

GOC Consultation on Business Regulation Optical Confederation Response

1. 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 Opticians (FODO). As a Confederation, we work with others to improve eye health for the public good.
2. As this is a joint response from the five member bodies of the Optical Confederation - including the bodies recognised by the Government as representing optometrists, opticians and optical practices in the community for negotiating purposes - we request that it be considered by the GOC as if five responses had been submitted with the added weight of our speaking with a united voice.

Support

3. As a Confederation, we fully support the GOC's strategic aim "to deliver effective, proportionate and fair public protection" (Executive Summary, paragraph 1). As founder supporters of the Better Regulation Executive (now Authority), we also support the GOC's commitment to the principles of good regulation: proportionate, targeted, consistent, transparent, accountable and agile (paragraph 23). We also welcome the commitment that the GOC's response to the Mid-Staffordshire NHS Foundation Trust Inquiry will also be proportionate (paragraph 53).
4. We further welcome the GOC's commitment to openness and consultation. We have appreciated the opportunity to be involved in the open consultation events on 4th September 2013 and support the GOC's commitment to consult further on implementing any new model of business regulation (Executive Summary, paragraph 4).

Evidence Base

5. We would however highlight the paucity of evidence put forward to justify the proposal recommended by the GOC (Option 4).

6. By the paper's own admission, the GOC currently regulates only a third of optical businesses yet there is no evidence to suggest that patients are at any greater risk from non-registered businesses than from registered businesses. Similarly business registration as a concept does not apply in for example the United States, Commonwealth countries such as Australia and New Zealand or EU partner countries particularly our close relations the Republic of Ireland and the Nordic Countries where, if there had been evidential justification, business registration would also have become the norm.
7. The GOC's own research has previously concluded that optometry and dispensing optics are low risk professions and, in preparing for this policy review, research has again concluded "that there [is] little direct evidence of patient harm arising from poor business practices" (paragraph 8).
8. We support the GOC's aim "to target [its] activity at those areas where there are risks or potential risks to public health and safety" (Executive Summary paragraph 5) but would again point out that
 - this is already within a very low risk environment
 - there is no evidence of any real (as opposed to theoretical) risk from care being provided through a "business environment" (paragraph 8).
9. It may simply be poor drafting but there seems to be a perception throughout the consultation of a 'public sector bias' against care delivered through retail business (e.g. "sometimes resulting in tension between the clinical and commercial incentives" - paragraph 11). This runs contrary to all the evidence to date which has shown that there is far higher risk to patients in the state-owned NHS sector where patients can only exercise choice within limits and can only - in a very limited and indirect way - carry their custom and value with them if they change provider. NHS inquiries passim and the recent Francis Report (referred to in this consultation) are cases in point.
10. It is clear therefore that, in this instance and in the absence of evidence, the GOC is proposing policy on the basis of perceptions and theoretical risk. We have no problem with that as that is what pragmatic organisations focused on patient safety sometimes have to do. However it is important to be honest that this is the case.

Option 4

11. That said

- we agree with the GOC that the current situation is "hard to explain to the public, who might expect all businesses to be registered" (GOC Council paper Public C32 (13) – paragraph 11)
- we are naturally in favour of a level playing field for all optical businesses (Executive Summary, paragraph 12)

- we recognise that that there could also be a “perception of unfairness” in that not all businesses have to register and comply with GOC Codes of Conduct (paragraph 58)

although we remain to be convinced that this creates confusion for business owners as the GOC paper Public C32 (13) of 3rd July claims (paragraph 12).

12. Nevertheless it is against the background of these latter points that we have considered the matter and the GOC’s proposed options very carefully and have concluded that we support the GOC’s proposed option – Option 4.
13. We also welcome the GOC’s commitment to “avoid duplicating other forms of regulation” (paragraph 135) in taking this further and recognition of the wider impact on sole traders and ophthalmic medical practitioners and ophthalmologists. We welcome the commitments to “consider the fee arrangements for sole traders” and to “avoid unnecessary bureaucracy” (paragraph 134) and would wish to be part of those discussions.

