professional standards authority

Annual review of performance 2015/16

# General Optical Council

## About the Professional Standards Authority

The Professional Standards Authority for Health and Social Care[1] promotes the health, safety and wellbeing of patients, service users and the public by raising standards of regulation and voluntary 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.[2] 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.

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1 The Professional Standards Authority for Health and Social Care was previously known as the Council for Healthcare Regulatory Excellence

2 *Right-touch regulation revised (October 2015)*. Available at www.professionalstandards.org.uk/policy-and-research/right-touch-regulation

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## About the General Optical Council

The General Optical Council (the 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 2016, the GOC was responsible for a register of 21,334 optometrists and dispensing opticians. Its annual retention fee for these registrants was £320 for the period under review.[3]

The General Optical Council has provided a commentary indicating its disagreement with part of this report. That commentary can be found at: http://www.professionalstandards.org.uk/docs/default-source/publications/performance-reviews/general-optical-council-comments-on-psa-performance-review-2016-relating-to-adjustable-focus-spectacles.pdf

[3] The fee is £330 from 1 April 2017.

# 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.[4] 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
- Acting 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 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 months. We use this to decide the type of performance review we should carry out.

[4] 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.

1.7 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.

1.8 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.

1.9 This will allow us to assess the reasons for the change(s) and the expected or actual impact of the change(s) before we finalise our performance review report. If the further information provided by the regulator raises concerns, we reserve the right to make a further recommendation to the panel that a 'targeted' or 'detailed' review is necessary.

1.10 We will recommend that a 'targeted' or 'detailed' performance review is undertaken, if we consider that there are one or more aspects of a regulator's performance that we wish to examine in more detail because the information we have (or the absence of relevant information) raises one or more concerns about the regulator's performance against one or more of the Standards:

- A 'targeted' review may be carried out when we consider that the information we have indicates a concern about the regulator's performance in relation to a small number of specific Standards, usually all falling within the same performance review area
- A 'detailed' review may be carried out when we consider that the information we have indicates a concern about the regulator's performance across several Standards, particularly where they span more than one area.

1.11 We have written a guide to our performance review process, which can be found on our website www.professionalstandards.org.uk

# 2. What we found – our decision

2.1 During October 2016, we carried out an initial review of the GOC's performance from 1 April 2015 to 30 September 2016.[5] Our review included an analysis of the following:

- Council papers, including performance reports and updates, committee reports and meeting minutes
- Policy and guidance documents
- External audit reports
- 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.[6]

2.2 Because of this assessment and following an analysis of further information that be obtained, we decided that a targeted review was required of the GOC's performance against Standard 3 for Registration and Standards 4 and 6 for Fitness to Practise. We decided that we had sufficient information at that time to conclude that the GOC had not met Standard 10 for Fitness to Practise.

2.3 We obtained further information from the GOC. As a result of a detailed consideration of this further information, we decided that the GOC had not met Standard 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

2.4 For 2015/16 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 6 and 10.

[5] This year's review covered a longer period than usual due to the change in our performance review process.

[6] 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).

2.5 This represents an improvement in the GOC's performance since last year, when it did not meet Standard 3 for Registration, and Standards 6 and 10 for Fitness to Practise.

### Key comparators

2.6 We have identified and agreed with all the regulators the numerical data that they should collate, calculate and provide to us, and what data we think provides helpful context about each regulator's performance. Below are the items of data identified as being key comparators across the Standards.

2.7 We expect to report on these comparators both in each regulator's performance review report and in our overarching reports on performance across the sector. We will compare the regulators' performance against these comparators where we consider it appropriate to do so.

