

COUNCIL

Illegal practice strategy: update

Meeting: 11 May 2016

Status: for decision

Lead responsibility/Project Director:

Alistair Bridge (Director of Strategy)

Council Champion: to be decided

Project manager/paper author: Marie
Bunby

Project team members: Simon Grier

Project Board: SMT

Purpose

1. The purpose of the paper is to update Council on the implementation of our illegal practice strategy, including the development of the voluntary code of practice for online contact lens supply.

Recommendations

2. Council is asked to:
 - 2.1 **consider** and **approve** the revised project scope and timescale, which reflects the need to redefine and rephrase a number of projects as a result of Council's desire to include the Education Strategic Review in the 2016/17 Business Plan;
 - 2.2 **consider** and **approve** our planned approach to raising public awareness of how to buy and wear contact lenses safely; and
 - 2.3 **consider** and **approve** our planned approach to the code of practice and **agree** that given the currently available evidence, it would not be appropriate to include the provisions that would constrain the substitution of contact lenses.

Strategic Objective

3. The specific purpose of the illegal practice strategy project is to protect the public by developing, 'a clear strategy for preventing and addressing illegal practice'.
4. 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.

5. Alistair Bridge, Director of Strategy, is the Project Sponsor for this work. Marie Bunby, Policy Manager, is the Project Manager. Rob Hogan was previously the Council Champion and chair of the stakeholder steering group. Since leaving Council Rob has remained as chair of the steering group in order to provide continuity. Rosie Glazebrook, Council Member, is a member of the stakeholder working group. Richard Edwards is the chair of the stakeholder working group.

Risks

6. The rationale for developing and implementing our illegal practice strategy is to address the risks to the public identified in the research report produced on our behalf by Europe Economics.
7. There is a risk that we are not able to meet stakeholders' 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 illegal practice strategy and spread awareness of the limitations on our ability to take formal enforcement action, particularly when contact lens suppliers are based overseas.
8. If the requirements of a code of practice are too onerous, there will be a risk of only limited support, thus reducing its effectiveness. Conversely, if the requirements are insufficiently demanding, compliance might not be sufficient to improve public protection.
9. There is also a risk of legal challenge from suppliers who feel disadvantaged by a code of practice that goes beyond the requirements of the current legislation and might object to the GOC's role in developing the code. To minimise this risk we have made clear that the rationale for the code is to improve public protection by reducing the risks to the public identified by the Europe Economics research, taking into account the constraints on our ability to take enforcement action against suppliers who are based overseas and therefore do not have to comply with UK law.

Background

10. 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:
 - 10.1 unlawfully conducting sight tests;
 - 10.2 unlawfully supplying spectacles;
 - 10.3 unlawfully fitting contact lenses;
 - 10.4 unlawfully supplying prescription contact lenses;
 - 10.5 unlawfully supplying zero-powered contact lenses; and
 - 10.6 misuse of protected titles.

11. The activities outlined above are only unlawful if they are carried out by individuals or businesses that are bound to comply with UK law.
12. The GOC deals with complaints about illegal practice in line with our prosecution protocol. However, we do not have statutory powers of investigation and enforcement and can take formal enforcement action only by mounting a private prosecution.
13. 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 a report¹ and made recommendations on the areas that carry the greatest risk to public health and safety.
14. We held a consultation on our strategy for tackling illegal practice between March and June 2014. During the consultation we sought views on our proposed approach to addressing the different types of illegal practice. Our preferred option was a proactive, multi-pronged approach to reducing public harm based on the following five areas:
 - 14.1 continuing to handle complaints in line with our prosecution protocol for all types of illegal practice (workstream 1);
 - 14.2 collaboration with other enforcement bodies to address high-risk areas of illegal practice (workstream 2);
 - 14.3 guidance for the public on the safe purchase and use of contact lenses (prescription and cosmetic) (workstream 3);
 - 14.4 development of a voluntary code of practice on the online supply of contact lenses (prescription and cosmetic) that would address the risks to the public identified by the Europe Economics research (workstream 4); and
 - 14.5 further research and intelligence-gathering (workstream 5).
15. In July 2014, following the consultation period and consideration of feedback from our stakeholders, Council approved our proposed strategy.
16. Online supply of contact lenses and contact lens supply where there is a lack of aftercare advice were identified by Europe Economics as two areas that presented some of the highest level of risk in relation to illegal practice. We decided to work in collaboration with stakeholders (through the setting up of two stakeholder groups – a steering group and a working group; membership of these groups was detailed in the consultation document) to minimise the risks to the public. We wanted to make the public more aware of how they can safely

