



Annual review of performance 2016/17

## General Optical Council



## About the Professional Standards Authority

The Professional Standards Authority for Health and Social Care promotes the health, safety and wellbeing of patients, service users and the public by raising standards of regulation and registration of people working in health and care.

We are an independent body, accountable to the UK Parliament. We oversee the work of nine statutory bodies that regulate health professionals in the UK and social workers in England. We review the regulators' performance and audit and scrutinise their decisions about whether people on their registers are fit to practise. We also set standards for organisations holding voluntary registers for people in unregulated health and care occupations and accredit those organisations that meet our standards.

To encourage improvement we share good practice and knowledge, conduct research and introduce new ideas including our concept of right-touch regulation. We monitor policy developments in the UK and internationally and provide advice to governments and others on matters relating to people working in health and care. We also undertake some international commissions to extend our understanding of regulation and to promote safety in the mobility of the health and care workforce.

We are committed to being independent, impartial, fair, accessible and consistent. More information about our work and the approach we take is available at [www.professionalstandards.org.uk](http://www.professionalstandards.org.uk).

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## About the General Optical Council

The General Optical Council (GOC) regulates the optical professions in the United Kingdom. Its work includes:

- Setting and maintaining standards of practice and conduct
- Assuring the quality of optical education and training
- Maintaining a register of students, qualified professionals and optical businesses
- Requiring optical professionals to keep their skills up to date through continued education and training
- Acting to restrict or remove from practice registrants who are not considered to be fit to practise.

As at 30 September 2017, the GOC was responsible for a register of 26,814 optical professionals and students and 2,635 optical businesses. Its annual retention fee for optical professionals was £320 for 2016/17 and £330 for 2017/18.



# At a glance

## Annual review of performance

Regulator reviewed: **General Optical Council**

### Standards of good regulation

#### Core functions

Met

Guidance and Standards

**4/4**

Education and Training

**4/4**

Registration

**6/6**

Fitness to Practise

**8/10**

# 1. The annual performance review

- 1.1 We oversee the nine health and care professional regulatory organisations in the UK, including the GOC.<sup>1</sup> More information about the range of activities we undertake as part of this oversight, as well as more information about these regulators, can be found on our website.
- 1.2 An important part of our oversight of the regulators is our annual performance review, in which we report on the delivery of their key statutory functions. These reviews are part of our legal responsibility. We review each regulator on a rolling 12-month basis and vary the scope of our review depending on how well we see the regulator is performing. We report the outcome of reviews annually to the UK Parliament and the governments in Scotland, Wales and Northern Ireland.
- 1.3 These performance reviews are our check on how well the regulators have met our *Standards of Good Regulation* (the Standards) so that they protect the public and promote confidence in health and care professionals and themselves. Our performance review is important because:
- It tells everyone how well the regulators are doing
  - It helps the regulators improve, as we identify strengths and weaknesses and recommend possible changes.

## The Standards of Good Regulation

- 1.4 We assess the regulators' performance against the Standards. They cover the regulators' four core functions:
- Setting and promoting guidance and standards for the profession
  - Setting standards for and quality assuring the provision of education and training
  - Maintaining a register of professionals
  - Taking action where a professional's fitness to practise may be impaired.
- 1.5 The Standards describe the outcomes we expect regulators to achieve in each of the four functions. Over 12 months, we gather evidence for each regulator to help us see if they have been met.
- 1.6 We gather this evidence from the regulator, from other interested parties, and from the information that we collect about them in other work we do. Once a year, we collate all of this information and analyse it to make a recommendation to our internal panel of decision-makers about how we believe the regulator has performed against the Standards in the previous 12

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<sup>1</sup> These are the General Chiropractic Council, the General Dental Council, the General Medical Council, the General Optical Council, the General Osteopathic Council, the General Pharmaceutical Council, the Health and Care Professions Council, the Nursing and Midwifery Council, and the Pharmaceutical Society of Northern Ireland.

months. We use this to decide the type of performance review we should carry out.

- 1.7 When considering information relating to the regulator's timeliness, we consider carefully the data we see, and what it tells us about the regulator's performance over time. In addition to taking a judgement on the data itself, we look at:
- any trends that we can identify suggesting whether performance is improving or deteriorating
  - how the performance compares with other regulators, bearing in mind the different environments and caseloads affecting the work of those regulators
  - the regulator's own key performance indicators or service standards which they set for themselves.
- 1.8 We will recommend that additional review of their performance is unnecessary if:
- We identify no significant changes to the regulator's practices, processes or policies during the performance review period; and
  - None of the information available to us indicates any concerns about the regulator's performance that we wish to explore in more detail.
- 1.9 We will recommend that we ask the regulator for more information if:
- There have been one or more significant changes to a regulator's practices, processes or policies during the performance review period (but none of the information we have indicates any concerns or raises any queries about the regulator's performance that we wish to explore in more detail) or;
  - We consider that the information we have indicates a concern about the regulator's performance in relation to one or more Standards.
- 1.10 This targeted review will allow us to assess the reasons for the change(s) or concern(s) and the expected or actual impact of the change(s) or concern(s) before we finalise our performance review report.
- 1.11 We have written a guide to our performance review process, which can be found on our website [www.professionalstandards.org.uk](http://www.professionalstandards.org.uk)

