

## **General Optical Council: Consultation on Guidance for the Investigation Committee, Case Examiners and the Fitness to Practise Committee**

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.

We very much welcome the opportunity to comment on the General Optical Council's (GOC) draft guidance. We consider there are a number of aspects of the guidance and the process itself which are not yet capable of being fully understood and we therefore look forward to hear from the GOC in response to the questions posed in this response.

### **Questions**

#### **1. Are the guidance documents clear? If not, please provide your comments:**

On the whole the documents are clear; however, there are some aspects of the guidance which could be made clearer. We have made some suggestions or requests for further clarification in the remainder of this document.

#### **2. Does the guidance clearly explain how the GOC will process fitness to practise matters? If not, please provide your comments:**

### **Structure:**

The content of the guidance for case examiners and the Investigation Committee is largely identical however the order is slightly different in each. The reason for this is not clear. If there is no reason for this difference, we consider the guidance would

read better and be more clearly structured if the order was the same in both documents.

We trust that where comments in this response are applicable to multiple guidance, due consideration will be given to their wider application.

### **Guidance for case examiners:**

#### **Paragraph 15: The case examiners**

We note that a case examiner will be a registered optometrist, dispensing optician or a lay person and that the decision at the end of the investigation stage is to be taken by two case examiners: one registered and one lay. We propose that the guidance specifically state that the Registrant's professional background will determine whether the registered case examiner is a dispensing optician or optometrist. This would be consistent with the position before the Investigation Committee, where for the committee to be quorate its members must include at least one optometrist, one dispensing optician and one lay member (Paragraph 18 of the guidance to the Investigation Committee).

#### **Paragraph 23: Further investigations**

When discussing the scenario whereby a further investigation has been requested by the case examiner, the guidance states that the Registrar will provide the Registrant with the information and give them a '*reasonable opportunity*' to respond. This is at odds with Rule 5 (2) (c) of the General Optical Council (Fitness to Practise) Rules Order of Council 2013 which states that Registrants must be given copies of any information or documents in support of the allegation and given 28 days to respond. The guidance should be in line with the statutory position (see also Paragraph 33 of the guidance for the Investigation Committee which is analogous with this part of the guidance for the case examiners).

#### **Paragraphs 26 to 28: Referral to the IC – (Health and/or Performance)**

We note that each assessor will be asked to write individual reports and then submit a joint report to the Investigation Committee. It is not clear in the guidance whether the Investigation Committee will receive the single reports and the joint report, or just the joint report, and furthermore which reports will be sent to the Registrant. Rule 10(4) allows for full disclosure of all reports to Registrants. This should be made clear in the guidance. Any joint report should make clear where the opinions of the two assessors differ.

We understand assessments can be requested by the case examiners or, if the case examiners have not been able to reach a unanimous decision and the matter is

referred to the Investigation Committee, then an assessment can also be ordered by the Investigation Committee. We assume that reports produced following a request made solely by the Investigation Committee would not be sent back for consideration by the case examiners – on the basis that they did not order it and were unable to reach agreement as to how the matter should be disposed of - but this needs to be made clearer in the guidance.

### **Paragraph 29: Decision-making process**

In relation to Rule 5(4), it remains our firm view that if the maker of the allegation uses the invitation to make comments on the Registrant's written representations as an opportunity to make new allegations then Registrants must have a full right of response. We shall continue to provide this advice to our members.

We are aware that other regulatory bodies particularise allegations on grounds of fairness and that the GOC is an outlier in this regard. If the GOC were to agree to do this, then this would avoid the risk that the maker of the allegation adds to their allegation, such that Registrants then need to respond further.

It would also be useful if the GOC could confirm its position regarding further comments by the makers of the allegation in the guidance. It is not clear how many opportunities the maker of the allegation will in fact be given to make further comments. In our experience there is seemingly no limit to the amount of further comments they can submit. This makes the above comments in relation to a Registrant's right of response even more pertinent, and as such we would welcome clarification on these matters.

### **Paragraph 58: Taking no further action**

This part of the guidance should also be included in the guidance for the Investigation Committee from which it is currently missing from Paragraphs 62 to 63.

Rule 15 gives the case examiners the power to review a decision not to refer within five years of the decision being made in light of new evidence. There could be circumstances whereby the original decision not to refer was made by the Investigation Committee, i.e. in circumstances where the original case examiners were not able to reach a unanimous decision. We are uncertain why, in those circumstances, the review of the decision not to refer is being considered by the case examiners and not the original decision-maker, i.e. the Investigation Committee. We would like to understand the reasons behind this. Furthermore, will it be the original two case examiners who are asked to review the decision not to refer, and what documentation will they receive?

In terms of the guidance, we believe the guidance should make clear what information they will be sent when asked to review a decision under Rule 15.

**Paragraph 64: Termination of referral**

Registrants should also be advised of the case examiners' decision to review the referral and be given an opportunity to provide representations. The guidance should reflect this.