¹ Europe Economics (2013), *Health Risk Assessment of Illegal Optical Practice: Final report for the General Optical Council* [<https://www.optical.org/download.cfm?docid=9AED7945-E047-4C9A-97633BD9052E53D0>]

buy and wear contact lenses and make it easier for them to choose a supplier that follows good practice by developing and promoting a voluntary code of practice for online suppliers. We saw this as a creative solution in the absence of being able to prosecute all suppliers who do not comply with UK legislation, bearing in mind that suppliers based overseas do not have to comply with UK law.

17. Throughout February to July 2015 the stakeholder groups developed a voluntary code of practice for the online supply of contact lenses. The main objective was to improve the practice of online suppliers by providing an incentive for them to provide better information and advice and ensure that, as far as possible, customers are having regular aftercare appointments and eye examinations. In particular, we wanted to develop a code of practice that was consistent with UK law and addressed the risks identified in the Europe Economics (2013) research into illegal practice, including the risks associated with certain kinds of substitution of contact lenses.
18. In July 2015, Council approved the draft code of practice for consultation. The consultation took place between 3 August and 12 October 2015.
19. In September 2015 we commissioned some research to provide us with data to establish a benchmark upon which to evaluate the impact of the code of practice. Focus groups with contact lens wearers took place in September 2015, with an online survey of over 2,000 UK contact lens wearers in October 2015. The research included where and how often members of the public buy their contact lenses, how often they attend eye examinations and contact lens check-ups with an eye care practitioner, and awareness and compliance with contact lens aftercare advice. The research also sought to understand the reasons for buying contact lenses online and what might make those that do not currently buy online interested in doing so. The research also established a profile of contact lens wearers, particularly those that buy online, and will help us to target our consumer information messages using the most appropriate communication methods.
20. We received 74 written responses to the consultation on the code of practice. We presented an analysis of the consultation responses to Council in November 2015. The consultation feedback can be summarised as follows:
 - 20.1 overall, the majority of respondents were supportive of the principle of a code of practice, although many of these doubted the impact that it would have on protection of the public;
 - 20.2 most respondents felt that the code of practice was the right course of action to take in the absence of being able to change the law or apply it in relation to suppliers from other countries, although many were concerned that the code might lead to more patients buying contact lenses online because of the publicity linked to the code;

