

Monitor: Draft Enforcement Guidance: Consultation Document: Optical Confederation Response

1. Thank you for consulting the Optical Confederation on the draft enforcement guidance.
2. The Optical Confederation represents the 12,000 optometrists, the 6,000 dispensing opticians and 7,000 optical businesses in the UK who provide high quality and accessible eye care services to the whole population. The Confederation is a coalition of the five optical representative bodies: the Association of British Dispensing Opticians (ABDO); the Association of Contact Lens Manufacturers (ACLM); the Association of Optometrists (AOP); the Federation of Manufacturing Opticians (FMO) and the Federation of Opticians (FODO). As a Confederation, we work with others to improve eye health for the public good.

Summary

3. We have welcomed the Government's proposal that the community optical sector will be exempt from the Monitor regime. This is a sensible and proportionate response in that the community optical sector
 - already operates in a highly competitive, retail and commercial market which works to the benefit of patients and the NHS
 - the sector is additionally regulated by a sector-specific regulator the General Optical Council and, in the case of NHS services, through the NHS contract compliance framework.
4. As a sector we therefore have only a tangential but nevertheless important interest in the proposed enforcement guidance which, from our perspective, looks sensible, proportionate and pragmatic building in as much flexibility as possible for Monitor and providers to manage regulatory obligations in a mature but firm way.
5. Our interest centres on the requirement on non-licensed providers to provide Monitor with information.
6. From our perspective we believe this would only apply to community optical care in extremely rare circumstances where, for some reason or another, Monitor wished to collect information about the operation of the market for enhanced services

commissioned from community optical practices by Clinical Commissioning Groups. (CCGs)

7. In such circumstances, we would expect that all relevant information would be available from CCGs rather than community optical providers and that this should be the route for any required information collection rather than imposing an administrative burden to the optical front-line. It would be helpful to have reassurance on this point.

Reasonableness

8. An issue that might be relevant to the wider consultation is the absence in the document of any mention of a requirement on Monitor (as opposed to the intention by Monitor) to act reasonably in discharging its functions. We are pretty certain that this must have been in the Act and feel that referring to this in the guidance this would give additional reassurance to providers.
9. It is in that context that we very much welcome the statement that “Monitor will ensure that action we take is proportionate and reasonable in the circumstances at hand, and that we balance the need to deter harmful contact with the need to ensure the continued provision of Health Care Services to Health Care Service users.” (Page 21).

Office of Fair Trading

10. Section 4.5 (Page 40) states that: “Monitor and the OFT will decide which organisation is best placed to investigate an issue on a case-by-case basis.”
11. As the community optical sector is already regulated by the OFT, we would expect any regulatory action to be taken via that route to avoid confusion.

Informal Action

12. The Optical Confederation takes regulation of the optical sector, competition and patient benefit extremely seriously. If Monitor has concerns that an Optical Confederation member may be breaching guidelines or acting inappropriately, outside of Monitor’s jurisdiction or where Monitor does not have sufficient evidence to proceed, we would be very happy to intercede with any community optical practice, Local Optical Committee (LOC) company or other community-based provider seek to resolve the issue for the benefit of all parties.
13. We would always rather work with Monitor and all regulatory authorities to resolve a problem for the benefit of patients, the public and the wider sector rather than delaying action and potentially allowing a problem to become worse.

Rights of Appeal (Section 6)

14. As a general principle, we welcome the right of a provider to appeal to the First-Tier Tribunal on the grounds that “the nature of the compliance requirement ... is unreasonable” or “that the decision was unreasonable for any other reason”. (Page 44)

Consultation Questions

15. It is against this background that we provide more detailed responses below to the consultation questions which we believe are relevant to us.
16. We are very happy for this response to be made public.

Chapter 2 Q3: Do you have suggestions for other types of informal action we could take?

Chapter 2 A3: Yes. If Monitor raises the matter informally (even where there is only a suspicion of breach and no evidence) with the Optical Confederation, we will readily intercede with a community optical practice, Local Optical Committee (LOC), LOC company or other provider to seek to resolve any problem to the satisfaction of all parties.

Chapter 3 Q4: Do you support Monitor’s proposal, that where appropriate, we will accept commitments in enforcement undertakings rather than pursuing more burdens of investigations and discretionary requirements? Are there other factors we could take into account in assessing what commitments to accept in an enforcement undertaking?

Chapter 3 A4: Yes, however if the issue is about information provision, Monitor should also consider whether seeking information direct from the provider (and adding a burden on provision) is in fact the best or only means of obtaining that information. As noted above, in the case of enhanced optical services commissioned in the community by Clinical Commissioning Groups (CCGs), the CCGs would normally be the best source of any information Monitor might require.

Chapter 4 Q3: Although not required to do so by Schedule 11 of the Act, Monitor proposes to publish notices of Intent, final notices and non-compliance notices to discretionary requirements. Do you support this proposal? In what circumstances do you consider it may be inappropriate to publish these notices?

Chapter 4 A3: Yes, however as noted above, we hope that a requirement of reasonableness will apply to Monitor in these circumstances and that Monitor will not publish these notices where

- it would be unreasonable as well as “inappropriate” to publish them
- a provider has lodged an appeal against publication and this has not yet been heard
- a provider has notified Monitor that he/she plans to lodge such an appeal.

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