

## **Enhancing consumer confidence by clarifying consumer law: Consultation on the supply of goods, services and digital content**

We welcome the opportunity to comment on this consultation. 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.

### **Introduction**

As a Confederation, we support the chief aims of this review: to simplify and streamline consumer protections, remove inconsistencies, create a level playing field for businesses while introducing clearer statutory consumer rights and remedies for goods and services. This should deliver welcome clarification for the majority of UK consumers and businesses. Moreover, we fully agree that consumers exercising choice can spur innovation and greater efficiencies in business.

As a sector, we have for many years operated in an open market with freedom of entry and exit, through which our patients as consumers exercise choice and eye care providers compete for each and every patient on grounds of quality, outcomes, accessibility and cost. This has delivered a range of business models which serve our patients well.

### **Mixed NHS and Private Provision**

As BIS has recognised, our patients as consumers have come from two distinct groups: NHS and private. These patients receive optical services which should be exempt because they are therapeutic and specifically regulated by the General Optical Council (GOC) in this regard.

Furthermore, when providing optical care to patients, we operate within and abide by a range of quality standards and regulations to safeguard patients' welfare and ensure quality service provision, including

- Opticians Act
- College of Optometrists 'Code of Conduct and Guidelines'
- ABDO 'Advice and Guidelines'.

In addition, as providers to the NHS we also operate under the provision of the

- General Ophthalmic Services Regulations and Contract (for NHS patients)
- NHS complaints regulations
- and from next year, Single Operating Model for NHS contract compliance.

About two thirds of sight tests in the UK are carried out under the NHS. A list of those patients entitled to an NHS sight test is available on NHS Choices.<sup>1</sup> While the remainder pays privately for their eye care services, such patients still benefit from compliance with the above regimes, given that almost every optical practice provides care to both NHS and private patients.

### **Single Portal to Resolve Complaints**

As a sector we therefore already face an overlap of NHS requirements, private standards for professional conduct and general business regulations, and would plea for joined up policies across Government Departments to deliver a single portal for optical patients that wish to raise a complaint about goods and services while implementing these changes. We feel this is vital to avoid confusion for our patients and a compliance nightmare for optical providers (when implementing the proposed modernised consumer law on the sale of goods and services).

### **Optical Complaints - Services**

Optical services such as a sight test or contact lens assessment are regulated functions and provided by optical professionals registered with the General Optical Council (GOC). As such, any patient who is unhappy with the quality of service that they receive can complain to the GOC which is then duty bound to investigate the matter. NHS patients can also complain to their local NHS body or authority (currently PCTs) if they are dissatisfied with their NHS care. In addition, non-clinical services are resolved by the Optical Consumer Complaints Service, an independent body to mediate and facilitate a mutually satisfactory outcome.<sup>2</sup>

### **Optical Complaints - Products**

The purchase of spectacles or contact lenses is a private transaction, governed by the laws on the sale and supply of goods. Moreover, optical products are medical devices which undergo a series of quality checks before being placed on the market and dispensed to patients.

Under the current system, product complaints from optical patients are dealt with effectively and efficiently by the Optical Consumer Complaints Service (OCCS), an independent regulator experienced in ophthalmic matters working in partnership with the

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<sup>1</sup> NHS Choices (2012) <http://www.nhs.uk/chq/Pages/895.aspx?CategoryID=68&SubCategoryID=157>

<sup>2</sup> For further information please visit the OCCS website at <http://www.opticalcomplaints.co.uk/index.html>

GOC. OCCS allows patients to pursue redress should they be dissatisfied with the quality of the optical appliance they purchase.

The level of complaints to the GOC and OCCS has remained very low in relation to over 20 million sight tests being performed annually, totalling 148 in 2011. We are therefore confident that optical providers are already dealing satisfactorily with optical complaints in the first instance, and where they do not, OCCS acts as an effective fallback. Given the unique characteristics of the optical market, the complexity in resolution (the problem may also relate to a clinical or ophthalmic condition), and the low level of complaints to our independent regulator, we would wish for this model to continue to operate.

While we agree that for most retail or business sectors a single overarching framework would assist to simplify the process and reduce the burden of compliance, we are wary about duplication and confusion for our patients if the private components of the optical market were included. Ideally we would wish to maintain, and where necessary revise, the current system of clear and parallel frameworks for complaints about goods (OCCS) and services (GOC and/or NHS or OCCS). In particular, when dealing with complaints about optical products, the recipient authority needs to understand the interplay between clinical decisions and the optical appliance dispensed to patients.

Our position is in line with the recent recommendation from the OFT for the dental market, which noted concern about the existence of multiple avenues for redress (differing for private and NHS treatments), and in certain cases where the treatment is mixed, the complaint must split into separate aspects covering separate routes. We would wish to avoid a maze of complexity and overlapping complaints systems for our patients and members. We agree in principle with the OFT recommendation for dentistry that to avoid confusion for patients, a single body or patient-facing portal should deal with those complaints which are not satisfactorily addressed by the practitioner and practice. The OFT felt that this would go a long way to delivering a more effective, efficient and consistent complaints system, and we agree that this would in principle also apply to optics.<sup>3</sup>

The Optical Confederation would be pleased to work with the Department of Health, GOC, OCCS and where necessary BIS, to build on the effective system that is already in place and to ensure that the regime operating for our patients is sufficiently robust and avoid duplication and confusion for patients and providers. We would also be pleased to assist with the drafting of the legislation to get this right.