- 20.3 many respondents were concerned about how we would convince enough suppliers from outside of the UK to sign up to the code;
 - 20.4 some respondents were concerned about how we would publicise the code to ensure that patients were aware of its existence and what to do about patients who were more interested in the price of contact lenses than about safe contact lens wear;
 - 20.5 there was a desire that we should educate patients about how to buy and wear contact lenses safely;
 - 20.6 most respondents were supportive of the approach taken toward zero-powered contact lenses in the code (i.e. that those signing up to the code would not sell these), but some respondents were concerned that this would drive patients who wanted to buy these contact lenses to suppliers who would not provide appropriate advice;
 - 20.7 there was concern that the code might breach competition law if it had a detrimental impact on businesses operating within the law; and
 - 20.8 there was a challenge as to whether there was enough evidence to support the provisions of the code which relate to the substitution of contact lenses.
21. We had originally anticipated that Council would approve a final code of practice at its meeting in November 2015. However, some of the consultation responses raised issues that warranted further consideration and required further discussion with our stakeholder groups. We also needed to consider the findings of our contact lens consumer research.
22. We presented the findings of our research to Council in February 2016 and published the report on our website (https://www.optical.org/en/news_publications/Publications/policy-and-research-papers.cfm). The findings included the following points (in relation to contact lens wearers):
- 22.1 77 per cent primarily purchase contact lenses in-store and 21 per cent primarily purchase contact lenses online;
 - 22.2 those who primarily buy their contact lenses in-store are much more likely to have more frequent contact lens check-ups (79 per cent at least once a year) when compared to those who primarily buy online (60 per cent);
 - 22.3 81 per cent of survey respondents were provided with their spectacles prescription at their most recent eye test, while 11 per cent said that they were not, and 8 per cent said they were not provided with one at their most recent eye test but had a copy from a previous test;
 - 22.4 59 per cent of survey respondents were provided with their contact lens specification at their most recent check-up, 26 per cent said that they were not provided with one and 15 per cent said they were not provided

- with one at their most recent check-up but had a copy from a previous check-up;
- 22.5 48 per cent of respondents said that they were provided with advice on how to wear and look after their lenses (i.e. aftercare advice) at their most recent contact lens check-up; 35 per cent said they were not provided with any advice and 17 per cent said they could not recall whether any advice was given;
- 22.6 there appears to be a relationship between respondents' experience of wearing contact lenses and the likelihood of receiving advice – those who have been wearing contact lenses for more than 20 years are significantly less likely to have been provided with aftercare advice (33 per cent) compared to those who have worn them for five years or less (56 per cent) or six to 20 years (50 per cent); and
- 22.7 there was fairly high awareness of the contact lens aftercare advice 'dos' and 'don'ts', provided by the British Contact Lens Association (BCLA). In terms of compliance with the advice, fewer than one in five contact lens wearers do not follow each of piece of advice despite being aware of it. The advice with the highest level of non-compliance is replacing the lens case at least monthly (21 per cent aware but do not follow), followed by using lenses for swimming, hot tubs or water sports without goggles (17 per cent), not following the advised method of cleaning the lens case (16 per cent), not discarding lenses and solutions that are past their expiry date (16 per cent) and wearing lenses when showering (15 per cent). It is important to note, however, that the advice in relation to replacing and cleaning lens cases, and discarding solutions, is not relevant to contact lens wearers using daily disposable lenses.

Analysis

23. Some of the representations made in relation to the draft code of practice argued that there was not enough evidence to justify the inclusion of the provisions relating to substitution, particularly in the light of the fact that the substitution of contact lenses is not illegal, i.e. a contact lens supplier is not legally required to supply a patient with the lenses prescribed to them by an eye care practitioner and described in the relevant contact lens specification.
24. The provisions in the draft code relating to substitution went beyond the law on the basis of the finding in the Europe Economics report that certain types of substitution create the potential for public harm to occur. Europe Economics discussed different types of substitution and the relevant research literature in paragraphs 3.69 and 3.77 of their report. They concluded by saying at paragraphs 3.76 and 3.77 that:

“3.76 Whilst [the research studies discussed] do not enable us to quantify the risk associated with the use of different lenses, they clearly show that not all lens types are the same (even within the narrower daily disposable lens family), and that there are benefits to patients of wearing the exact lens fitted to them and prescribed by their registered practitioner. Given the variety of differences between lenses and materials, substitution could lead to a poorer fit for the patient and sub-optimal outcomes.

“3.77 Ascertaining the likelihood of the risks of substitution is further complicated by the fact that the consequences are only often identifiable in the long term and are therefore difficult to prove as directly related to substitution itself. More severe problems reported in hospitals may not be properly recorded as being caused by substitution (even if this was demonstrable). Consequently, there is no direct evidence of direct harm caused by substitution.”