2.8 We set out below the data provided by the GOC for the period under review.

| | Comparator | Annual 2015/16[7] | Q1 2016/17[8] | Q2 2016/17[9] |
|---|---|---|---|---|
| 1 | The number of registration appeals concluded, where no new information was presented, that were upheld | 0 | 0 | 0 |
| 2 | Median time (in working days) taken to process initial registration applications for | | | |
| | • UK graduates | 2 | 6 | 5 |
| | • EU (non-UK) graduates | 1 | 3 | 4 |
| | • International (non-EU) graduates | 1 | 2 | 2 |
| 3 | Time from receipt of initial complaint to the final Investigating Committee/Case Examiner decision | | | |
| | • Median | 43 weeks | 46 weeks | 45 weeks |
| | • Longest case | 133 weeks | 84 weeks | 139 weeks |
| | • Shortest case | 9 weeks | 6 weeks | 11 weeks |
| 4 | Time from receipt of initial complaint to final fitness to practise hearing | | | |

[7] The 2015/16 year refers to the period 1 April 2015 to 31 March 2016.
[8] Quarter 1 2016/17 refers to the period 1 April 2016 to 30 June 2016.
[9] Quarter 2 2016/17 refers to the period 1 July 2016 to 30 September 2016.

| | | | | |
|---|---|---|---|---|
| | • Median<br>• Longest case<br>• Shortest case | 82 weeks<br>168 weeks<br>31 weeks | 92 | 111[10] |
| 5 | Time to an interim order decision from receipt of complaint | 17 weeks | 17 weeks | 11 weeks |
| 6 | Outcomes of the Authority's appeals against final fitness to practise decisions | | | |
| | • Dismissed | 0 | 0 | 0 |
| | • Upheld and outcome substituted | 0 | 0 | 0 |
| | • Upheld and case remitted to regulator for re-hearing | 0 | 0 | 0 |
| | • Settled by consent | 0 | 0 | 0 |
| | • Withdrawn | 0 | 0 | 0 |
| 7 | Number of data breaches reported to the Information Commissioner's Office | 3 | 0 | 1 |
| 8 | Number of successful judicial review applications | 0 | 0 | 0 |

# 3. Guidance and Standards

3.1 The GOC has met all of the *Standards of Good Regulation* for Guidance and Standards during 2015/16. 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's revised *Standards of Practice for Optometrists and Dispensing Opticians* and *Standards for Optical Students* came into effect on 1 April 2016. Prior to this, students and qualified registrants were both subject to the *Code of conduct.* The GOC have stated that the separate standards for students reflect the context of study and do not place unfair or unrealistic expectations on students. The standards for students and registrants include a new duty for professionals to be candid when things go wrong.

[10] This data is requested from the regulators on an annual basis only, however the GOC provided this data to us in correspondence.

**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 The GOC's website has a section on standards and guidance, which collates guidance published by the GOC and other organisations on several topics, including on the duty of candour and the requirement for healthcare professionals to report any case of female genital mutilation.

3.4 In February 2016, the GOC published new guidance for registrants on *Raising concerns with the GOC (whistleblowing).* This provides information for registrants on raising concerns about risks to patient safety.

**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 continues to engage with stakeholders in developing and revising its guidance and standards.

3.6 It carried out a consultation between March and June 2015 on the new *Standards of Practice for Optometrists and Dispensing Opticians* and *Standards for Optical Students*. In the development of these standards, the GOC conducted a survey of registrants' opinions, and held several focus groups with patients and members of the public, students and registrants, and GOC staff. The GOC also consulted publicly on its new whistleblowing guidance.

**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 Standards and supplementary guidance are available on the GOC website. The Standards are available in Welsh, and other formats and languages are available on request. The GOC website allows users to adjust the text size and use audio facilities.

# 4. Education and Training

4.1 The GOC has met all of the *Standards of Good Regulation* for Education and Training during 2015/16. 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 The GOC introduced new *Standards for optical students* on 1 April 2016. In developing these standards, the GOC held a public consultation. It also carried out an online survey of registrants and held focus groups, including two with student registrants.

4.3 In its 2016/17 Business Plan, the GOC announced that it would conduct an Education Strategic Review, to evaluate the system of optical education, training and qualification. The GOC held a call for evidence on the Education Strategic Review between December 2016 and March 2017. We will monitor this piece of work and report on developments in our next performance review report.

**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.

4.5 The GOC undertook six accreditation and quality assurance reviews in 2016, the reports of which are available on the GOC's website. It developed a programme analysis tool to track and monitor conditions imposed on education providers and to risk rate quality assurance activities for the next 18 months.