## 2. What we found – our judgement

- 2.1 During October 2017 we carried out an initial review of the GOC's performance from 1 October 2016 to 30 September 2017. Our review included an analysis of the following:
- council papers, including performance reports and updates, committee reports and meeting minutes
  - policy and guidance documents
  - statistical performance dataset (see sections below)
  - third party feedback
  - a check of the GOC register
  - information available to us through our review of final fitness to practise decisions under the Section 29 process.<sup>2</sup>
- 2.2 As a result of this analysis, we carried out a targeted review of Standard 5 of the *Standards of Good Regulation* for Registration and Standards 1, 3, 6, 8 and 10 of the *Standards of Good Regulation* for Fitness to Practise.
- 2.3 We obtained further information from the GOC relating to these Standards through targeted written questions. We also audited 100 fitness to practise cases closed by the GOC between 1 May 2017 and 31 October 2017.
- 2.4 As a result of a detailed consideration of this further information and the findings of our audit we decided that the GOC had met all of the Standards for Registration but had not met Standards 1 and 6 for Fitness to Practise. The reasons for this are set out in the following sections of the report.

### Summary of the GOC's performance

- 2.5 For 2016/17 we have concluded that the GOC:
- Met all of the *Standards of Good Regulation* for Guidance and Standards
  - Met all of the *Standards of Good Regulation* for Education and Training
  - Met all of the *Standards of Good Regulation* for Registration
  - Met eight of the ten *Standards of Good Regulation* for Fitness to Practise. The GOC did not meet Standards 1 and 6.
- 2.6 This represents a similar performance to last year, when the GOC did not meet Standards 6 and 10 for Fitness to Practise.

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<sup>2</sup> Each regulator we oversee has a 'fitness to practise' process for handling complaints about health and care professionals. The most serious cases are referred to formal hearings in front of fitness to practise panels. We review every final decision made by the regulators' fitness to practise panels. If we consider that a decision is insufficient to protect the public properly we can refer them to Court to be considered by a judge. Our power to do this comes from Section 29 of the [NHS Reform and Health Care Professions Act 2002 \(as amended\)](#).

### 3. Guidance and Standards

3.1 The GOC has met all of the *Standards of Good Regulation* for Guidance and Standards during 2016/17. Examples of how it has demonstrated this are indicated below each individual Standard.

**Standard 1: Standards of competence and conduct reflect up-to-date practice and legislation. They prioritise patient and service user safety and patient and service user centred care**

3.2 The GOC introduced revised *Standards of Practice* for optometrists and dispensing opticians and separate standards for optical students in April 2016 as part of a strategic review of its standards for registrants. This review will be complete once the GOC has introduced revised *Standards for Business Registrants*; these are currently subject to consultation with the intention that they will take effect in 2019.

**Standard 2: Additional guidance helps registrants apply the regulator's standards of competence and conduct to specialist or specific issues including addressing diverse needs arising from patient and service user centred care**

3.3 As a result of stakeholder feedback it received whilst consulting on the *Standards of Practice*, the GOC developed supplementary guidance on the standards relating to candour and consent:

- *Supplementary guidance on the professional duty of candour* was published in March 2017. This explains the professional duty of candour (distinct from the statutory duty of candour which applies to organisations which provide care) and provides guidance on how registrants should respond when something has gone wrong which causes harm or distress to a patient, including the requirement to offer an apology
- *Supplementary guidance on consent* was published in April 2017. This explains the principles of consent and what registrants need to consider to ensure that the consent of patients to care and treatment is valid. The guidance sets out the differing legal frameworks for consent in the three UK jurisdictions.

3.4 In August 2017, the GOC, along with the other UK health regulators issued a joint statement, setting out its expectations of health and care professionals in relation to avoiding, declaring and managing conflicts of interest.

**Standard 3: In development and revision of guidance and standards, the regulator takes account of stakeholders' views and experiences, external events, developments in the four UK countries, European and international regulation and learning from other areas of the regulator's work**

3.5 The GOC took into account the feedback it received from stakeholders when developing the supplementary guidance outlined under Standard 2 above.

3.6 The GOC worked with the Driver and Vehicle Licensing Agency (DVLA) to produce a bulletin for registrants in July 2017 to help them understand their responsibilities in notifying the DVLA where a patient is unfit to drive in circumstances where the patient will not or cannot notify the DVLA. This followed the DVLA updating its guidance for health professionals. The GOC also commissioned research to enable a better understanding of registrants' responsibilities in this area and how well the current system protects the public. The research report was published in October 2017 and the GOC intends to use the findings to inform a consultation during 2019.