As above, there could be circumstances whereby the original decision to refer to the Fitness to Practise Committee was made by the Investigation Committee, i.e. in circumstances where the original case examiners were not able to reach a unanimous decision. We are uncertain why, in those circumstances, the review of the decision to refer is being considered by the case examiners and not the original decision-maker i.e. the Investigation Committee. We would like to understand the reasons behind this. As queried above, will it be the original two case examiners who are asked to review the decision to refer and what documentation will they receive?

In terms of the guidance, we believe the guidance should make clear what information they will be sent when asked to review a decision under Rule 16.

**Paragraph 66: Guidance for case examiners on Findings by other Regulators**

This paragraph does not make sense. The relevant sub-section is 13D2(g). However reference is also made in terms to 13D (2) (a). (also please see Paragraph 69 of the guidance for the Investigation Committee which is analogous with this part of the guidance for case examiners).

**3 Do you agree that the guidance will help ensure the decisions made by the Investigation Committee and case examiners are consistent? If not, please provide your comments:**

**Guidance for case examiners:**

**Paragraph 18: Interim Orders.**

We remain concerned that a referral for an Interim Order can be made by one individual. We are therefore keen to understand what training the new case examiners will receive. If sufficient training is not given it could result in a large number of unnecessary referrals resulting in large amounts of wasted costs.

#### **Paragraph 40: Realistic Prospect Test**

The guidance given to the case examiners when considering the realistic prospect test should mirror the guidance to the Investigation Committee. The second bullet point in Paragraph 45 of the guidance for the Investigation Committee is absent from the current draft guidance for case examiners.

Regarding the last bullet point, it would be a rare case wherein despite the case examiners having been satisfied that the Registrant had remedied any deficiencies a referral is still deemed appropriate on public interest grounds. It would be helpful if the GOC were able to provide some examples of when they consider it may be appropriate. (please see Paragraph 45 of guidance for the Investigation Committee which is analogous with this part of the guidance for case examiners).

#### **Paragraph 50: Warnings**

We agree that case examiners should be given more flexibility when determining the length of any warning and welcome the proposal that is being made in the guidance. (please see Paragraph 55 of the guidance on the Investigation Committee which is analogous with this part of the guidance for case examiners).

**4 Do you agree that the guidance will help those who are making or determining fitness to practise matters understand the factors that will be taken into account when reaching a decision? If not, please provide your comments:**

#### **Fitness to Practise Panels Hearings Guidance and Indicative Sanctions:**

##### **Page 9-10: What makes a good determination?**

The guidance for FTP panels is in the main clear and should continue to assist the FTP Committees when reaching a decision. In particular, the section entitled 'What makes a good determination?' provides a detailed account of the matters that should be included in their determinations. It could be made clearer if the matters listed in the draft guidance at sections a-q were further sub-grouped by reference to the stage at which those matters fall to be considered i.e. findings of fact, when determining misconduct etc, impairment and sanction.

##### **Page 16: Interim Order**

The guidance states that where an order is made the Committee should ensure that a date for a 6-month review is always included in the determination. It would be

useful if parties were given prior notice of this date so that they can confirm availability if an Interim Order is then made.

### **Page 16: Warning**

Any warnings issued by the Committee should be time-specific and the guidance should reflect this.

### **Page 19: Available sanctions**

The guidance lists the sanctions available to the Committee in ascending order starting with the least severe. This section does not include any reference to the fact that the starting point should be whether it is possible to conclude the case with no action at all, as is appropriate in some circumstances. This is referred to later in the guidance at page 28, but this section should come at the beginning of any discussion of available sanctions that are being discussed.

### **Page 20: Conditional registration**

We strongly disagree with the guidance where it states that *'conditions should normally impose a requirement for the Registrant to be under strict supervision in either his practice or other places of work'*. Supervision is not always applicable, either direct or indirect, and for these reasons both the guidance and the use of the word 'strict' is inappropriate. It is a matter for the Committee, having heard submissions from both parties, to decide what conditions are appropriate, bearing in mind the circumstances of each particular case.

### **Page 28: Cautions**

It has previously been determined that despite accepting a caution a Registrant can seek to go behind the caution and provide evidence as to the underlying facts (GOC and Gurpreet Chaggar). This has been agreed by a previous FTP Committee. This should be made clear in the guidance.

### **Page 29: Costs and expenses**

The guidance is currently silent as to when, and in what circumstances, costs awards may be made against a Registrant and/or the Council. This is not helpful to the Committee and we believe this section needs to be revisited, if it is to have any useful application.

## **5 Do you have any other comments on the draft guidance?**

As stated earlier in this response, we are keen to understand what training the case examiners will receive and how many case examiners the GOC will be recruiting. The guidance does not explain how case examiners will be paired, whether pairings will change on a regular basis and whether Registrants will be notified which case examiners will be considering the allegation against them. For the sake of clarity, we believe Registrants should be notified which case examiners will review the allegation against them.

We have made a number of suggestions in this response and have also sought clarification on some very important aspects of the processes and guidance. We would therefore welcome a second opportunity to comment on the guidance before it is finalised.

**January 2014**