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

4.6 There is no evidence this year to indicate that the GOC has identified any concerns about an education or training establishment. The GOC continued to monitor four training institutions who had conditions set in previous years.

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

4.7 The GOC publishes on its website details of approved courses and accredited training providers. This includes a list of all education and course providers, details of the GOC quality assurance process, details of recent visits and how to apply for accreditation of new programmes.

# 5. Registration

5.1 As we set out in section two, we conducted a targeted review of Standard 3 for Registration. The reasons for this, and what we found as a result, are set

out under the relevant Standards below. Following the targeted review, we concluded that Standard 3 was met.

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

5.2 We have not seen any information to suggest that the GOC has added to its register anyone who has not met the registration requirements, and therefore this Standard continues to be met.

### 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 The GOC has not reported any significant changes to its registration processes and we note that the number of appeals continues to be low, with the GOC reporting that four registration appeals were received in 2015/16, four in the first quarter of 2016/17 and two in the second quarter of 2016/17. Although this shows an increase on the number of appeals received in the previous year (two), the number remains low and fluctuation in such small numbers does not necessarily indicate a trend. We will however continue to monitor the numbers of appeals received by the GOC.

5.4 The median time (in working days) to process initial registration applications for the period under review is shown in the table below. The median times across all three registrant groups increased in the first two quarters of 2016/17. The GOC has stated that it had changed its reporting methods, which impacted on this data. We note that the data may fluctuate on a quarterly basis in any case.

| | 2015/16 | Q1 2016/17 | Q2 2016/17 |
|---|---|---|---|
| UK graduates | 2 | 6 | 5 |
| EU (non-UK graduates | 1 | 3 | 4 |
| International (non-EU) graduates | 1 | 2 | 2 |

5.5 We will continue to monitor the GOC's registration processes and timeliness, however at this stage this information does not raise concerns about the GOC's performance against this Standard.

### 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

5.6 This Standard was not met last year due to errors we found when conducting an accuracy check of the GOC's register. The errors identified related to six

entries on the GOC's register in which the fitness to practise sanction was incorrect or misleading.

5.7 We carried out a check of the GOC's register this year and identified one error in 51 entries checked. This error occurred when a student registrant who had been subject to a fitness to practise investigation was not placed on the register of dispensing opticians when they successfully applied for full registration.

5.8 In this performance review period, the GOC has updated its initial registration processes, undertaking additional checks before publishing new registrants' details on the register. In addition, several quality assurance mechanisms have been introduced to ensure the accuracy of information on the register. This includes a requirement that the Hearings team check the online public register the day after an order comes into effect or ends, and that the Registration team check the register the day after it has actioned an erasure or removal.

In addition, once a month, the Registration and Fitness to Practise teams check:

- All orders that are recorded on the database that impact the public register; interim orders, conditions and suspensions
- A random sample of at least 20 open fitness to practise investigations, to establish whether they have the appropriate status recorded against them on the database
- If more than 30 *fitness to practise outstanding* statuses[11] are in place, a random sample of at least 20 to see that fitness to practise matters are still ongoing.

5.9 The GOC has provided a copy of the 18 registration errors identified through various means since January 2016 (provided January 2017). Of the eight errors identified since September 2016, when the GOC introduced additional quality assurance checks, six were identified through these checks.

5.10 These changes seem to have resulted in improvements in the accuracy of the register, with our register check this year finding significantly fewer errors than in the last performance review period. We have also seen the GOC's own internal audits and note that these are now identifying and rectifying inaccuracies at an early stage. Although small numbers of errors are still occurring, we do not consider there to be any evidence that these are the result of systemic issues. Further, of the errors identified, we found that these did not raise significant public protection concerns.

5.11 The changes made by the GOC to its registration processes, and the resulting improvement to the accuracy of their register, lead us to conclude that this Standard is met this year.

[11] The 'fitness to practise outstanding' status indicates that a registrant has not met registration requirements (for example, by not paying their annual retention fee) but has been maintained on the register while a fitness to practise investigation is ongoing.