**Standard 4: The standards and guidance are published in accessible formats. Registrants, potential registrants, employers, patients, service users and members of the public are able to find the standards and guidance published by the regulator and can find out about the action that can be taken if the standards and guidance are not followed**

3.7 The GOC continues to publish its standards and guidance through its website. Publications are available in Welsh; other formats and languages are available on request.

## 4. Education and Training

4.1 The GOC has met all of the *Standards of Good Regulation* for Education and Training during 2016/17. Examples of how it has demonstrated this are indicated below each individual Standard.

**Standard 1: Standards for education and training are linked to standards for registrants. They prioritise patient and service user safety and patient and service user centred care. The process for reviewing or developing standards for education and training should incorporate the views and experiences of key stakeholders, external events and the learning from the quality assurance process**

4.2 We noted in our last report that the GOC was undertaking a strategic review of optical education and training to ensure that it remains fit for purpose and to make changes to ensure it is future-proof. During the period of this review the GOC:

- Issued a call for evidence about the future of eye care delivery and published a summary of the responses received (June 2017)
- Published a discussion paper exploring the changing roles of optical professionals (September 2017).

4.3 The GOC has carried out further work on the strategic review during 2017/18 including a public consultation on concepts and principles. We will report on these in next year's performance review. We note that the GOC's progress with this review appears to be in line with its published project plan.

**Standard 2: The process for quality assuring education programmes is proportionate and takes account of the views of patients, service users,**

**students and trainees. It is also focused on ensuring the education providers can develop students and trainees so that they meet the regulator's standards for registration**

- 4.4 There have been no significant changes to the GOC's process for quality assuring education programmes. The GOC continued to carry out its quality assurance programme during 2016/17.

**Standard 3: Action is taken if the quality assurance process identifies concerns about education and training establishments**

- 4.5 The GOC continues to take action if concerns are identified. During the period under review it imposed conditions on two education and training programmes and removed conditions from another.

**Standard 4: Information on approved programmes and the approval process is publicly available**

- 4.6 The GOC continues to publish on its website details of approved courses and accredited training providers together with information about the quality assurance and accreditation processes.

## 5. Registration

- 5.1 As we set out in section two, we conducted a targeted review of Standard 5 for Registration. The reasons for this, and what we found as a result, are set out under the relevant Standard below. Following the targeted review, we concluded that Standard 5 was met and the GOC therefore met all of the *Standards of Good Regulation* for Registration during 2016/17.

**Standard 1: Only those who meet the regulator's requirements are registered**

- 5.2 We have seen no evidence to suggest that the GOC has added to its register anyone who has not met the registration requirements.

**Standard 2: The registration process, including the management of appeals, is fair, based on the regulator's standards, efficient, transparent, secure, and continuously improving**

- 5.3 In late 2016 the GOC carried out a review of its registration function in order to identify improvements to internal systems, controls and risk management. The GOC subsequently reported that a number of initiatives were implemented as a result, including online payments and applications, electronic correspondence with applicants/registrants, and the introduction of strengthened identification checks and processes. The GOC also undertook work to develop its process for considering applications from optometrists from within the European Economic Area, including updating documentation.

### ***Registration processing times***

- 5.4 In our last report, we noted that the median time taken to process initial registration applications had increased in Quarters 1 and 2 of 2016/17 compared to the median time taken for the year 2015/16. The GOC told us that it had changed its reporting methods and this had impacted on the data. (Subsequently, the GOC amended its performance target for processing applications from three days to five days, to reflect the change in reporting methodology.) We concluded that this data did not indicate a decline in the GOC's performance in registration processing times at that time.
- 5.5 The time taken to process initial registration applications is shown in the table below, together with the number of applications received.

|   | <b>Annual<br/>2015/16</b> | <b>Q3<br/>2016/17</b> | <b>Q4<br/>2016/17</b> | <b>Annual<br/>2016/17</b> | <b>Q1<br/>2017/18</b> | <b>Q2<br/>2017/18</b> |
|---|---------------------------|-----------------------|-----------------------|---------------------------|-----------------------|-----------------------|
| <i>UK graduates</i>                     |                           |                       |                       |                           |                       |                       |
| Median time taken (working days)        | 2                         | 4                     | 3                     | 4                         | 5                     | 13                    |
| No. applications                        | 946                       | 313                   | 152                   | 951                       | 100                   | 438                   |
| <i>EU (non-UK) graduates</i>            |                           |                       |                       |                           |                       |                       |
| Median time taken (working days)        | 1                         | 5                     | 13                    | 5                         | 9                     | 5                     |
| No. applications                        | 43                        | 6                     | 3                     | 22                        | 5                     | 4                     |
| <i>International (non-EU) graduates</i> |                           |                       |                       |                           |                       |                       |
| Median time taken (working days)        | 1                         | 3                     | 1                     | 2                         | 0                     | 20                    |
| No. applications                        | 7                         | 1                     | 3                     | 8                         | 0                     | 1                     |

- 5.6 We note that the significant increase in the time taken to process applications from UK graduates in Quarter 2 of 2017/18 correlates with the increase in numbers of applications, although we have not seen the processing times fluctuate in this way in previous years. We do not consider that the figure for Quarter 2 of 2017/18 denotes a trend of increasing processing times as the median for Quarter 3 and Quarter 4 of 2017/18 was five and three days respectively. However, we will continue to monitor this.
- 5.7 We do not consider that the quarterly fluctuations in the median time to process applications for the small numbers of EU (non-UK) and international (non-EU) graduates are numerically significant.
- 5.8 It appears that for 2016/17 the GOC met its own performance targets of processing 80 per cent of applications within five days.

