

COUNCIL

Illegal practice strategy update

Meeting: 11 February 2015

Status: for information

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Purpose

1. The purpose of the paper is to update Council on the progress of the illegal practice strategy project and to enable Council to note our implementation plan.

Strategic Objective

2. The specific purpose of this project is to 'develop a clear strategy for preventing and addressing illegal practice'.
3. This project contributes to our mission of protecting and promoting public health and safety by helping to achieve our strategic objectives in the 2014-17 Strategic Plan to raise public trust and awareness, handle complaints more effectively and implement a targeted and proportionate system of regulation.
4. Alistair Bridge, Director of Strategy, is the Project Sponsor for this work. Marie Bunby, Policy Manager, is the Project Manager. Rob Hogan is the Council Champion.

Background

5. In 2013 the General Optical Council (GOC) began a review of its strategy for tackling illegal practice. Illegal practice is defined as criminal offences under the Opticians Act 1989 (the Act). The Act creates criminal offences in relation to:
 - 5.1 unlawfully conducting sight tests;
 - 5.2 unlawfully supplying spectacles;
 - 5.3 unlawfully fitting contact lenses;
 - 5.4 unlawfully supplying prescription contact lenses;
 - 5.5 unlawfully supplying zero-powered contact lenses; and
 - 5.6 misuse of protected title.
6. We commissioned Europe Economics to carry out a study into the risks associated with illegal practice. They examined both the likelihood of an adverse event occurring as a result of each type of illegal practice, and the likely harm that would arise from the adverse event. Europe Economics produced

their report and made recommendations on the areas that carry the greatest risk to public health and safety.

7. We launched a consultation on our strategy for tackling illegal practice on 3 March 2014. The consultation closed on 3 June 2014. During the consultation we sought views on our proposed approach to addressing the different types of illegal practice.
8. In our consultation document, we explained our current approach to dealing with illegal practice (handling complaints in line with our prosecution protocol, published in June 2011¹) and the difficulties we faced in taking effective enforcement action as follows:
 - 8.1 we have limited powers of investigation and enforcement;
 - 8.2 we face significant challenges in prosecuting online suppliers of contact lenses (both prescription and zero-powered), particularly as many are based overseas; and
 - 8.3 we do not have the resources to deal with the large numbers of people engaged in certain types of illegal practice, such as businesses supplying zero-powered contact lenses.
9. We proposed a strategy that recognised that we cannot just rely on reacting to complaints. We advocated a more proactive, multi-pronged approach, working collaboratively with stakeholders to reduce the harm to the public which illegal practices can cause.
10. We proposed that our strategy should be guided by the following principles:
 - 10.1 it should encompass all the types of illegal practice covered by the Act;
 - 10.2 we should adopt a differentiated approach, recognising that a 'one size fits all' approach to tackling the different types of illegal practice would not be effective;
 - 10.3 we should use a range of levers, taking into account businesses' incentives, focusing on what will achieve the best outcomes for the public;
 - 10.4 we should base our strategy on the evidence of the risks to the public presented by the different types of illegal practice;
 - 10.5 we should use our resources in a targeted way, focusing on the types of illegal practice that cause the greatest public harm;
 - 10.6 we should take into account the aggregate level of harm caused by particular types of illegal practice as well as the harm that can be caused in individual cases;
 - 10.7 we should collaborate with other organisations, including professional bodies, businesses, consumer groups and other enforcement bodies, and in doing so, make clear our role and remit; and

¹ http://www.optical.org/en/Investigating_complaints/index.cfm

- 10.8 we should recognise that we do not have the resources or powers to tackle all these issues alone and that we will need to work through others, acting as a catalyst and co-ordinating activity.
11. Taking into account the above principles and the research by Europe Economics, we proposed a proactive, multi-pronged approach to reducing public harm based on the following five areas:
- 11.1 continuing to handle complaints in line with our prosecution protocol for all types of illegal practice;
 - 11.2 collaboration with other enforcement bodies to address high-risk areas of illegal practice;
 - 11.3 guidance for the public on the safe purchase and use of contact lenses (prescription and cosmetic);
 - 11.4 development of a voluntary code of practice on the supply of contact lenses (prescription and cosmetic) online; and
 - 11.5 further research and intelligence-gathering.
12. In July 2014, following the consultation period and consideration of feedback from our stakeholders, Council approved our strategy for tackling illegal practice in the optical sector.