**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**

5.12 The registration search function is clearly visible on the GOC's website. Guidance is available on using the search function and on what information contained in the register means.

**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**

5.13 We identified that the GOC was receiving increased numbers of illegal practice cases in this performance review period. In 2014/15, the GOC stated that they opened 30 new cases relating to illegal practice.[12] For the period 1 January 2016 to 30 September 2016, the GOC had opened 62 cases. We understand that the GOC has changed its counting methodology, counting the total number of complaints received rather than cases (which may involve more than one complainant) which provides an explanation for this increase.

5.14 We were also aware that a high proportion of these illegal practice cases had been in progress for more than 52 weeks. The GOC's target is to complete 60 per cent of illegal practice cases within 52 weeks. On 30 September 2016, the GOC had a total of 244 open cases of which 234 had been received prior to 1 January 2016.

5.15 The GOC provided further information about its illegal practice caseload. They said that most open cases were older complaints regarding zero-powered contact lenses[13], and that the remaining cases were in relation to the misrepresentation of registration status and the supply of optical appliances. The GOC stated that none of the open cases were clinical complaints. It also told us that all the illegal practice cases had been risk-assessed in line with its procedures.

5.16 The information provided by the GOC indicates that there are processes in place to risk assess all illegal practice concerns on receipt, and that most cases received are considered low-risk. Therefore, we are assured that the number and age of open cases does not represent a public protection risk.

### Adjustable focus spectacles

5.17 In 2014, a commercial manufacturer approached Government to request a change in the Opticians Act 1989, to permit the sale of adjustable focus spectacles without a prescription.[14] The Department of Health (DH) and the Cabinet Office approached the GOC for its views. The GOC responded,

[12] Illegal practice in the optical sector can refer to such actions as online contact lens sales that do not comply with UK law, the unlawful supply of cosmetic contact lenses and the misuse of protected titles - protected titles are legally reserved for GOC registrants. They are: (registered) optometrist; (registered) dispensing optician; (registered) ophthalmic optician; and (registered) optician(s).
[13] Zero powered contact lenses are non-corrective contact lenses, and may be used for cosmetic purposes such as to change the colour of the eye.
[14] Adjustable focus spectacles allow users to adjust the focus of each lens themselves.

appearing to oppose any change to the law because, amongst other things, the ready availability of such spectacles might mean that fewer people visited opticians for eye tests.

5.18 Subsequently, and following representations from the manufacturer, the GOC commissioned an independent report to advise on the impact such a change would have on public protection. On receiving the report, it obtained the views of its Standards Committee[15] on the subject. Both the report and the Committee's note of its discussion raised some concerns about the impact of such a change. It is notable that the Committee's note was negative and its first point was about the effect on the number of people taking eye tests.

5.19 The GOC's approach was criticised by the manufacturer, suggesting that it prioritised the interest of opticians over the public interest. It complained to us. We recognise the manufacturer's own commercial interests and that the issue had been raised in the House of Lords in early 2016.

5.20 It is clear from the correspondence we have seen that the GOC as an organisation has no view about whether the law should be changed. It has said that there needs to be full public consultation on the issue and has raised concerns which ought to be considered in that consultation without necessarily endorsing them. We accept that the GOC's position is a reasonable one for a regulator to take. However, we have concerns about the way in which the GOC approached this issue.

5.21 First, we think it was inappropriate for the GOC to provide advice or take the lead on providing advice to the DH on product safety. The GOC is a regulator of people, not of products, and we think that it may have been acting outside its statutory remit in doing so. Our view is that the DH ought not to have asked it and the GOC ought not to have agreed to take steps to provide advice on the subject. It is also not clear how the advice given by the Standards Committee falls within that Committee's remit as set out on the GOC's website.

5.22 We accept that the GOC was acting in good faith. However, by straying outside its statutory remit, looking at the clinical aspects of products and by expressing views which were not about regulatory concerns in respect of a highly commercial matter, we can understand why there might be a perception that the GOC was prioritising the commercial interests of registrants.