25. In the light of the representations made in relation to the draft code, it was necessary for us to consider whether evidence of potential harm was sufficient to justify the way in which the draft code dealt with substitution.
26. We have discussed the responses to the consultation on the draft code of practice with stakeholders. There was substantial concern among members of our stakeholder groups about the practice of substitution and the potential for public harm, but there was recognition that there is no evidence of direct public harm available to draw upon at the present time.
27. Therefore, we recommend to Council that based on the currently available evidence, it would not be appropriate to include in the code of practice the provisions included in the draft code that would prevent the substitution of contact lenses. We would reconsider this position, of course, in the light of any evidence of direct harm that might arise in the future.
28. In parallel with considering the responses to the consultation on the code of practice, we considered our capacity to progress the implementation of the illegal practice strategy given Council’s desire to include the Education Strategic Review in the business plan for 2016/17, which required several projects to be re-defined or postponed.
29. We consider that going forward this project should be redefined and rephased, with activity falling into the following three workstreams:
 - 29.1 guidance for the public on the safe purchase and use of contact lenses (prescription and cosmetic) – we will work with our stakeholders to progress this area during the current financial year and intend to engage

- a public relations (PR) agency to enable us to maximise the impact of this work;
- 29.2 a stakeholder engagement plan to address illegal practice – this will address the full range of illegal practice, not just contact lens supply, with a plan for targeted engagement with a range of stakeholders within and outside of the optical sector; and
- 29.3 development of a voluntary code of practice on the supply of contact lenses (prescription and cosmetic) online – this workstream being postponed until 2017/18.
30. We have therefore removed three workstreams from this project on the following basis:
- 30.1 continuing to handle complaints in line with our prosecution protocol for all types of illegal practice – this work is part of our day to day handling of complaints, following our revision of our prosecution protocol which Council approved in May 2015;
- 30.2 collaboration with other enforcement bodies to address high-risk areas of illegal practice – this area has been progressed over the last year, with links with Trading Standards and the General Pharmaceutical Council being strengthened, and will be picked up as part of the revised stakeholder engagement workstream; and
- 30.3 further research and intelligence-gathering – this workstream was progressed through our research with contact lens wearers. Further research to, for example, assess the impact of our work to raise public awareness of how to buy and wear contact lenses safely, will form part of our organisational research programme.

Impacts

31. Likely impact of the proposed illegal practice strategy:
- 31.1 Reserves – there would be costs involved in implementing the strategy through, for example, implementing the code of practice and raising public awareness. We intend to minimise the costs to the GOC through collaboration with stakeholders, but would need to quantify the costs more precisely following the consultation and discussions with stakeholders about how the code would be administered;
- 31.2 Budget – we have funds for research and consultancy, and have factored into the draft budget for 2016/17 the work we will need to do in relation to raising consumer awareness;
- 31.3 Legislation – the project may identify areas where our stakeholders consider that a change in legislation would be required;
- 31.4 Resources – none;
- 31.5 Equality, diversity and inclusion (EDI) – none;
- 31.6 Human Rights Act – none; and

31.7 Sustainability - none.

Devolved nations

32. 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

33. 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. To this end, we have ensured that our key stakeholders are represented on our stakeholder steering and working groups.

34. The optical 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.

35. We note the concerns of individual registrants in respect of illegal practice and online contact lens supply and will communicate with them directly e.g. through our regular bulletin.

Timeline for future work

36. The currently envisaged timeline for the project is as follows:

Action	Date
Work with stakeholder groups to produce guidance for the public on the safe purchase and use of contact lenses	May – July 2016
Appoint agency to advise on raising awareness about our guidance to the public and key information messages	May 2016
Work with agency and stakeholders to further develop our guidance to the public and key information messages	May – July 2016
Publish guidance and key information messages	August – October 2016
Reinforce key information messages	TBC

Attachments

Annex 1 – Draft code of practice

Code of practice for the online supply of contact lenses

Purpose

Contact lenses can positively change the lives of millions of wearers as a safe and effective way to correct eyesight. Developments in contact lens materials and design continue to bring ever-advancing benefits to wearers.

