriate.

Review of current advisory governance structure

Advantages of the current advisory committee structure:

1. it brings diversity of perspective and committee members often pick up on other issues not considered by the Executive;
2. registrant members contribute with the latest thinking as are closer to what is happening in the sector;
3. it is a good way of allowing in-depth discussion, exploring issues and working through problems – effectively enabling pre-consultation and testing of proposals;
4. discussion in committees helps with stakeholder engagement – often registrant members are influencers via their networking – so an effective way of getting our message out and influencing opinion;
5. compared with other regulators the committee structure is mature in how it is managed/serviced and is structured in a way which enables the provision of advice effectively;
6. compared with other regulators the quality of advice received from lay members is good - which is particularly beneficial in providing the societal view;
7. pre-discussion at committees provides Council with greater assurance and helps prepare Council members to input better to the debate in public Council - allowing Council members to develop their thoughts, be better informed of the issues and ensure the public have confidence in the debate undertaken at Council;
8. by having a formal committee structure and appointments process we are seen to be more transparent in our decision making; and
9. by discussing issues at committee level (non-public) enables executive and non-executive relationships to develop, which helps with decision making and the executive being able to seek advice from members outside formal structures.

Disadvantages of the current advisory committee structure:

1. the committees do not have a diverse enough membership re patient view, end users and registrants;
2. having formal meetings, with some delegated decision-making authority means it is harder to manage conflicts of interest;
3. it is more difficult for Council members to exercise their governance role when they are also involved in committees and policy development;
4. the costs required to manage the committees – inc fees and expenses for members, staff costs and recruitment and other associated costs;
5. the output from committees does not always offer value for money – when compared to the amount of effort required to administer them;
6. there is duplication of effort for the executive in preparing for multiple committees to gain advice on the same issue;
7. the timing of meetings isn't always aligned to when advice is required - and moving/holding meetings at short notice is hard to do with availability – this can result in delays to work and the creation of items to fill the time available;

8. some committees are confused over what is expected of them;
9. some committees have requested new or additional work contrary to agreed priorities in the business plan;
10. some committees are too internally focused and operational;
11. the Education Committee is too large;
12. compared with other regulators we do not use technology effectively to hold remote meetings and maintain security of information (we should be using a board portal); and
13. our committees are in statute and therefore Council do not have complete authority to have a structure which meets its changing needs.

Draft Advisory Panel Terms of Reference

1. Purpose

- 1.1 The purpose of the Advisory Panel is to give advice and assistance to the Chief Executive & Registrar and Council (whether or not in response to a reference from them), specifically including:
- matters relating to optical training, education and assessment – including the review of requirements as to the content and standard of education and training (including practical experience) required for the purpose of achieving those competencies and changes to those requirements; and
 - review the competencies for qualification and provide advice as to the necessity of changes to those competencies.
- 1.2 The Advisory Panel will also help to identify what task and finish groups might be necessary and suggest other appropriate members.

2. Membership, Chair, Secretary and Quorum

- 2.1 The Advisory Panel will be constituted from the members of the four advisory committees¹ with supplementary members appointed by closed invitation according to skills/knowledge/experience to reflect the full range of stakeholders the GOC needs to engage with.
- 2.2 Members are expected to attend meetings in person, however attendance via telephone or video-link is permissible.
- 2.3 Members will be asked to participate in task and finish groups (created as required), with additional invitees as necessary.
- 2.4 Meetings will be chaired by the Chief Executive & Registrar, with one or two Council members in attendance. In the absence of the Chief Executive & Registrar and Registrar, a Council Member or the Director of Strategy will chair the meeting.
- 2.5 Members may also be contacted individually, or as a group, to provide advice in person, on-line or via tele/video-conference between meetings.
- 2.6 The Advisory Panel will be supported by a member of the Governance Team who will act as Secretary.
- 2.7 The quorum for meetings is five including at least one OO, one DO and one lay.

3. Frequency and Notice of Meetings

- 3.1 There will be a minimum of one Advisory Panel meeting each year.

¹ Education, Standards, Registration and Companies committees
03 July 2019

3.2 Notice of each meeting confirming the venue, time and date together with a programme of areas to be discussed and supporting papers (where required) shall normally be sent to attendees, no later than five working days before the date of the meeting.

3.3 Meetings shall be summoned by the Governance Team at the request of the Chief Executive & Registrar.

3.4 Meetings will be run in a workshop style to consider strategic issues, progress against the strategic plan and any other issues on which the Chief Executive and Registrar or Council require advice.

4. Notes of Meetings

4.1 A record of the advice provided will be recorded by the Governance Team and reported to Council.

5. Accountability & Reporting Responsibilities

5.1 The Advisory Panel is accountable to Council.

5.2 The notes of each meeting will be circulated to the next public Council meeting.

6. Other

6.1 The Council will review the Advisory Panel terms of reference every three years.

7. Authority

7.1 The Advisory Panel is advisory only and does not hold any decision-making powers.