

COUNCIL

Fitness to Practise: Acceptance Criteria

Meeting: 9 May 2018

Status: for decision

Lead responsibility/Project Director: Lisa Davis (Director of Fitness to Practise)

Project manager/paper author: Kayleigh Allen (Senior Lawyer)

Council Champions: Helen Tilley and David Parkins

Project Board: SMT

Project team members: Keith Watts (Head of Case Progression), Hannah Doherty (Investigations Manager) and David Bryan (Investigations Manager).

Purpose

1. To advise Council of the findings from the consultation and seek approval for the Acceptance Criteria guidance.

Recommendations

2. Council are asked to:
 - 2.1 **consider** the consultation findings;
 - 2.2 **approve** the guidance; and
 - 2.3 **delegate authority** to the Chief Executive & Registrar and Chair of the Council to finalise the guidance and the consultation findings for publication.

Strategic objective

3. The Acceptance Criteria guidance supports the 2017-20 Strategic Plan objectives of delivering high quality efficient services (Organisational Transformation), and targeting regulatory activities appropriately to reduce risks (Targeted approach to regulation).

Risks

4. The main risk relates to inconsistent application of the guidance which could have an impact on public protection. This will be addressed by the following:
 - 4.1 training of all staff utilising the guidance;
 - 4.2 quality assuring decisions to not open a case made in line with the criteria; and
 - 4.3 extending the review type cases considered by the annual independent fitness to practise audit to include acceptance criteria decisions.

Background

5. Formal Acceptance Criteria will help to ensure that only fitness to practice (FTP) concerns are investigated and referred to Case Examiners.
6. The Acceptance Criteria documents comprise a case management tool to identify whether a complaint amounts to an allegation as defined in the Opticians' Act 1989 – ie whether the complaint can (if found proved) amount to an allegation that a registrant's FTP is impaired. This could assist with the efficiency and proportionality of the GOC's FTP processes.
7. We drafted two documents: 'Guidance to assist the GOC Registrar and delegates' (staff guidance), which sets out the criteria in full, and 'Guidance to assist members of the public' (public guidance), which explains how the criteria will be used. Draft Acceptance Criteria guidance documents were reviewed by Council at its meeting on 15 November 2017 where plans to consult were approved.
8. The consultation received 11 written responses from a range of stakeholders. The consultation was also discussed at the Defence Stakeholder Meeting on 6 March 2018 (**annex one**). The consultation period ran from 14 December 2017- 9 March 2018. The responses are summarised in **annex two** and the draft guidance has been updated in light of the responses.
9. We met separately with the Association of Optometrists to discuss their thoughts on the Criteria prior to them providing a written response.
10. We also met with the Professional Standards Authority (PSA) and they were encouraged by the proposals of an Acceptance Criteria but did highlight some challenges in applying the criteria. We have considered the PSA's response in detail.
11. We did not receive any responses to the consultation from patients or patient representatives. It is very important to us that patients have the opportunity to input into the implementation of the guidance. We will include a feedback form in the closure letter to complainants, asking if they understood the reasoning behind the decision.

Analysis

12. The majority of respondents to the consultation were supportive of the principle of using Acceptance Criteria to filter initial complaints.
13. Generally, the comments were positive about the introduction of formal Acceptance Criteria. There were some comments about the wording of the draft documents, potential inconsistencies and how the criteria would be used.

14. The GOC has taken into consideration the responses received, and has amended the criteria documents to ensure they are consistent and appropriate. The amendments include:
 - 14.1 only having one guidance document that serves as both a public and internal guidance;
 - 14.2 ensuring the criteria are closely related to the GOC's Standards of Practice for Optometrists and Dispensing Opticians, Standards of Practice for Optical Students and the Code of Conduct for Business Registrants;
 - 14.3 ensuring that clear and transparent training will be provided to decision makers;
 - 14.4 addressing inconsistencies in drafting; and
 - 14.5 ensuring a right to review is available to both complainants and registrants.