5.23 This perception could have been intensified by the lack of transparency and clarity about the GOC's actual position. The GOC's letter to the DH in October 2015 could have been written in more neutral terms. Moreover, it was clear that its views were not appreciated by some members of the House of Lords in January 2016 and do not appear to have been made public until the GOC provided some statements for press articles which appeared after that date. Its stance, as stated in correspondence of January 2016, was not published on its website until March 2017 and an individual

[15] According to the GOC's website, the Standards Committee's role in to advise and give "assistance to the Council on the standards of conduct and performance expected of current and potential registrants".

looking at the Standards Committee's report might reasonably have thought it represented the GOC's views.

**Standard 6: Through the regulator's continuing professional development / revalidation systems, registrants maintain the standards required to stay fit to practise**

5.24 The GOC operates a Continuing Education and Training (CET) scheme, requiring registrants to earn a set number of points (through completion of learning activities) in each three-year cycle to stay on the register.

5.25 Following the introduction of the new Standards of Practice, registrants are required to complete at least one piece of CET in relation to the new Standards in the current three-year period.

5.26 The GOC has continued to develop the CET scheme this year, including by highlighting and developing the functionality of the Personal Development Plan (PDP) within the CET online system. It is also now a requirement that all registrants submit a reflective statement when they complete peer review CET activity.

5.27 The GOC has communicated these changes and updates to registrants and stakeholders.

# 6. Fitness to Practise

6.1 As we set out in section two, we identified concerns about the GOC's performance against Standards 4, 6 and 10 for fitness to practise, and carried out a targeted review of Standards 4 and 6. The reasons for this, and what we found as a result, are set out under the relevant Standards below. We concluded that Standard 10 was not met prior to conducting a targeted review, and following the review, we concluded that Standard 4 was met but Standard 6 was not met.

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

6.2 Information for potential complainants is available on the GOC website. This includes guidance as to the type of concerns that can be investigated by the GOC and the fitness to practise process. The GOC website is accessible and information on raising concerns is available in alternative formats on request (including in the Welsh language).

6.3 In February 2016, the GOC updated its guidance for registrants on raising concerns as whistleblowers.

**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**

6.4 This Standard was met last year and we have no evidence that any significant changes have been made that would affect the GOC meeting this

Standard. The GOC continues to share information about fitness to practise cases with employers and other regulators where necessary.

**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**

6.5 The GOC introduced case examiners in April 2014, replacing the Investigating Committee as the preliminary decision-makers for fitness to practise cases.

6.6 The GOC instructed an independent party to conduct an audit of cases closed at both the preliminary and final stages of fitness to practise. The audit examined 73 cases closed between 1 April 2015 and 31 March 2016. The GOC provided us with a copy of the audit report.

6.7 The audit found that, overall, case examiner decision making was appropriate and in accordance with the GOC's internal guidance. The auditors identified concerns in a small number of cases, but we considered that these were not so significant or widespread to result in the GOC not meeting this Standard.

### Application of the realistic prospect test

6.8 The auditors found that the case examiners applied the realistic prospect test[16] appropriately in the majority of cases. However, in a small number of cases the language used in the decision did not clearly demonstrate that the realistic prospect test had been correctly applied.

6.9 Case examiners are required to consider whether there is a realistic prospect of establishing one of the statutory grounds of impairment and whether there is a realistic prospect of establishing current impairment. In several cases the case examiners concluded that there was no realistic prospect of establishing current impairment of the registrant's fitness to practise without examining whether there was a realistic prospect of proving misconduct.

6.10 In two cases, the case examiner decision could give the impression that a finding of fact had been made, which is not part of the correct test to be applied.

6.11 Although the auditors considered that the wording in these decisions did not clearly demonstrate that the realistic prospect test had been correctly applied, they did not consider that there was any significant impact on the safety of the decision.

[16] The realistic prospect test has two strands. First, is there a realistic prospect of being able to prove the facts alleged against the registrant, if the allegation is referred to a final fitness to practise committee? Secondly, if the alleged facts were proved, are they so significant as to indicate that the registrant's fitness to practise is or may be impaired to a degree that justifies action being taken against their registration?