Analysis

13. In October 2014 we approached Richard Edwards, an optometrist with significant management experience in the sector and a member of our Companies Committee, to act as a consultant to advise on delivery of the illegal practice strategy. Richard was keen to take on the role and a contract has been put in place.
14. Marie Bunby took over the project management role in November 2014, following the departure of Danny Langley. Rob Hogan has replaced James Russell as Council Champion. Over the last few months we have been concentrating on two workstreams: raising awareness among contact lens wearers of how to purchase and wear contact lenses safely and developing a voluntary code of practice for online contact lens supply.
15. We published a statement in November 2014 confirming our strategy, the appointment of Richard Edwards, Rob Hogan's involvement, and our intention to set up a stakeholder group to oversee the workstreams on raising awareness among contact lens wearers and developing a code of practice for online suppliers. We announced this at a conference of the British Contact Lens Association (BCLA).
16. Throughout November 2014 we considered appropriate membership of the stakeholder steering group and contacted potential members to see if they

would be interested and willing to commit the time to the group. We agreed the names of the stakeholder steering group with the Chief Executive and Registrar and the Chair. The stakeholder steering group will be chaired by Rob Hogan. Members are likely to be as follows:

- 16.1 Gordon Ashworth – Director of Consumer Protection at the Competition and Markets Authority;
 - 16.2 Peter Black – President of the Association of British Dispensing Opticians (ABDO);
 - 16.3 Kamlesh Chauhan – Immediate Past President of the College of Optometrists and Director of THE VISION CARE INSTITUTE®, Europe, Middle East and Africa at Johnson & Johnson Medical Ltd;
 - 16.4 Cheryl Donnelly – Chief Executive Officer of the British Contact Lens Association (BCLA);
 - 16.5 Helen McKenna – Which? (consumer representative);
 - 16.6 Phil Morgan – Professor of Optometry, Director of Eurolens Research and Program Director for Optometry at The University of Manchester;
 - 16.7 Mitesh Patel – founder of Lenstore (online contact lens supplier), Digital Strategy Director at Vision Express and member of the GOC Companies Committee;
 - 16.8 Simon Rodwell – Secretary General of the Association of Contact Lens Manufacturers (ACLM);
 - 16.9 Claire Slade – member of the Federation of Ophthalmic and Dispensing Opticians (FODO) and GOC Companies Committee and Registration Committee, and Superintendent Optometrist at Asda;
 - 16.10 Kevin Thompson – member of Council of the Association of Optometrists (AOP) and GOC Companies Committee;
 - 16.11 representative of Healthwatch (consumer representative) (yet to be confirmed);
 - 16.12 Alistair Bridge – Director of Strategy at the GOC;
 - 16.13 Marie Bunby – Policy Manager at the GOC;
 - 16.14 Richard Edwards – independent consultant and member of the GOC Companies Committee; and
 - 16.15 Rob Hogan – Council Member of the GOC.
17. We wrote to the members of the stakeholder steering group in December 2014 to confirm their appointment and send draft terms of reference and meeting dates. We will be meeting with the steering group on 4 February and 27 March 2015. The purpose of the steering group will be to:
- 17.1 advise on the development of a code of practice for online contact lens suppliers and advise on options for implementation, with the emphasis being on addressing the risks to the public that can arise from internet supply; and
 - 17.2 advise on strategies to raise awareness among contact lens wearers of the need to follow aftercare advice and have regular check-ups.

