

Guidance on Fitness to Practise Rule 16 consultation

We respond on behalf of the Optical Confederation to the General Optical Council (“GOC”) consultation on the guidance on the application of Rule 16.

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.

Overall, we consider that detailed guidance will be beneficial in the management of applications under Rule 16, subject to the comments outlined below.

Questions

1. Is the guidance clear on the background and reasons for of Rule 16 guidance?

If not, please provide your comments:

We think the guidance is clear to a point in that it sets out that the purpose of the guidance is to assist those making and determining applications for review. The guidance does not, however, set out the reason why the GOC has included in its fitness to practise rules a procedure for reviewing referrals.

In our view, Rule 16 provides an important opportunity for the Investigation Committee (“IC”) to review afresh whether a referral to a Fitness to Practise Committee is appropriate by applying the realistic prospect test. The IC must then reach their own decision as to the future management of the case, with reference to paragraph 14 of the guidance.

This ensures fairness to registrants and assists with the efficiency of the regulatory process.

2. Does the guidance clearly explain how the GOC will process applications made under rule 16?

If not, please provide your comments

The guidance does make some reference to the process for dealing with applications under Rule 16, with paragraph 6 providing welcome clarification as to who can make an application. We would recommend, however, further clarification in the following areas:

Paragraph 8 suggests that the IC may consider an application under Rule 16 without first having given the registrant an opportunity to comment. We consider that the registrant's comments on such an application should always be sought as it is the registrant's fitness to practise which is in question. Paragraph 8 should be amended accordingly. There are no reasons given within the guidance as to why it would ever be appropriate to proceed without having invited the registrant to comment on the application. We acknowledge that there may be rare occasions when a registrant is incapacitated or cannot be found and therefore this rule should not in our view be mandatory.

Should the GOC take the view that there will be some circumstances (we are of the view that these circumstances would need to be exceptional) where it would be justifiable not to seek comments from the registrant, it is essential that the registrant is, in any event, informed of the application. In those circumstances, the registrant would also need to be informed of the GOC's decision not to seek the registrant's comments and the reasons for this decision.

Paragraph 11 refers to the Investigations Manager preparing and submitting to the IC copies of the application and any comments received in response to it. This paragraph should also state that a copy of the complete bundle for the IC will be provided to the registrant.

Paragraph 15 refers to the need for the IC to give reasons for its decision. We recommend that this paragraph also give an indication of the timeframe in which the registrant will be provided with notification of the decision, namely within 7 working days.

Paragraph 15 refers to legal advice being given to the IC in relation to the application. The legal advice should be from a source independent of any persons listed at paragraphs 8 (a) – (d). We note that paragraph 15 of the guidance refers to legal advice being recorded. We are of the view that this recorded legal advice should be set out within the IC determination letter sent to the registrant to assist them in understanding the IC's decision.

3. Do you agree that the guidance will help ensure the decisions made by investigation committee are consistent?

If not, please provide your comments

We do not consider that this guidance assists in ensuring that IC decisions are consistent. The guidance primarily deals with the process of the application and not decision-making criteria. The guidance currently makes no reference to consistency of decisions nor to the importance of ensuring consistency and we would recommend that the guidance be amended in this regard.

4. Do you agree that the guidance will help those who are making or determining rule 16 application understand the factors that will be taken into account when reaching a decision?

If not, please provide your comments

In terms of the factors to be taken into account by the IC, we accept that the guidance, at paragraph 13, draws the IC's attention to the criteria and tests set out in the IC's general guidance. However, in our view, the IC guidance is brief and does not give any advice as to how to decide whether the evidence before the IC should be considered to meet the realistic prospect test. The guidance does not detail the type of issues which, if proven, could indicate that a registrant's fitness to practise may be impaired and would justify action being taken against their registration. The guidance gives a set of criteria but nothing tangible to attach those criteria to by way of practical illustration.

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

We believe that, as this process impacts significantly on the registrant, it is essential that they be kept informed, in a timely manner, of the process and be allowed to provide any observations they may have. We do not consider it appropriate for any procedure/application to be undertaken without keeping the registrant fully informed.

We consider that further clarity would be very useful within the guidance.

In particular, it would be helpful if the guidance contained examples of situations in which it might be appropriate for such an application to be made, including:

- Where the original IC has failed to have regard to relevant matters or has taken into account irrelevant matters.
- Where the decision reached is one that no reasonable IC could have reached.
- Where new evidence has come to light that indicates that the concerns raised are not sufficiently serious to meet the realistic prospect test.
- Where evidence becomes available that suggests that that practitioner's fitness to practise is not impaired.

The guidance should make it clear that any examples provided are not intended to constitute an exhaustive list.

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