### Referral of some allegations and closure of others

6.12 The audit report raised concerns about the approach taken in a small number of cases where some factual allegations were closed by the case examiners, whilst others arising out of the same circumstances were referred to a fitness to practise hearing.

6.13 The auditors found that this approach potentially impacted on the fitness to practise committee's consideration of the case, given the relevance of the closed allegations to the referred allegations.

### Closure with advice

6.14 The audit report noted variations in terminology, meaning that the status of advice given was not always clear. The GOC's internal guidance advises case examiners that if a case is closed with no further action, they may 'direct that a letter of advice be sent to a registrant'. The guidance acknowledges that "such a letter has no formal status; it is simply advice." We consider that where the GOC issues such advice, they should be clear with registrants and employers of the status of the advice, which does not carry the status of an adverse fitness to practise outcome. There is a risk that a decision to give advice may be viewed as implying formal criticism of the registrant. The GOC has since amended its decision letters, to make clear that advice is not an adverse outcome.

### Rule 15 decisions[17]

6.15 Rule 15 allows case examiners to review a decision not to refer an allegation to a final fitness to practise hearing. Applications for a review of a decision must be made within five years from the date of the decision, unless in exceptional circumstances. Case examiners reviewing a decision may uphold the original decision, issue a warning, or refer the case to a final fitness to practise hearing.

6.16 The auditors noted concerns about the approach taken by the case examiners in one case, where they assessed whether information received was considered to be 'new' information. These concerns did not raise any broader issues.

### Conclusion on performance against this Standard

6.17 While a small number of concerns were identified by the GOC's external auditors, and the report makes several recommendations, the report did not find any cases in which an inappropriate decision was made by the case examiners, and no public protection concerns were identified. The audit report therefore provides assurance to us that not only is the case examiner process working as it should be, but also that the GOC is monitoring the process and reviewing potential improvements.

[17] Rule 15 of The General Optical Council (Fitness to Practise) Rules 2005.

### 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 This Standard was met last year, although we noted concerns about the median time taken from receipt of a complaint to an interim order decision (16 weeks). This year we noted that the median for 2015/16 had risen to 17 weeks and conducted a targeted review. Following a review of the information obtained, we concluded that the Standard continues to be met this year.

6.19 A new triage system was piloted by the GOC between June and December 2016. As part of this, the GOC set new targets to make triage decisions in four calendar days if no further information is required, and within 17 calendar days if further information is required. The GOC reported that under its old process, the average time taken to make a triage decision was 42 calendar days, which reduced to 19 calendar days with the new process. The GOC acknowledged that this is still outside its own target, but maintains that this nonetheless represents a significant improvement. As of April 2017, the GOC had reviewed this pilot and implemented it in full. The GOC set a target to make triage decisions in an average of 22 calendar days from receipt, and where no additional information is required, within 7 days from receipt.

6.20 The GOC provided details of its risk assessment process, stating that risk is assessed at triage stage and at regular intervals thereafter, including on receipt of new information. Risk level is recorded and cases considered high risk are reviewed every two weeks. The GOC provided training to staff on assessing clinical risk in June 2016 and on identifying risk and risk assessment in August 2016.

6.21 In September 2016, the GOC appointed an optometrist as a clinical advisor to provide clinical input at triage stage, including advising on risk. The clinical advisor also reviews records and provides advice at the later stages. It is hoped by the GOC that this will identify cases requiring referral for an interim order at an early stage.

6.22 The GOC has stated that although it prioritises cases which may require an interim order, information that an interim order is required is not always apparent on receipt of a complaint. The GOC stated that the median time from receipt of information indicating the need for an interim order to an interim order decision is a more useful indication of their performance, which for the period under review was three weeks.

6.23 We note that there is some indication that the work undertaken by the GOC is starting to have a positive impact on the median time from receipt of a complaint to an interim order decision being made. The median for 2015/16 and the first quarter of 2016/17 was 17 weeks, which dropped to 11 weeks in the second quarter of 2016/17 and was 13 weeks in the third quarter of 2016/17. Although the third quarter of 2016/17 is outside of our period of review, it suggests that the lower median we saw in the second quarter of 2016/17 may indicate a longer-term change. We hope to see the GOC sustaining these reduced timescales in the next period of review.