15. The project team will continue to work closely together to create:
 - 15.1 revised draft Acceptance Criteria documents;
 - 15.2 a training programme for staff implementing the Acceptance Criteria documents; and
 - 15.3 developing quality assurance criteria to ensure decisions are monitored closely to enable issues to be highlighted early.

Impacts

16. An impact assessment has been completed and the following impacts identified:
 - 16.1 budget – possibly affected if there are legal challenges of the criteria. Implementation of the criteria documents could reduce costs to the GOC and to registrants. The exact figures are not yet known;
 - 16.2 equality, diversity and inclusion (EDI) –no adverse impact, all sections of society will benefit from increased timeliness;
 - 16.3 resources – the introduction of the criteria documents would free up staffing resources (although a portion of this will be used to apply the criteria) and it will ensure that the process is streamlined so that matters which could not raise an FTP concern are dealt with through other means. It has been identified that, initially, the GOC will need to invest in training staff;
 - 16.4 legislation – the criteria documents will improve overall fairness, as registrants would not have to respond to complaints that do not amount to FTP allegations;
 - 16.5 Human Rights Act – no issues, provided the criteria is applied fairly; and
 - 16.6 sustainability – no impact.

Devolved nations

17. There are no issues regarding devolved nations, as the same FTP processes apply across all four nations of the UK.

Communications

18. The GOC will ensure that the introduction of the Acceptance Criteria documents is properly communicated to stakeholders and the project team will work closely with the Communications team.

Timeline for future work

19. The timeline is as follows:

31 May 2018	<ul style="list-style-type: none">- Finalise Acceptance Criteria document and finalise staff training plan.- Publish consultation response summary.
June 2018	Provide in-house training
June 2018	Communicate to stakeholders
July 2018	Introduce Acceptance Criteria documents into the FTP workflow.
December 2018	First independent audit cases closed under Acceptance Criteria

Attachments

- Annex one: membership of the Defence Stakeholder meeting (6 March 2018);
Annex two: consultation responses summary.

Defence Stakeholder Meeting on 6 March 2018

Members in attendance:

- Federation of (Ophthalmic and Dispensing) Opticians (FODO)
- Association of British Dispensing Opticians (ABDO)
- Association of Optometrists (AOP)
- BLM
- Brachers
- William Graham Law
- Hempsons

Summary of consultation responses

1. **Consultation question 1** – do the Acceptance Criteria documents properly reflect the overarching objective of the GOC (s.1(2A)).
 - a. Most respondents felt the documents properly reflected the overarching objective. One commented:

“The proposals concerning Acceptance Criteria do place public protection at the forefront of decision making, and ultimately focus on enabling the GOC to provide effective regulation”
2. **Consultation question 2** – Will the Acceptance Criteria help to achieve consistency in the GOC’s decision making?
 - a. Some respondents felt that further clarity could help with consistent decision making. One respondent commented:

“the Acceptance Criteria is extremely wide ranging...”
3. **Consultation question 3** – Do the Acceptance Criteria documents ensure that FTP allegations will be accepted? How could this aspect be improved?
 - a. It was suggested by some respondents that reference to the standards of conduct will help ensure that FTP allegations are accepted.
 - b. Suggestions on how to improve the decision making and ensure fairness and transparency were also received.
4. **Consultation question 4** – What impacts (positive and negative) could the criteria have for: a) registrants b) the public.
 - a. The respondents were generally positive about the impacts the criteria would have on both registrants and the public including the following comments:

“acceptance criteria allows the GOC to focus on targeted and effective regulation.”

“this could also impact on the way in which registrants view the GOC, reducing fear of investigations and perception of over regulation.”
 - b. There were comments that further clarity would help ensure a positive impact for both registrants and the public:

“In our view the impact of the acceptance criteria will depend on whether the GOC clarifies its guidance and uses appropriately experienced staff to apply the criteria.”
5. **Consultation question 5** – Do you have any further comments on our proposed acceptance criteria which are not captured in your responses to the questions above?
 - a. There were suggestions relating to the drafting of specific paragraphs within the criteria documents, with a view to assisting consistency and transparency.