### ***Appeals against registration decisions***

- 5.9 In our last report, we noted that there had been an increase in the number of appeals from the previous year. The GOC received two appeals in the financial year 2014/15, four in 2015/16, and six in 2016/17. In 2017/18 the GOC received 12 appeals. We ask the regulators for the outcome of appeals concluded where no new information was provided, as this demonstrates

how many appeals are successful on the basis of the same information as that available to the original decision maker. The GOC did not uphold any appeals where no new information was provided in 2016/17 or in 2017/18. We will continue to monitor the number and outcome of registration appeals.

**Standard 3: Through the regulator's registers, everyone can easily access information about registrants, except in relation to their health, including whether there are restrictions of their practice**

- 5.10 The GOC did not meet this Standard in 2014/15. The GOC took steps to improve its processes and checking mechanisms with the result that in our report last year we were able to conclude the Standard was met as we found no evidence of continuing systemic concerns, despite identifying one error in our accuracy check of the GOC register. We did not find any errors in our accuracy check this year and therefore the Standard continues to be met.

**Standard 4: Employers are aware of the importance of checking a health professional's registration. Patients, service users and members of the public can find and check a health professional's registration**

- 5.11 A 'search the registers' function is clearly visible on the GOC website. Information is provided about the professions that the GOC registers (optometrists and dispensing opticians) and specialty qualifications, together with more information about the registers and how to search them.

**Standard 5: Risk of harm to the public and of damage to public confidence in the profession related to non-registrants using a protected title or undertaking a protected act is managed in a proportionate and risk-based manner**

- 5.12 We carried out a targeted review of this Standard to explore the three areas set out below. We concluded the Standard is met.

**Adjustable focus spectacles**

- 5.13 In our performance review report last year, we expressed concerns about the GOC's approach to adjustable focus spectacles following a request by a manufacturer to the Department of Health (DH) to permit the sale of such spectacles<sup>3</sup> without a prescription. The DH asked the GOC for advice. Whilst the GOC expressed no view on whether the law should be changed, it did voice concerns that the ready availability of such spectacles might mean that fewer people visited opticians for eye tests.
- 5.14 We did not think that it was appropriate for the GOC to provide advice to the DH on clinical aspects of optical products as the GOC is a regulator of people, not of products. In our view the GOC had strayed outside of its statutory remit. Whilst we accepted that the GOC had acted in good faith, we also accepted the concerns raised by the manufacturer that a perception

<sup>3</sup> These spectacles allow users to adjust the focus of each lens themselves; sale of such products is illegal under the Opticians Act 1989 (as amended) unless it is supervised by a registered optometrist or dispensing optician, or a doctor.

might arise that the GOC's opposition to a change in the law protected the commercial interests of its registrants.

- 5.15 In the period covered by this year's performance review we became aware of an issue arising about adjustable reading glasses. The GOC told us that it considers that the sale of these spectacles is illegal; however, it had applied its internal guidance on criminal prosecutions – which requires it to apply both an evidential and public interest test before deciding to prosecute an alleged offence – and had decided not to prosecute unless evidence emerged of harm or a risk to the public. The GOC told us it will keep the issue under review, but for the time-being it is treating adjustable focus reading spectacles as benefitting from the exemption under the Opticians Act 1989 that is enjoyed by 'ready reader' spectacles.<sup>4</sup>

### **Illegal practice caseload**

- 5.16 In the last performance review, we reported that the number of illegal practice cases the GOC was opening was increasing, and that a high proportion of these cases had been in progress for more than 52 weeks. On 30 September 2016, the GOC had a total of 244 open illegal practice cases of which 234 had been received prior to 1 January 2016. Therefore 96 per cent of cases were at least nine months old: the GOC's target is to complete 60 per cent of illegal practice cases within 52 weeks.
- 5.17 Whilst we do not have directly comparable data for the number and age of cases open at 30 September 2017, we have noted from the GOC's own performance reporting for Quarter 2 of 2017/18 (July to September 2017) there were 29 illegal practice cases open, of which eight had been open for longer than 26 weeks and with the oldest case being three years old. It therefore appears that the GOC has dramatically reduced its caseload in terms of both numbers and age.