6.24 We consider that the GOC has taken steps to improve its risk assessment process, and expedite cases which are considered high risk. We note the early indication of improvement in the data the GOC provide to us, and taking this into account, we have concluded that this Standard is met this year.

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

6.25 This Standard was met last year and we have not identified any concerns from the information available during the period under review.

6.26 Following a public consultation, updated hearings and indicative sanctions guidance was introduced for fitness to practise panels. The revised indicative sanctions guidance includes specific guidance for panels in respect of the allegations around the duty of candour, raising concerns and obtaining patient consent.

### 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

6.27 This Standard was not met last year, due to the length of time taken to progress cases through the fitness to practise process. This year, we concluded that the GOC has again failed to meet this Standard.

6.28 The data below demonstrates the GOC's performance on a number of measures relevant to this Standard.

| | 2014/15 | 2015/16 | Q1 2016/17 | Q2 2016/17 |
|---|---|---|---|---|
| Median weeks from receipt to IC/CE decision | 35.5 | 43 | 46 | 45 |
| Median weeks from IC to hearing | 51 | 38 | N/A | N/A[18] |
| Median weeks from receipt to hearing | 104 | 82 | 92 | 111[19] |
| Cases >52 weeks old | 42 | 79 | 90 | 105 |
| Cases >104 weeks old | 18 | 32 | 40 | 48 |
| Cases >156 weeks old | 4 | 13 | 16 | 21 |

6.29 Although data may fluctuate, we were concerned to note the time taken from receipt of a case to a case examiner decision had steadily increased, and that although the median time taken from receipt of a case to a final fitness to practise hearing decreased from 2014/15 to 2015/16, it increased in the first two quarters of 2016/17.

[18] This data is requested on an annual, rather than quarterly, basis.
[19] This data is not requested on a quarterly basis, but was provided by the GOC in the process of the performance review.

6.30 We were also concerned to note that the number of cases older than 52, 104 and 156 weeks steadily increased from 2014/15, with the figures from the second quarter of 2016/17 demonstrating that the number of older cases has more than doubled over the period under review.

### Work undertaken to improve timeliness in Fitness to Practise

6.31 The GOC introduced a new triage system during the period under review and, as noted above in paragraph 6.19, this resulted in a reduction in the time taken to make initial triage decisions.

6.32 In addition, the GOC has embarked on a project to conduct all investigative work of cases identified as having the potential to progress to a final fitness to practise hearing prior to consideration by the case examiners. The GOC expect this to reduce the time taken to progress cases from case examiner decision to final fitness to practise hearing, as investigations will be at a more advanced stage on referral from the case examiners.

6.33 The GOC told us that it implemented a new listing protocol in August 2016, which is intended to allow the Hearings Manager to bring forward the point at which case listing can take place. In addition, the GOC have trained additional staff to assist in the running of hearings, to increase the number of hearings that can take place.

6.34 Further, the GOC is undertaking work to refresh its pool of expert clinical witnesses, as it had identified that, in some cases, experts' availability had caused delays in obtaining reports and listing hearings.

6.35 The GOC has stated that it is working on reducing the 'legacy' caseload of fitness to practise cases, setting targets for when these cases should have progressed to case examiner and final fitness to practise hearings. Such cases are periodically reviewed to identify whether any are suitable for reconsideration and closure by the case examiners (through Rule 16).

### Conclusion on performance against this Standard

6.36 The GOC has introduced several measures which it expects will result in improved timeliness in fitness to practise. However, these changes have not yet resulted in improved timeliness, as the data provided by the GOC demonstrates an overall worsening of performance over the period under review. We hope to see an improvement in timeliness in the next period, when the GOC have had additional time to embed changes to the fitness to practise process.

## 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

6.37 This Standard has been met in previous years and we have not identified any concerns in the GOC's performance in the period reviewed.

6.38 The GOC publishes guidance on its website for registrants, complainants and witnesses about the fitness to practise process.