The purpose of this code of practice is to protect the eye health of those members of the public who purchase their contact lenses online and to promote safe contact lens wear, by improving advice and information provided to the customer and encouraging regular visits to an eye care practitioner.

Signatories to this code of practice commit to promote the safe and effective online provision of contact lenses.

The code reflects the views of a range of experts from across the optical sector and consumer representatives on what constitutes current good practice in the supply of contact lenses online. It also takes account of the risks associated with contact lens supply identified in research undertaken by Europe Economics (2013)².

Code of practice

All suppliers signing up to the code of practice will commit to the following:

- 1) We will provide advice and information to our customers about safe and effective use of contact lenses (in line with agreed guidance³ published on the website of the code of practice sponsor) including advising the customer to follow the advice of their eye care practitioner, with particular reference to advice on emergency situations and a reminder of the importance of aftercare and eye examination appointments.
- 2) We will comply with this code of practice as well as all domestic and international legislation that applies to the country where we are based, including consumer protection legislation. In particular, we will ensure that all lenses supplied are genuine and not counterfeit.

² Europe Economics (2013), *Health Risk Assessment of Illegal Optical Practice: Final report for the General Optical Council*

³ This guidance will be developed by the stakeholder working group and approved by the stakeholder steering group. It will draw on existing guidance produced by the British Contact Lens Association and other professional bodies such as the College of Optometrists and the Association of British Dispensing Opticians.

- 3) We will provide customers with advice about how to complain to us about a service or product and what they can do if they are not satisfied with the outcome of the complaint.
- 4) We will only sell contact lenses online or over the telephone to a customer who has provided assurance that he/she:
 - a. is 16 years of age or over;
 - b. is not registered sight impaired⁴;
 - c. is ordering contact lenses for themselves or, if ordering contact lenses on behalf of someone else (e.g. someone who is not able to use a computer or someone who does not have a debit/credit card), is assured that that person has been fitted with the contact lenses being requested by an eye care practitioner;
 - d. attends aftercare appointments on a regular basis as directed by their eye care practitioner;
 - e. will follow the contact lens advice given by their eye care practitioner, the manufacturer of the contact lenses and the online supplier of the contact lenses, for example, advice on emergency situations;
 - f. is ordering contact lenses prescribed by an eye care practitioner within the last two years;
 - g. has accurately submitted the contact lens details as prescribed by their eye care practitioner; and
 - h. is ordering a quantity of contact lenses that does not amount to more than two years' supply.
- 5) We will supply only the exact contact lenses that have been requested by the customer (provided that they have given the assurances in point 4 above). In the event that the requested contact lens is not available, we will direct the customer back to their eye care practitioner for further advice unless one of the following circumstances applies:
 - a. the original manufacturer of the prescribed contact lens has endorsed an alternative without the need for a further fitting;
 - b. where an own-label contact lens has been prescribed and the supplier is able to supply the manufacturer-branded contact lens that is the same as the own-label contact lens;
 - c. where a manufacturer-branded contact lens has been prescribed and the supplier is able to supply the own-label contact lens that is the same as the manufacturer-branded contact lens; or
 - d. where a request is made for a tinted version of the same contact lens that has been prescribed (provided that the tint has been added by the same

⁴ 'Registered sight impaired' means a person who has registered with their local social service's register. Registration is voluntary and requires the person to have been certified by an ophthalmologist (known as a Certificate of Vision Impairment (CVI) in England and Wales, an A655 in Northern Ireland and a BP1 in Scotland).

manufacturer) (or an alternative contact lens that it is permissible to supply in accordance with 5a, b or c above).

- 6) When informing customers about a new or alternative range of contact lenses, we will advise them to consult an eye care practitioner to be fitted for the new contact lenses before placing an order (unless point 5 of the code of practice applies).
- 7) We will not sell zero-powered contact lenses (the rationale for this being that the Opticians Act 1989 provides that zero-powered contact lenses may only be sold by or under the supervision⁵ of a registered medical practitioner, a registered optometrist or a registered dispensing optician).