### **'Love Your Lenses' campaign**

- 5.18 The GOC told us last year that its increased illegal practice caseload as described above related largely to complaints about zero-powered contact lenses. These are non-corrective contact lenses which may be used for cosmetic purposes, such as to change eye colour. All contact lenses must only be sold under the presence and supervision of a registered optometrist or dispensing optician, or a doctor as set out in Part Four of the Opticians Act 1989 (as amended).
- 5.19 In practice, this is a very difficult area for the GOC to police. While the sale of such lenses is illegal unless under supervision of a registrant of the GOC or General Medical Council, the police rarely prosecute such cases and it is arguable that a health danger arises from possible eye infections caused by users failing to apply these lenses hygienically. In May 2016 the GOC's Council directed that the GOC should, as part of its illegal practice strategy, produce guidance for the public on the safe purchase and use of both prescription and cosmetic contact lenses. The GOC created a campaign

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<sup>4</sup> Reading glasses which have two single vision lenses of the same power, not exceeding four dioptres.

called 'Love Your Lenses' which has a dedicated website.<sup>5</sup> An awareness week took place in March 2017. The GOC's approach appears to be that, rather than pursue an expensive and probably impossible task of prosecuting sellers of contact lenses, the GOC should seek to address the risk of harm through a public awareness campaign.

- 5.20 The website provides practical information for the public about ways to keep their eyes healthy when using lenses and the risks of not doing so. The website explains that the campaign is led by the GOC with involvement and support from opticians, manufacturers and patient groups. The website lists over 40 organisations that supported the awareness week, including high street opticians and manufacturers of contact lenses.
- 5.21 In our view, the 'Love Your Lenses' campaign raises similar concerns to those we expressed in last year's performance review about the GOC's approach to adjustable focus spectacles. The GOC's statutory remit is to regulate optical professionals. It is arguably outside the GOC's statutory remit to run a public health campaign. In addition, support of the campaign by some optical businesses (which may be businesses registered with the GOC) may give rise to perceptions that the GOC endorses these businesses or may be too close to them given that it also regulates them and, further, that the GOC is promoting and protecting the commercial interests of its registrants with a campaign encouraging the public to use optical professionals.
- 5.22 The GOC does not agree with our view. It believes the campaign accords with its statutory objective to protect, promote and maintain the health and safety of the public, and at the same time enables the GOC to raise awareness of illegal practice and the possible risk this poses to individuals. The GOC told us that the website makes it clear that it does not endorse the optical businesses listed. The GOC's view is that it is important for registrants and businesses to be involved to ensure the messages of the campaign reach the public. The GOC does not accept that there is a conflict of interest, or the perception of one. The GOC has stated that there is a clear evidence base that regular aftercare appointments mitigate the risk of eye infection for contact lens users, and that its campaign is aimed at building awareness of the need for aftercare rather than promoting commercial interests.
- 5.23 We accept that this campaign is well-intentioned and the GOC considers it to have been successful, though we are not clear that there is evidence of actual harm prevented or that public behaviours have changed as a result. However, we are unconvinced that it falls within the GOC's statutory remit to do such campaigning; if the risk to the eye health of contact lens wearers is such that a campaign is needed, then it is for other bodies to do that work. We also consider that there is a perception of conflict where bodies regulated by the GOC or employing people who are regulated by the GOC are supporting or endorsing the GOC's campaigns. This gives the impression that the GOC is indebted to those organisations. We do not think this is appropriate for a regulator.

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<sup>5</sup> [www.loveyourlenses.com](http://www.loveyourlenses.com)

- 5.24 We are aware that there is a disagreement between ourselves and the GOC on these questions, but we propose to pursue them further with the GOC.
- Standard 6: Through the regulator's continuing professional development/revalidation systems, registrants maintain the standards required to stay fit to practise**
- 5.25 The GOC is in the process of evaluating the first three-year cycle of its Enhanced Continuing Education and Training (CET) scheme for optometrists and dispensing opticians. The scheme commenced in 2013. The purpose of the evaluation project is to ensure the scheme is embedded, properly administered and managed, and to identify and implement changes to ensure that the CET scheme remains fit for purpose. This work is closely linked to the strategic review of optical education and training described under Standard 1 for Education and Training above. Stakeholder research into the effectiveness of the scheme was carried out in 2016, and the feedback evaluated by the GOC in May 2017. An advisory stakeholder reference group has been set up.
- 5.26 The GOC has carried out further work on the review during 2017/18 including a public consultation on proposed changes to the CET scheme. We will report on these in next year's performance review.

## 6. Fitness to Practise

- 6.1 The GOC has met eight of the 10 *Standards of Good Regulation* for Fitness to Practise during 2016/17. Examples of how it has demonstrated this are indicated below each individual Standard.
- 6.2 As we set out in Section 2, we conducted a targeted review of Standards 1, 3, 6, 8 and 10. The information we obtained in the targeted review also raised concerns about the GOC's performance against Standard 4. We concluded that Standards 1 and 6 are not met. The reasons for our judgements are set out below.

**Standard 1: Anybody can raise a concern, including the regulator, about the fitness to practise of a registrant**

- 6.3 This Standard is not met. There were two areas that we explored as part of our targeted review.

**Introduction of a new triage process**

- 6.4 In last year's performance review, we reported that the GOC had implemented a new triage process, described by the GOC as the 'initial screening process that all new referrals go through to determine whether a full investigation should be opened'. In order to be assured that this new screening process was enabling appropriate decisions to be made, we looked at the triage process and decisions as part of our audit.