Concerns

14. It is on this last point about unnecessary bureaucracy that we would however signal our concerns about the GOC’s plans to review the Code of Conduct for business registrants. We recognise the necessity for a review, which we welcome, but have concerns about the seemingly given assumption that this will necessarily lead to an “enhanced” and “more targeted” Code (passim).
15. We would strongly request to be part of that review both directly as major stakeholders as well as through public consultation events and written comments.
16. Clearly the Code of Conduct for business registrants needs to dovetail and support the Code of Conduct for individual registrants but we would point out that the strength and wide acceptability of the existing Codes lies in their simplicity and ease of comprehension. These are considerable virtues for codes of conduct (e.g. the Ten Commandments) and should not be thrown away lightly. The GOC’s first attempt at drafting codes of conduct over ten years ago now were bureaucratic and incomprehensible and would have been confusing for registrants and Fitness To Practise (FTP) panels alike. Unfortunately the staff concerned at that time have now all moved on, but we would caution strongly against a return to this kind of thinking. "The present Code for Business Registrants was deliberately designed to be complementary to, and strongly supportive of, the Code for Individual Registrants as it is the individual registrant who is in direct contact with the public.
17. We welcome the GOC’s commitment therefore to consult further on these matters and would argue that this consultation should be, before the GOC

starts considering the matter and reaching conclusions, rather than afterwards. As noted above, we would be very keen to engage with the GOC on a “no commitment” basis (e.g. in a joint workshop environment) to identify any shortcomings with the existing Codes and to help generate options for how these might be remedied.

18. We are also far from persuaded that the GOC should “have powers to inspect premises or seize property” (paragraph 71). We have not seen any evidence suggesting that it should or to what ends these powers might be applied.
19. With these caveats and our general support for Option 4 in mind, we are pleased to respond to the specific consultation questions below.
20. We are happy for this response to be made public. Please do not hesitate to contact us if we can be of any further help or if further information or clarification is needed.

Q1. Do you agree with our estimate (based on the analysis in the Appendix to Europe Economics's Report) that there are around 6400 optical businesses (just under 2200 registered and approximately 4200 unregistered)? Do you have information that would enable us to calculate a more precise estimate? If yes, please provide details.

A1: Yes, we support the estimate. Unfortunately we do not have more precise figures or we would have provided them when consulted by Europe Economics.

Q2. Do you have any evidence in relation to the view that the optical businesses currently registered with the GOC have a disproportionately large share of the market by volume?

A2: It is difficult to understand what is meant by disproportionately large share. However the proportion of the market covered by large businesses – all of which are in Optical Confederation membership through FODO - is about 80% by volume.

These large companies are all registered bodies corporate and so already within GOC jurisdiction.

Q3. What are your views on the risks associated with business practices?

A3: The GOC has previously concluded that both optometry and optics are low risk professions. We would also point out that the report by Europe Economics identifies theoretical rather than actual risks so we are operating in the domain of the hypothetical.

We do not accept that there is any more of a “mismatch of incentives between the owners with ultimate responsibility/liability for the business and the responsibility and incentives of practitioners in terms of clinical governance” than in any other area of healthcare. Not only the Francis Report but many proceeding reports on NHS services have shown this to be the case and demonstrated the pressures that frontline care can come under when for example acute hospitals are under financial pressures or striving to meet government targets, efficiency programmes or achieve Foundation Trust status.

That said, we agree that there is a theoretical risk that the management of an optical business could become detached from its shared responsibility with clinicians for good clinical care just as in any other part of the health or social care system. However in a low risk sector such as ours, the market - where the money genuinely follows the patient - would normally correct this very rapidly.

We note that European Economics “did not consider the risks relating to business practice to be significantly high” (paragraph 8) and welcome their conclusion that a “proportionate yet comprehensive system of business registration would be desirable” (our emphasis) (paragraph 81).

There is a far greater problem in our view, touched on in paragraph 80, which is failure by the GOC to enforce existing regulations or to pursue clear breaches of the Opticians Act by non-registrants through the courts.

This is particularly problematic with unregulated online sales from internet-only providers based outside the UK and outside the EU. We have examples in recent years of faulty product being submitted to the GOC but with no regulatory action taken; similarly with online contact lens suppliers disregarding specification requirements.