## 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

6.39 The Authority sees all final fitness to practise decisions and can refer to court cases which we consider to be insufficient to protect the public. In the period under review we did not refer any cases relating to the GOC.

6.40 It has already been noted that the GOC introduced Case Examiners in April 2014 and has issued revised hearings and indicative sanctions guidance for fitness to practise panels.

6.41 As detailed under Standard 3 above, the GOC obtained an external audit to review 73 fitness to practise cases. The audit included seven determinations from final fitness to practise hearings.

### Audit findings

6.42 The audit report raised concerns in three cases considered by a final fitness to practise panel.

6.43 In the first case, the auditors raised concerns about the wording of the conditions placed on the registrant, and the proportionality of those conditions.

6.44 The second case identified by the auditors was also considered through our Section 29 process, during which we identified concerns about the clarity of the determination. In particular, the panel decision did not make its decision on each charge clear, nor did it specifically address each element of the misconduct found.

6.45 A third case was also considered through our Section 29 process. We were concerned that the fitness to practise panel took account of irrelevant matters, as well as about the panel's reasoning around misconduct, and the conclusion the panel came to.

### Conclusion on performance against this Standard

6.46 Although we noted the small number of concerns identified in the audit report, we found that these did not suggest widespread problems with the GOC's fitness to practise decision making. We considered that there were no cases identified in which an inappropriate decision was made by either the case examiners or a final fitness to practise panel, and no public protection concerns were identified. We therefore concluded that 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

6.47 Fitness to practise decisions, apart from matters relating to the registrant's health, are published on the GOC website. We have received no information 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

6.48 The GOC did not meet this Standard last year, when it reported two data breaches to the Information Commissioner's Office (ICO) in the 12 months reviewed. The GOC have not met this Standard again this year. In the period under review, covering 18 months, the GOC reported four data breaches to the ICO.[20]

6.49 The GOC has provided details of the four breaches which occurred during this performance review period. In one breach, five cases had been identified in which patient records had been sent to the wrong practice/provider on completion of an investigation. The ICO took no further action in this instance, as they found that the GOC was developing a new process and guidance for staff to prevent a similar situation reoccurring.

6.50 In the second case, the GOC provided a mixture of home and practice addresses of approximately 17,000 registrants when responding to a data sales request.[21] The ICO took no further action in this case on the basis that no sensitive information was disclosed and that risk of potential detriment was low. We note that this information was already in the public domain, through the online public register. The GOC now release this data under the Freedom of Information Act, without charge. [22]

6.51 In the third instance, sensitive information about a registrant's fitness to practise was sent to another registrant. The ICO noted that there had been similar breaches of this type in 2014 and 2015, and although the GOC had provided training to staff, this appeared to be the result of individual human error. The ICO recommend that the GOC complete an improvement plan and undertake several actions to improve information security. The ICO confirmed with the GOC that the action plan submitted addressed the concerns raised by this incident.

6.52 In the fourth case, sensitive information relating to two different registrants was sent to the wrong individual, with Registrant A receiving documents for Registrant B and Registrant B receiving documents for Registrant A. The ICO considered that this was the result of human error, and decided that formal enforcement action was not required.

6.53 The GOC provided information to us about the changes it has made to improve information governance. The GOC stated that training on information governance was delivered to all permanent employees who started prior to September 2016 and 98 per cent of staff have completed online training. In August 2016, the GOC conducted a staff survey, and 94 per cent of

[20] Although there is no legal obligation to report data breaches to the ICO, the ICO suggest that serious breaches are reported. The ICO provides guidance on the type of breaches that should be reported.
[21] Organisations and businesses can sell data they hold on members, customers and so on to other organisations and businesses.
[22] The Freedom of Information Act 2000 provides public access to information held by public bodies.

respondents reported that they were confident or very confident about following information governance standards and process. We note that the ICO has expressed support for the GOC's improvement plan, and has recognised the positive steps taken by the GOC.

6.54 We consider that although the GOC has undertaken steps to improve information security, in the context of previous performance, the number of serious data breaches that have occurred indicate that insufficient improvements have been achieved in the period under review.

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