- 6.5 We reviewed 45 cases which were closed at triage and identified concerns in 13 of these cases, including:
- Triage decisions which were not recorded, and therefore there were no reasons for a decision to close a complaint
  - Decisions which were not sufficiently reasoned
  - Decisions which did not demonstrate consideration of all aspects of the complaint
  - Triage decisions to refer a complaint for investigation being overturned by a subsequent decision to close the complaint. It was not clear to us the process under which this was being done.
- 6.6 We reviewed 41 cases closed by Case Examiners, which included a review of the triage decision to refer the case for investigation. In one of these cases:
- No triage decision was recorded
  - There was insufficient reasoning for a decision not to open cases against a number of other registrants referred to in the complaint
  - There was insufficient reasoning for a decision not to investigate all aspects of the complaint.
- 6.7 As a result of our audit findings, it is not evident to us that all relevant information is being properly considered at triage stage, or that decisions to close cases are appropriate as the reasons for the closure are absent or unclear. Given that we had concerns about the recording of the triage decision in nearly a third of the cases we reviewed which were closed at triage stage, we have concluded that this Standard is not met.

### **Acceptance criteria**

- 6.8 The GOC undertook work during the period of review to develop acceptance criteria. The GOC told us that the purpose of introducing acceptance criteria was to support staff in making decisions at the triage stage of its fitness to practise process by formally defining the principles under which it currently accepts a complaint as an allegation of impaired fitness to practise.
- 6.9 The GOC consulted on draft acceptance criteria between December 2017 and March 2018, and the criteria were subsequently updated and introduced. We will examine the impact of the acceptance criteria in next year's performance review.

### **Standard 2: Information about fitness to practise concerns is shared by the regulator with employers/local arbitrators, system and other professional regulators within the relevant legal frameworks**

- 6.10 We have seen no evidence to suggest that the GOC is failing to share information with relevant parties. Following an audit it carried out of Case Examiner decisions, the GOC amended its fitness to practise guidance in March 2017 to ensure that the definition of 'employer' captured all those with

whom a registrant has an agreement for the provision of services, to ensure they are notified of a fitness to practise investigation.

**Standard 3: Where necessary, the regulator will determine if there is a case to answer and if so, whether the registrant's fitness to practise is impaired or, where appropriate, direct the person to another relevant organisation**

- 6.11 We carried out a targeted review of this Standard to seek assurance that the introduction of Case Examiners in April 2014 (replacing the Investigating Committee as the case to answer decision-maker) was resulting in proper decisions being made and the process being followed was appropriate and enabled good decision-making. In our last performance review report we noted the results of an independent audit carried out on behalf of the GOC which found some concerns but overall concluded that appropriate decisions were being made. However, as three years had passed since the introduction of Case Examiners, we decided that we needed to look at some of these decisions as part of our wider audit.
- 6.12 We reviewed 41 cases which had been closed by Case Examiners, and found concerns in six of these, including:
- Failures to demonstrate that all aspects of the case had been considered
  - Failures to identify or act on omissions to obtain relevant material during the investigation stage.
- 6.13 We also identified some concerns about the allegations drafted as part of the investigation and put before the Case Examiners. In some instances, the allegations did not capture the full extent of the concerns, and clinical advice on the allegations was not always sought in cases where there was a clear need to do so to ensure that all clinical concerns were properly captured.
- 6.14 However, in the majority of the cases we reviewed we found that the decisions made by the Case Examiners clearly demonstrated both appropriate application of the relevant test for referral to a final fitness to practise hearing (the realistic prospect test) and that Case Examiners had properly considered the information before them. We did not consider any decisions to close were not properly made or gave rise to a public protection concern.
- 6.15 We did identify a concern about the quality assurance of Case Examiner decisions process operated by the GOC. We were concerned that there was a conflict of interest in the office holder – who had responsibility for investigating fitness to practises cases – quality assuring the decisions made at the end of the investigation stage, and that a perception might arise that Case Examiner decision were not made independently of the GOC staff. We raised our concerns with the GOC which told us that it was considering what changes to make to the quality assurance process in light of the issue we raised. We will follow up on this in the next performance review.

- 6.16 We also reviewed nine Case Examiner decisions made following Rule 15 and Rule 16<sup>6</sup> reviews. Rule 15 allows Case Examiners to review a decision *not to refer* an allegation of impairment to a final fitness to practise hearing, whereas Rule 16 allows Case Examiners to a review a decision *to refer* an allegation to a final hearing. We identified concerns in four of these nine cases. Our concerns were largely around the process followed rather than decision-making. We understand that the GOC identified these issues for itself and obtained legal advice on the Rule 15 and Rule 16 provisions and correct procedure. We saw evidence of the correct procedure being followed in the more recent Case Examiner decisions we reviewed.
- 6.17 This Standard is met as, although we identified concerns in a small number of cases, we considered that overall the Case Examiner process was working effectively. We had concerns about the application of the Rule 15 and Rule 16 process in a small number of cases, however noted that the GOC had already taken steps to address these. We were also assured by the GOC's response to our concerns around the quality assurance processes in place.