Explanatory notes

The code takes into account the legislative framework governing the supply of contact lenses, but also reflects the fact that good practice should evolve in line with technological advances, changes in consumer behaviour and the development of new delivery channels, notably online supply.

The logo for the *Code of practice for the online supply of contact lenses* will be used to assure customers that contact lenses will be supplied in accordance with the above best practice and may be withdrawn if any material breach of this code is proven. Online suppliers signing up to the code will be given permission to use a logo on their website to promote their business to customers. Mystery shopping will be carried out on a regular basis to ensure that the online supplier is complying with the points and explanatory notes specified in this code. If any evidence is found to suggest that there has been a material breach of the code, the use of the logo will be suspended pending investigation. If the breach is proven, use of the logo will be withdrawn until the breach can be rectified or on a permanent basis should the breach be considered to be serious.

The code reflects the following principles:

- All contact lens wearers should have aftercare appointments at appropriate intervals in line with the recommendation of the eye care practitioner who fitted their contact lenses.
- Aftercare appointments enable eye care practitioners to:
 - remind and advise contact lens wearers how to use their contact lenses safely;
 - check the health of the eye and ensure that the contact lenses remain suitable to wear; and

⁵ The GOC's standards of practice defines supervision as being on the premises and in a position to intervene.

- advise contact lens wearers about product developments from which they may benefit.

Guidance for the numbered points in the code of practice is provided below.

- 1) *We will provide advice and information to our customers about safe and effective use of contact lenses (in line with agreed guidance⁶ published on the website of the code of practice sponsor) including advising the customer to follow the advice of their eye care practitioner, with particular reference to advice on emergency situations and a reminder of the importance of aftercare and eye examination appointments.*

Online suppliers should ensure that they provide advice and information to their customers about safe and effective use of contact lenses, including advising the customer to follow the advice of their eye care practitioner, with particular reference to emergency advice and reminders about the importance of aftercare and eye examination appointments. We would suggest referring the customer to guidance provided on the code of practice sponsor's website in this regard.

- 2) *We will comply with this code of practice as well as all domestic and international legislation that applies to the country where we are based, including consumer protection legislation. In particular, we will ensure that all lenses supplied are genuine and not counterfeit.*

Online suppliers should ensure that they are aware of all relevant legal obligations when selling to their customers, regardless of the legal jurisdiction applicable to their operations. In the UK the following consumer protection legislation applies: the Consumer Protection from Unfair Trading Regulations 2008, Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013, Unfair Terms in Consumer Contracts Regulations 1999, Sale of Goods Act 1979 and Supply of Goods and Services Act 1982 and the Data Protection Act 1998. The Unfair Terms in Consumer Contracts Regulations 1999, Sale of Goods Act 1979 and Supply of Goods and Services Act 1982 will be replaced by the Consumer Rights Act 2015 in October 2015.

- 3) *We will provide customers with advice about how to complain to us about a service or product and what they can do if they are not satisfied with the outcome of the complaint.*

⁶ This guidance will be developed by the stakeholder working group and approved by the stakeholder steering group. It will draw on existing guidance produced by the British Contact Lens Association and other professional bodies such as the College of Optometrists and the Association of British Dispensing Opticians.

Online suppliers should make information about their complaints process available to customers, including what a customer can do if they are not satisfied.

