

How can professional regulation encourage healthcare professionals and social workers to be more candid when care goes wrong?

A response to a call for information from the Professional Standards Authority

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.

It should be noted from the outset that optometry and optics are low risk professions and patients already receive excellent standards of care. To give an example, optometrists have a duty to test sight and identify any signs or symptoms indicating abnormality and disease. They use non-invasive procedures to do this and, if appropriate, will refer the patient onwards to the hospital for further investigation. It is highly unlikely that the direct actions of an optometrist or dispensing optician would cause death or serious injury to a patient. Naturally there are some life threatening conditions which are capable of early detection through a sight test, i.e. ocular and brain tumours, but their incident rate is extremely low. The Optical Confederation feels it is important, therefore, to draw a distinction between the practice of optometry by our members, and the associated low risk of harm to patients, and the unfortunate events at Mid Staffordshire, and elsewhere, brought about by the actions of the NHS Trusts, NHS Managers, Doctors and Nurses involved.

In short, the Optical Confederation recognises the need for candour in a healthcare setting; however, it considers the introduction of a statutory duty in the context of optometry to be a disproportionate response to the recommendations made by Robert Francis QC. We support the comments in the recent Berwick review into patient safety (p.34 published on 6 August 2013), as follows:

“we do not subscribe to an automatic ‘duty of candour’ where patients are told about every error or near miss, as this will lead to defensive documentation and large bureaucratic overhead that distracts from

patient care. However, patients should be given all the information they ask for”.¹

We have set out below some of the ways in which our members are already being encouraged to be candid when things go wrong, and some areas of possible improvement.

1. In your view, are all the regulators listed effective at encouraging the professionals they regulate to be candid when something goes wrong?

The GOC already has published codes of conduct setting out the personal and ethical standards expected of its registrants. There are separate codes for individuals and business registrants. If a registrant is shown not to have adhered to this, then the code is clear that they are putting their registration at risk.

The following standards taken from the code are particularly relevant to the issues being discussed here:

- Make the care of the patient your first and continuing concern;
- Treat every patient politely and considerately;
- Listen to patients and respect their views;
- Give patients information in a way they can understand and make them aware of the options available;
- Respect the rights of patients to be fully involved in decisions about their care;
- Be honest and trustworthy;
- Act quickly to protect patients from risk when there is a good reason to believe you, or a colleague, may not be fit to practise.

These standards, when read together, will ensure that registrants understand they must be candid with patients at all times, particularly when things go wrong.

We would like to add that we agree with comments in the Berwick report (p.34) which states:

“we do not support the creation of a statutory duty for healthcare workers to report beliefs or suspicions about serious incidents to their employer, as this duty is adequately addressed in relevant professional codes of conduct and guidance”.

In our experience, Optical Confederation members are aware of the GOC’s Code of Conduct and recognise the need for candour, openness and transparency. They also understand that if at any time they are found to have acted without integrity, genuineness and honesty they face the real threat of disciplinary proceedings.

¹https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/226703/Berwick_Report.pdf

The principles of the code are also echoed in the Professional Guidelines and Ethics for the profession, produced by the College of Optometrists². The GOC also have a whistle-blowing policy.

2. What could the regulators do differently to encourage professionals they regulate to be more candid/open/honest about treatment or care that has gone wrong or incidents that have caused harm or nearly caused harm? For example are there any improvements you think should be made to:

a. Their codes of practice and how they support professionals to be open

We believe the GOC's current code of conduct is worded in such a way that registrants are capable of fully understanding what is required of them.

We understand that GOC policies are regularly reviewed by the GOC to make sure they are fair, effective and proportionate.

b. Their fitness to practise/disciplinary investigation and adjudication processes

The GOC's Investigation Committee has a statutory right to obtain *all* relevant documents from a registrant or business registrant under investigation, and not simply the optometric (medical) records. This is a very wide power which the FTP investigation team utilise regularly to ensure they have full disclosure from registrants under investigation, making it extremely difficult for those under investigation to keep back relevant information.

During the investigatory process, a registrant is given the opportunity to submit detailed representations explaining their actions, first in writing and then in oral evidence under oath if the matter proceeds to a substantive hearing. Any attempt to withhold information or any inconsistency between an earlier or later explanation is easily identified within the current process.

The Optical Confederation is not certain whether a complete set of patient records is always disclosed to the patient making the complaint. If registrants were aware this would happen as part of the investigatory process this may be an additional way of ensuring a fully candid response to complaints at the outset, as the majority of complaints are usually dealt with at a practice level first. It may also reduce the number of matters coming before the GOC. However, it should be noted that as part of the current investigatory process the response of registrants together with enclosures is always sent to the complainant and they are invited to provide further comments if they disagree with the representations from the registrant, and therefore the process is already very transparent.

Whilst the robust processes of the GOC do not apply when a complaint is dealt with at a local/practice level, the duties of an individual registrant apply

² http://www.college-optometrists.org/en/professional-standards/Ethics_Guidance/index.cfm

at all times and individuals are aware that a complaint can be escalated to the GOC and therefore it is advisable to provide a full and candid response from the outset.

If a registrant is found to have deliberately withheld information and/or been dishonest then, as well as the original charge relating to their clinical conduct in respect of a patient, they could also face misconduct charges, which if proven could lead to harsher sanctions being imposed. Furthermore, if the registrant continues to exhibit a lack of insight into their failings and/or provide evidence of any, or any sufficient, remedial action, then the sanction is often increased to reflect this. In these circumstances there is a real risk to their livelihood and, therefore, the incentive for registrants to be honest and reflective from the outset already exists in the GOC's current processes.

In summary, the Optical Confederation considers the GOC processes to be sufficiently robust and do not believe major changes to the way in which the GOC investigates complaints is necessary.

c. How their education standards and processes encourage education providers to satisfactorily prepare new professionals to be candid

All ten optometry schools in the UK have a module specifically dealing with legal responsibilities and professional conduct, as part of which students are taught the importance of being honest and trustworthy in their dealings with patients and their regulatory bodies. The GOC and defence organisations provide additional lectures to support these programmes.

In addition, the new CET process introduced by the GOC on 1 January 2013 requires registrants to have undertaken CET with a professional conduct element, within the three-year cycle. In our experience, it is often hard to identify CET specifically relating to professional conduct. The GOC may, therefore, wish to consider asking those organisations responsible for producing CET to devise some learning specifically on this topic.

d. How their registration and registration renewal processes work

We are not aware of any improvements that could be made in this area. We believe the declarations currently required by statute are adequate and would not wish to see these extended.

3. What good practice is there in this area, either from overseas or here in the UK, which we could learn from?

In our view, the GOC already has sufficient policies, guidance, and legislation in place to encourage its registrants to be honest when things go wrong.

4. Are you aware of any reasons why a duty of candour on professionals may benefit or disadvantage patients, people who use social care services, carers or professionals differently depending on their age, gender, disability

status, transgender status, ethnicity, nationality, sexual orientation, marital or civil partnership status, religion or belief?

The principles of candour should apply equally. There are no obvious advantages or disadvantages to any particular sub-group of patient, user of social care services, carer or healthcare professional.

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