**Standard 4: All fitness to practise complaints are reviewed on receipt and serious cases are prioritised and where appropriate referred to an interim orders panel**

- 6.18 Whilst we did not carry out a targeted review of this Standard, and have concluded it is met, we have concerns about the risk assessment processes being operated by the GOC. These concerns were evident from our audit.

**Risk assessments**

- 6.19 The GOC told us in last year's performance review that it had introduced a new triage system and that risk is assessed at triage stage, at regular intervals thereafter and on receipt of new information, and that high risk cases were reviewed every two weeks. This approach was not evident in the cases we reviewed as part of our audit.
- 6.20 Risk is assessed on receipt of a complaint but the GOC process does not require or facilitate the ongoing assessment of risk whilst a case remains at the triage stage. Enquiries or requests for information may take place at this stage, with the result that complaints remain in the triage stage whilst this information is obtained. Failure to assess risk on an ongoing basis means that where new information raises the risk profile, this may not be identified. Where a complaint is closed after receipt of new information, the failure to re-assess the risk does not provide assurance that the decision to close is fully informed.
- 6.21 Cases that are not closed at triage proceed to the investigation stage. We found in our audit that risk was not routinely re-assessed at the point of transfer for investigation, nor regularly thereafter. We reviewed 41 cases which proceeded through the investigation stage and were closed by the Case Examiners. We found:
- In one case no risk assessment was carried out

<sup>6</sup> Rule 15 and Rule 16 of the General Optical Council (Fitness to Practise) Rules Order of Council 2013.

- In five cases there was insufficient reasoning to support the risk profile
- In 19 cases the risk was not regularly reassessed or not reassessed on receipt of new information – in 12 of these cases, risk was not reassessed for periods in excess of six months
- In one case, delay in carrying out a risk assessment impacted negatively on the time taken to seek an interim order.

6.22 Unless risk is assessed on receipt of a complaint, on receipt of new information, and regularly as a case progresses, it is likely that cases which are or become higher risk – and which may require consideration of an interim order – will not be identified at all or in a timely manner, and the more serious cases will not be identified and prioritised. This may place the public or registrants at risk of harm.

### **Interim orders – timeliness**

6.23 We have reported in recent years that the time taken for the GOC to make an interim order decision from receipt of a complaint has continued to increase. Last year it increased to 17 weeks, up from 16 weeks in 2014/15. For the calendar year 2016/17 the median was 13 weeks, which appears to be an improvement. However, the median increased to 24 weeks for 2017/18. It is of concern that the median has increased; however, in the context of the small number of interim order applications made by the GOC we do not consider these figures to be significant at present, but we will continue to monitor performance. The time taken for the GOC to obtain an interim order decision once the need for an order has been identified has remained constant at 3-4 weeks.

### **Conclusion of performance against this Standard**

6.24 The fact that the risk assessment procedure is not robust and compliance with it is poor is a significant concern to us, as failure or delay to identify a high risk case and to seek an interim order has the potential to place the public and registrants at a risk of harm. We considered very carefully whether this Standard was met or not due to our audit findings; on balance we concluded it was met because we had not seen in our audit any cases where a high-risk case had not been identified. In making this decision, we had regard to the risk posed by the practice of professions regulated by the GOC. We consider that the GOC should address the weaknesses in its risk assessment process as a priority.

### **Standard 5: The fitness to practise process is transparent, fair, and proportionate and focused on public protection**

6.25 We have not identified any concerns from the publicly available information or our audit to suggest that the process being operated by the GOC is not transparent, fair, proportionate or focused on public protection. We have set out concerns about the quality assurance of Case Examiner process at Standard 3, and the risk assessment process at Standard 4. However, we do not consider these issues to be so serious as to result in this Standard not being met.

**Standard 6: Fitness to practise cases are dealt with as quickly as possible taking into account the complexity and type of case and the conduct of both sides. Delays do not result in harm or potential harm to patients and service users. Where necessary the regulator protects the public by means of interim orders**

6.26 This Standard was not met in 2014/15 or 2015/16: it is not met again this year. In all key timeliness measures in fitness to practise, the GOC's performance continues to decline as demonstrated by this table:

|  | 2014/15 | 2015/16 | 2016/17 | Quarter 1<br>2017/18 | Quarter 2<br>2017/18 |
|--|---------|---------|---------|----------------------|----------------------|
| Median time from receipt of complaint to Case Examiner decision (weeks)    | 35.5    | 44      | 39      | 47                   | 45                   |
| Median time from Case Examiner decision to final hearing (weeks)           | 51      | 38      | 66      | 62                   | 96                   |
| Median time from receipt of complaint to final hearing or decision (weeks) | 104     | 82      | 121     | 96                   | 138                  |