Although this issue is mentioned in paragraph 80 (second bullet) – “lack of comprehensive oversight” - it is not clear precisely how the GOC plans to tackle it. In our view, this is a greater risk to public safety than the non-regulation of UK all optical businesses, the registration of which, as noted above, notwithstanding, we support.

Q4. Can you provide additional evidence about the risk to public health and safety that could potentially result from business practices? If so, please provide details.

A4: No. As noted above, there is no evidence to support this and we are in the area of hypothesis. The GOC already has access to fitness to practise case evidence and details of complaints lodged with the Optical Consumer Complaints Service (OCCS). Whilst there can never be scope for complacency, in the context of 21 million sight tests a year in the UK, such a level of problems, although regrettable, is almost vanishingly small and there is no evidence from these sources that the optical retail business model involves

- either any measurable risk to public health and safety
- or any greater risk than any other delivery mechanism.

Q5. What is the likelihood and severity of the risks you had identified?

A5: Vanishingly small and extremely low. We are dealing with theoretical and comparative risk. In any clinical situation involving the interaction of two or more human beings, occasional errors will arise. Whilst we must all do our very best to design these out of the system and to be ever alert to correcting them in our own practice, there is no evidence to support the need for further regulation.

Q6. What are your views on the option of retaining the current system of business registration (including the risks and implications)? Please supply supporting evidence if possible.

A6: Although this system has worked well for many years, it is anomalous for the reasons identified above, i.e.

- it is “hard to explain to the public, who might expect all businesses to be registered”
- it does not provide a level playing field
- there could also be a “perception of unfairness” amongst providers in that not all businesses have to register and comply with GOC Codes of Conduct, etc.

We would not therefore favour retaining the current voluntary system based on protected titles and management structures.

Q7. What are your views on removing business regulation (including the risks and implications)?

A7: As noted above, there is no evidence from any comparable health care systems that removing business regulation would increase risk to patients or the public. We take the points, however, that the public - to the extent that people ever consider the matter - might believe that all optical practices are somehow regulated and that it is hard to explain to the public why some providers should be regulated and some not or the differences between the two.

In the interests of a level playing field therefore and to bring all optical businesses within GOC jurisdiction, we would not support the proposal to remove business regulation altogether.

Q8. What are your views on the option of extending business regulation to all businesses providing restricted functions (defined as sight testing, contact lens fitting, supply of contact lenses and spectacle sales to the under sixteen's, registered severely visually impaired and registered visually impaired) – including the risks and implications?

A8: For the reasons outlined above, we would support this option provided it did not add to the regulatory burden and costs on either existing registered optical businesses or practitioners. In our view the increased costs identified in GOC paper Public C32(13) – paragraph 33.2 should be more than recouped by bringing the remaining two thirds of optical businesses within regulation. We would hope in fact that this additional revenue might lead to lower registration fees for all.

Q9. For businesses that do not primarily provide optical services, should we retain the requirement for the optical services to be under the management of a registrant?

A9: Yes, it is hard to imagine how high-quality clinical services could be provided and led without a registrant overseeing and influencing that part of the business from within the management chain and command structure.

Q10. What are your views on the option of extending business registration enhancing the code of conduct for business registrants (including the risks and implications)? Please provide supporting evidence where possible.

A10: We would support this for the reasons outlined above. We also support a review of the Code of Conduct for business registrants and hope that, as previously, the GOC Companies Committee will be able to play a significant role in making it pragmatic and fit for purpose in optical practices.

As noted above, we do have concerns about the assumption throughout the consultation document that a review of the Code of Conduct will naturally lead to its

enhancement. As far as we can see, there is no evidence for this although we would be more than willing to work with the GOC on these issues.

The key, in our view, is for the Code of Conduct to be simple and easy to understand so that it can be systematically applied across the whole optical sector - and with the active support of the sector - without adding significantly to regulatory burdens and costs for the GOC and existing registrants.

Q11. If this option were adopted, should the *Code of Conduct for individual registrants* be amended to provide that individual registrants should not work for unregistered business.

