

## **Response to Consultation in respect of amendments to Rule 15 of the GOC Fitness to its late Practice Rules**

The Optical Confederation represents the 12,000 optometrists, 6,000 dispensing opticians, 7,000 optical businesses and 45,000 ancillary staff in the UK, who provide high quality and accessible eye care services to the whole population. The Confederation is a coalition of 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 (Ophthalmic and Dispensing) Opticians (FODO). As a Confederation we work with others to improve eye health for the public good.

*Question: Do you agree with the provision for the case examiners, rather than the Investigation Committee, to be able to review a decision not to refer?*

### **Previous position:**

In our response to the previous consultation on the new GOC Fitness to Practice Rules, we indicated that the decision not to refer should not be undertaken by an individual, but instead this should remain the preserve of the Investigation Committee (IC).

### **New Consultation on Rule 15:**

As stated in the Consultation on Rule 15 document, the amendment now being proposed by the GOC to Rule 15 is to remove the power from the GOC registrar to review a decision previously not referred to the Fitness to Practice Panel. The new proposal is that a decision not to refer a matter may be reviewed by the case examiners. The case examiners reviewing any such decision would consist of one lay individual and a registrant either an optometrist or a dispensing optician. The time period for review would be limited in principle to five years or a longer period if the case examiners considered the matter to be exceptional.

A review of any decision would be only undertaken if it were a matter of public protection or registrant interest otherwise in the public interest or if the GOC had erred in the handling of the matter.

### **Our Response to New Proposals:**

Any review of a case after a decision has already been made to close the matter is a significant step and the impact on any registrant should not be underestimated. The registrant at the time of the original investigation will have had to contend with a significant amount of stress, only to find that up to five years later (or potentially more) the matter has been revived. Whilst we broadly support the power to enable the GOC to review such decisions we would strongly recommend this power should be used extremely cautiously. We welcome the proposed change in the Rules providing for another body other than the registrar to review decisions but we remain concerned this power is being passed to case examiners. We consider that a review of a decision under Rule 15 should be considered by a fully quorate body of the IC.

There are two particular concerns we have in respect of a decision being reviewed by case examiners. Firstly, the Rules do not provide that any decision made by the case examiners had to be unanimous. This has the potential, particularly where matters may related to a clinical issue, as decision is to fall on one case examiner alone. We consider this is neither reasonable, nor fair, on the case examiner and means that a registrant is subject to the views of one individual. We consider that this significantly undermines the rules of natural justice and could be challenged. Secondly, there is no provision in the Rules to prevent the original case examiners of being in a position of reviewing their original decision; this cannot be right. As a minimum, we would expect the Rules to provide that any case examiner who has considered a matter previously cannot subsequently review that decision.

As set out above, we are of the view that a decision to re-open a case should be made by the IC as it is such a significant step.

### **Secondary Position:**

If it is decided at the conclusion of the consultation that the IC will not be involved in the review of a decision, provision should be made within the Rules for the registrant to have a right of appeal to the IC of any decision made by the case examiners to review a matter.

We would also recommend that:

- guidance should be given to the case examiners setting out their roles, remit and the tests they should apply, with appropriate training on these issues;
- clinical complaints continue to be considered by a case examiner with the same title as that of a registrant (e.g. a dispensing optician should consider a complaint against a dispensing optician);
- the word ‘unanimously’ be inserted after the word ‘may’ in Rule 15(4)’
- a rule is included that prevents the original case examiners reviewing their original decision.

In the event that a decision cannot be made unanimously, we would recommend that the matter be referred back to the IC for consideration.

Nevertheless, our primary position remains that the review of decisions not to refer an allegation to the Fitness to Practice Committee should remain the preserve of the IC for the abovementioned reasons.

**Optical Confederation  
April 2012**