6.27 The GOC's aged caseload continues to increase:

|                              | 2014/15 | 2015/16 | 2016/17 | Quarter 1<br>2017/18 | Quarter 2<br>2017/18 |
|------------------------------|---------|---------|---------|----------------------|----------------------|
| No. cases over 52 weeks old  | 42      | 79      | 120     | 126                  | 131                  |
| No. cases over 104 weeks old | 18      | 32      | 41      | 44                   | 47                   |
| No. cases over 156 weeks old | 4       | 13      | 16      | 15                   | 16                   |

6.28 In our audit, we found avoidable delays in 67 of the 100 cases we reviewed, across all stages. A number of the delays we found were due to no activity being carried out to progress cases, and we also noted weaknesses in chasing up outstanding information that the GOC had requested from the parties to a complaint. We did not see evidence of a system of regular oversight of cases.

- 6.29 In last year's performance review, the GOC has told us it had taken a number of steps which it expected would improve timeliness in fitness to practise including:
- a new triage process (see Standard 1 for Fitness to Practise)
  - the introduced of a 'frontloading' process in September 2016 whereby the majority of an investigation is carried out prior to a referral to the Case Examiners
  - a new listing protocol for hearings
  - increasing the level of clinical advice available
  - reducing the number of 'legacy cases' which are a backlog of cases received prior to August 2016.
- 6.30 It is of concern that the time taken for cases to reach a final hearing is increasing, particularly given the introduction of 'frontloading' which should mean that the time between a referral to a hearing and the hearing taking place should reduce. We acknowledge that it will take time for cases which have been 'frontloaded' after September 2016 to reach final hearing stage and therefore for any timeliness gains to be reflected in the data, but we would not have expected to see the time taken increase as it has. We are also concerned that although the GOC set targets to close its 'legacy cases' and it has reported that it was on track to meet these targets, this work has not impacted on the number of aged cases which has, conversely, increased.
- 6.31 This year, the GOC told us that it had:
- increased staff resources at triage
  - worked with third parties to improve the efficiency of information-sharing
  - consulted on the implementation of consensual panel determination process
  - reviewed the provision of legal and advocacy services and commenced a pilot of in-house advocacy.
- 6.32 The GOC also told us that the changes made last year, and these were allowing it to progress cases more efficiently, but that until it had closed all the 'legacy cases' it was unlikely that timeliness measures would show improvement until the second half of 2018/19. We will continue to monitor the GOC's performance against this Standard.

**Standard 7: All parties to a fitness to practise case are kept updated on the progress of their case and supported to participate effectively in the process**

- 6.33 As noted at Standard 6 above, we identified in our audit delays in progressing cases and failures to chase information. These delays had a significant impact on the customer service provided. Parties to a complaint were not always kept up to date, and correspondence and queries were not always responded to in a timely manner. In a small number of cases closed

at triage, we found that the decision was not communicated to all relevant parties.

- 6.34 However, overall we found that communication with parties and the information provided to them was appropriate and therefore this Standard is met.

**Standard 8: All fitness to practise decisions made at the initial and final stages of the process are well reasoned, consistent, protect the public and maintain confidence in the profession**

- 6.35 We carried out a targeted review of this Standard in conjunction with our decision that a targeted review was required of Standards 1 and 3, as all three Standards relate to decision-making.
- 6.36 Whilst we had concerns about triage decision-making and recording (which we have covered under Standard 1) we did not see any cases closed which had the potential to result in a risk to public protection. We were satisfied that decisions made by Case Examiners were appropriate and well-reasoned (see Standard 3). The Authority did not appeal any final fitness to practise decisions made by the GOC during the period under review. Therefore, we conclude this Standard is met.

**Standard 9: All fitness to practise decisions, apart from matters relating to the health of a professional, are published and communicated to relevant stakeholders**

- 6.37 Fitness to practise decisions, apart from matters relating to the registrant's health, are published on the GOC website. We have seen no evidence to suggest that the GOC is failing to publish or communicate fitness to practise decisions and no such concerns were identified during our check of a sample of entries on the register where there had been a final fitness to practise decision.

**Standard 10: Information about fitness to practise cases is securely retained**

- 6.38 The GOC did not meet this Standard in 2014/15 or 2015/16. It reported two data breaches to the Information Commissioner's Office (ICO) in 2014/15 and three to the ICO in 2015/16.
- 6.39 The GOC reported one data breach to the ICO in 2016/17 and one to the ICO in 2017/18. The GOC has reported that both of these data breaches were the result of human error. We note that the ICO did not take enforcement action.
- 6.40 The GOC submitted details of its revisions to information governance policies, processes and staff training since 2017 to the ICO. This was also provided to us. The ICO acknowledged the efforts the GOC is making to update its practices. The GOC informed us that its internal auditors reported positive feedback after a spot-check of staff awareness and implementation around data protection.

- 6.41 We recognise that the GOC has put a number of measures in place designed to address the ongoing concerns with data breaches and that the most recent errors were the result of human error by suitably trained employees. We have concluded that the improvements made by the GOC are sufficient to result in it meeting this Standard this year.

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