18. We have also put together a smaller stakeholder working group to develop a voluntary code of practice for online contact lens supply, which will report back to the stakeholder steering group. This group will consist of some members of the stakeholder steering group together with other members who we consider will be helpful in drafting the voluntary code of practice. This group will meet on 4 February and 4 March 2015 in the first instance. The working group will be chaired by Richard Edwards. Its terms of reference will be to:
 - 18.1 develop a code of practice for online contact lens suppliers; and
 - 18.2 advise on options for implementation.
19. We intend to bring the draft code of practice and options for implementation to Council in May 2015 for approval prior to a 12 week public consultation. We also intend to set up a working group to help raise awareness among contact lens wearers and will update Council on this strand of work at the May 2015 meeting.
20. Over the next few months we will also be focusing on the other three workstreams:
 - 20.1 acting on complaints in line with our prosecution protocol;
 - 20.2 strengthening our collaboration with other bodies with a role in enforcement and promoting public health; and
 - 20.3 developing our approach to research and intelligence-gathering (although the public perceptions survey that we carried out recently will give us data on the percentage of contact lens wearers who buy online and we will track this through future surveys).
21. SMT will be holding a meeting to discuss how we handle complaints (both historic and future). Once we have agreed the approach to handling complaints we will be able to contact other enforcement bodies to enlist their help as appropriate.

Implications

22. Likely impact of the proposed illegal practice strategy:
 - 22.1 GOC's reserves – none;
 - 22.2 GOC budget – there will be costs involved in implementing the strategy through, for example, setting up the code of practice and raising public awareness, but we intend to minimise the costs to the GOC through collaboration with stakeholders;
 - 22.3 Resources – none;
 - 22.4 Equality and diversity – none; and
 - 22.5 Human Rights Act – none.

Devolved Nations

23. We do not believe that the proposed strategy has any specific implications for the devolved nations, but we will continue to engage with stakeholders in all four nations as we implement our proposals and will respond to any issues that may subsequently arise.

Communications

24. This is an area of great interest to many of our stakeholders, and many of these have already indicated to us that they are very keen to engage with any proposals on how to deal with illegal practice.
25. To this end, we have ensured that our key stakeholders are represented on our stakeholder steering group on contact lens supply and our stakeholder working group on the voluntary code of practice for online contact lens supply.
26. We will consult on the draft voluntary code of practice for online contact lens supply between May and September 2015. We will continue to engage with our stakeholders throughout this process, including online suppliers of contact lenses. We have also agreed to speak at the BCLA Conference at the end of May 2015 to provide an update on progress with implementing the strategy.
27. The trade press are also likely to take an interest, and at certain times of the year (particularly around Halloween) the issue of cosmetic contact lenses can attract national media attention.

Risks

28. There is a risk that we are not able to meet stakeholder's expectations in relation to the actions we take and the results we achieve. We will continue to engage closely with stakeholders to maintain support for the strategy and spread awareness of the limitations on what we can realistically do.
29. There is a risk that any enforcement action taken may drive consumers to online suppliers based outside of the UK, over whom we have no jurisdiction. We will continue to evaluate the market and the impact of our strategy to monitor this.

Recommendations

30. Council is asked to note our update on the implementation of the illegal practice strategy.

Timeline for future work

31. The currently envisaged timeline for the work is as follows:

Action	Date
First meeting of the stakeholder steering group on contact lens supply	4 February 2015
First meeting of the stakeholder working group on the voluntary code of practice for contact lens supply	4 February 2015
Second meeting of the stakeholder working group on the voluntary code of practice for contact lens supply	4 March 2015
Second meeting of the stakeholder steering group on contact lens supply	27 March 2015
First meeting of the stakeholder working group on consumer awareness	27 March 2015
Council meeting to approve code of practice and options for implementation for consultation and provide an update on progress with implementing the strategy generally	13 May 2015
Consultation period	20 May – 12 August 2015
Consumer information resources produced	April – September 2015
Council discussion on consultation outcome, final voluntary code of practice and implementation	November 2015
Launch of code of practice and consumer information	December 2015
Implementation period	January – March 2016

32. We will review the timeline for this work after the first meetings of the stakeholder steering and working groups have taken place.