- 4) *We will only sell contact lenses to a customer who has provided assurance that he/she:*
- a. *is 16 years of age or over;*
 - b. *is not registered visually impaired;*
 - c. *is ordering contact lenses for themselves or, if ordering contact lenses on behalf of someone else (e.g. someone who is not able to use a computer or someone who does not have a debit/credit card), is assured that that person has been fitted for the contact lenses being requested by an eye care practitioner;*
 - d. *attends aftercare appointments on a regular basis as directed by their eye care practitioner;*
 - e. *will follow the contact lens advice given by their eye care practitioner, the manufacturer of the contact lenses and the online supplier of the contact lenses, for example, advice on emergency situations;*
 - f. *is ordering contact lenses prescribed by an eye care practitioner within the last two years;*
 - g. *has accurately submitted the contact lens details as prescribed by their eye care practitioner; and*
 - h. *is ordering a quantity of contact lenses that does not amount to more than two years' supply.*

Contact lenses should not be provided to the under 16s or visually impaired and therefore we require online suppliers to seek this assurance from the customer. We also require them to seek assurance (via a tick-box approach) that the customer is ordering contact lenses for themselves, or if on behalf of someone else that person has been fitted for the contact lenses being requested, attends regular appointments with an eye care practitioner, will follow contact lens advice given by their prescribing eye care practitioner and the online supplier (particularly in emergencies), that they are only requesting contact lenses prescribed by an eye care practitioner and have accurately submitted those details. Customers are also required to provide confirmation that they are not ordering a quantity of contact lenses that will exceed the expiry date in their contact lens specification (if available).

- 5) *We will supply only the exact contact lenses that have been requested by the customer (provided that they have given the assurances in point 4 above). In the event that the requested contact lens is not available, we will direct the customer back to their eye care practitioner for further advice unless one of the following circumstances applies:*
- a. *the original manufacturer of the prescribed contact lens has endorsed an alternative (via a fit-match study) without the need for a further fitting;*

- b. where an own-label contact lens has been prescribed and the supplier is able to supply the manufacturer-branded contact lens that is the same as the own-label contact lens;*
- c. where a manufacturer-branded contact lens has been prescribed and the supplier is able to supply the own-label contact lens that is the same as manufacturer-branded contact lens; or*
- d. where a request is made for a tinted version of the same contact lens that has been prescribed (or an alternative contact lens that it is permissible to supply in accordance with 5a, b or c above).*

Contact lenses should only be substituted in accordance with the guidance provided above. A research report by Europe Economics (2013)⁷ identified substitution as an area of concern in relation to those who buy online, particularly in relation to substitution carried out by a non-eye care professional who is not under the supervision or general direction of an appropriately qualified General Optical Council registrant or registered medical practitioner. The guidance above addresses the risks to consumers in this regard.

Points 5b and 5c of the code relate to situations where a contact lens is exactly the same product (that is, exactly the same material) but has been branded by both the manufacturer and supplier, meaning that the product has two different names.

- 6) When informing customers about a new or alternative range of contact lenses, we will advise them to consult an eye care practitioner to be fitted for the new contact lenses before placing an order (unless point 5 of the code of practice applies).*

We recognise that suppliers will wish to inform their customers about product developments. However, we expect suppliers to advise customers to ensure that they see an eye care practitioner for a contact lens fitting before placing an order.

- 7) We will not sell zero-powered contact lenses (the rationale for this being that the Opticians Act 1989 provides that zero-powered contact lenses may only be sold by or under the supervision⁸ of a registered medical practitioner, a registered optometrist or a registered dispensing optician).*

The Opticians Act 1989 provides that zero-powered contact lenses may only be sold by or under the supervision of a registered medical practitioner, a registered optometrist or a registered dispensing optician. Supervision has been interpreted to mean on the premises and in a position to intervene. It would therefore not be

⁷ Europe Economics (2013), *Health Risk Assessment of Illegal Optical Practice: Final report for the General Optical Council*, pp21-23

⁸ The GOC's standards of practice defines supervision as being on the premises and in a position to intervene.

appropriate for online suppliers to sell zero-powered contact lenses online or over the telephone. A research report by Europe Economics (2013)⁹ found that wearers of zero-powered contact lenses are less likely to comply with good contact lens hygiene practices and less likely to have a proper fitting and/or follow aftercare advice.

⁹ Europe Economics (2013), *Health Risk Assessment of Illegal Optical Practice: Final report for the General Optical Council*, p19