A11 It would depend on how this was defined and we would not wish in any way to restrict the freedom of optometrists and opticians to work in ethical institutions wherever their skills were needed, e.g. for charities.

We would also need to understand more about how the GOC intends to deal with unregistered business that are in breach of the Opticians Act, in particular what resources they plan to put behind bringing these into line or prosecuting them, before we can agree any amendment to the Code of Conduct for individual registrants. Otherwise this amendment would place the onus on individuals to effectively police the business regulation of their employers.

Q12. What are your views on extending business registration to all businesses, enhancing the code of conduct for business registrants, and establishing an inspection regime (including auditing protocols, for optical businesses (including the risks and implications)? Please provide supporting evidence where possible).

A12: We would not support the establishment of inspection regime by the GOC for optical businesses as we can see no need for this. The vast majority of optical businesses in the UK are already either registered with or in contract with NHS authorities for the provision of NHS services and inspected by them.

As Europe Economics recognised, the practices which are not NHS providers tend to be high-end providers who do everything possible to deliver high quality services and achieve high quality outcomes in order to retain their high value patients. We doubt that the GOC or OCCS ever receives complaints about such practices and no evidence was produced in the consultation document.

As a Confederation we are not opposed to practice inspection per se and, indeed, have recently reached agreement with NHS England for

- initial practice inspection for new openings
- periodic inspection thereafter
- inspection of any practices which cause concern
- plus random inspection of sample practices for overall quality assurance purposes.

What we would not favour is duplicatory registration by another agency and the costs this would place on patient care.

Parallels are sometimes made with the inspection of pharmacy premises by the General Pharmaceutical Council. However this is a false analogy as the two situations are not comparable. Pharmacies are inspected because they contain significant stores of poisons and other highly addictive or dangerous pharmacological products with a very high street value. These make them a high risk target for break-in and theft, potentially releasing many harmful substances particularly into a susceptible young population. Optical practices are in no way similar. The drugs they store are not addictive, dangerous or attractive to the general public or young people.

If there is a perceived failure by the NHS to inspect in certain parts of the UK, as a Confederation, we would be very keen to work with the GOC and those NHS authorities to ensure that all NHS providers are appropriately inspected.

Q13. What are your views on the option of removing business registration and introducing registration of a dedicated practice principal for all business premises (including the risks and implications)? Please provide supporting evidence where possible.

A13: We do not support this option for the reasons set out by the GOC – specifically that it does not address the theoretical problems that the GOC is setting out to address and on grounds of its high costs and limited benefit.

Q14. Would it be necessary for the practice principal to be a registrant? Please describe the risks and benefits of the practice principal being a registrant or non-registrant?

A14: We do not support this option but, yes, for the reasons given in Answer 9 above.

Q.15 If the practice principal were not a registrant (and therefore not registered with the GOC) would this model adequately protect public health and safety?

A15: It is a matter of relative risk but, again, please see our answer to Question 9 above.

Q16. What are your views on the option of replacing the current system of business registration with voluntary self-regulation by the industry (including the risks and implications)? Please provide supporting evidence where possible.

A16: We do not support this option. Voluntary self-regulation by the industry would still involve costs and the voluntary nature of this approach would mean that the costs were not evenly distributed – thus undermining the GOC’s aim of achieving a “level playing” field.

It is also arguable that the most cost-effective solution for the industry would be for the existing regulator, i.e. the GOC, to take on this secondary role raising revenue from wider coverage to meet the costs but without imposing additional costs on existing registrants.

Voluntary registration with the GOC would also have the added benefit – as now - of being transparently and self-evidently independent of the sector regulated – a key principle of effective public regulation. However this is what we have now.

Q17. What are your views on whether there are any quality issues that would result from any of the potential models which require consideration? If so, please provide evidence of the issues and the potential impact on people sharing the protected characteristics covered by the Equality Act 2010: disability, race, age, sex, gender reassignment, religion and belief, pregnancy and maternity, and sexual orientation and carers.

A17: There are no equality issues that we can see in respect of any individual groups with protected characteristics specified by the Equality Act 2010. However, comprehensive registration as proposed by the GOC would clearly add an additional quality safeguard for people sharing protective characteristics, which we support.

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