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<sup>3</sup> OFT (2012) Dentistry – An OFT market study

We have limited our responses below to the key questions relating to our patients and the optical market.

**Question 1:**

As outlined above, we strongly believe that complaints in the optical sector should continue to be governed by the GOC, NHS bodies and OCCS (for services) and OCCS (for products), which already provides effective redress for our patients as consumers.

To avoid duplication and overlap, we strongly believe that for the reasons outlined above, services and products provided by the optical sector should not fall under the proposed single framework of consumer protection for the sale and supply of goods (as outlined by BIS). We are prepared to work with BIS and all interested parties to ensure that our patients as consumers are adequately protected, and where appropriate, understand the avenues for redress.

Given that optical micro and small businesses are already overseen by the GOC, NHS and OCCS systems, this would have the added advantage of avoiding duplication and cost for them.

**Question 2:**

We agree that it would help to have a single and consistent definition of ‘consumer’ and ‘trader’ in most areas of business, however as stated above we would wish for complaints by the optical sector’s (patients as) consumers to continue to be dealt with by the GOC, NHS and OCCS, as appropriate.

**Supply of Products**

**Question 3:**

We agree that there should be a single definition of goods used by most areas of business, and feel that the EU definition proposed seems sensible.

Should we not be exempted, we would have major concerns that terms such as ‘sub-standard’ would not easily apply to our sector. For example and to underline our case for exemption from the general BIS regime, the reason for non-compliance with a pair of spectacles might relate to a clinical matter or may indicate previously undetected pathology. Our patients as consumers should therefore be directed back to the prescribing practitioners and/or supplier to ensure that there is no underlying eye health problem or issue with the prescription found when the patient presented. Simply directing unsatisfied optical patients into the remedies designed for general supply of goods and services could and we predict would cause patients to suffer from undetected eye health problems.

**Question 6-11:**

As a core principle in any framework, we would wish to see our patients as consumers encouraged to return to the supplier and/or prescribing practitioner in the first instance to put things right, which ensures that clinical matters can be separated from problems with product. This system has worked well for the optical sector over many years, which is illustrated by the very low number of GOC and OCCS complaints relative to over 20 million sight tests performed annually.

We would be happy to work with OCCS to ensure that optical products and repairs are sufficiently guaranteed, with redress for patients through OCCS.

**Question 12:**

We agree that it a single framework for repairs or replacement would benefit both patients and optical businesses. We would wish to work with the GOC and OCCS to determine a fair and simple model for our patients to understand and benefit from.

**Questions 17-20:**

We agree that where patients are not satisfied and the supplier has had the opportunity to put things right but cannot, in some instances, a refund is the best method of redress.

As above we would wish to work with the GOC and OCCS to determine how this might work for patients purchasing optical appliances.

**Supply of Services**

We would like to make some additional final comments relating to Sections 6.1-6.10 of this consultation (pages 83-85). The optical sector is already highly regulated which ensures that services supplied by optical practitioners are of sufficient quality, overseen by the GOC or NHS bodies as appropriate. Optical practitioners must be sufficiently trained and demonstrate their competence before registration with the GOC. Once they have registered, optical practitioners are required to maintain their skills and competences. We are pleased to note that this consultation is only concerned with 'horizontal law', i.e. those that are not publicly funded or covered by sector regulators such as the GOC. We would also like to add for clarity that domiciliary eye care services should also not be covered by the 'horizontal law' framework.

As stated in the introduction, (as providers of healthcare services) we would strongly recommend that our patients have an efficient and effective means of redress through our sector's regulator, the GOC. We are pleased to note that BIS shares this view and also makes reference to our duties under the law of negligence. As noted by the OFT for dentistry, multiple and overlapping routes for resolution of (patient as) consumer complaints is sub-optimal and a recipe for confusion. The vast majority of optical practices

offer both NHS and private ophthalmic services in the same location with the same practitioners, therefore the high regulatory standards for NHS patients (for example relating to professional standards, premises, equipment, patient records, etc) overspill into private provision and both patient groups receive a similarly high level of protection for private patients. Moreover, whether providing NHS or private care, optical professionals and practices are bound by the same 'Codes of Conduct and Guidelines' from the College of Optometrists and the 'Ethics and Guidelines' from the Association of British Dispensing Opticians, and overseen by the GOC as regulator.

For these reasons, we would argue strongly that ophthalmic services (provided by our members) and products be exempted from the horizontal law definition across the four UK nations (as BIS has already granted for our NHS care<sup>4</sup>) to ensure consistency in application and avoid overlapping and replicating requirements for our members, which would be contrary to BIS' stated aim to avoid this.

We would be willing to meet with BIS and the Department for Health to provide further evidence that it is unnecessary to include the private services we provide within the 'horizontal law' framework.

**Response submitted by Mark Nevin on behalf of the Optical Confederation**

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<sup>4</sup> BIS Consultation Document: The Supply of Services 6.1-6.5, p.83