

GOC response to the PSA's comments on Adjustable Focus Spectacles in its *Annual Review of Performance 2015/16*

1. We wish to respond to the comments made by the Professional Standards Authority about the issue of adjustable focus spectacles in paragraphs 5.17 to 5.23 of its *Annual Review of Performance 2015/16*.
2. We note the Authority accepts that we took a neutral position on whether or not the law should be changed to allow the supply of adjustable focus spectacles namely that we advised the Department of Health that it should undertake a public consultation before making any change to the law. We are also pleased that the Authority agrees that this position is a "reasonable one for a regulator to take".
3. We are disappointed, however, by some of the Authority's other comments, which present an incomplete picture of our role. We believe it would be helpful, therefore, to explain our remit and how the advice we provided fits within it. We have also highlighted the aspects of the report where our view differs from that of the Authority.
4. Annex 1 sets out the relevant functions and powers of the GOC under the Opticians Act 1989 ('the Act'). This makes clear that in dealing with illegal practice in the optical sector we have a role in the relation to the sale and supply of spectacles by unregistered individuals – our role is not limited to protection of title issues or the online supply of contact lenses. Given our functions and powers, and our overarching objective to protect the public, it is clear that we have the power to give advice, or express views, to Government on proposed amendments to the Act that would permit the sale of adjustable focus spectacles by an unregistered individual without prescription, including any implications of such changes for patient safety and public health.
5. In responding to the Department's request for advice on this issue, we made clear that changing the law was a matter for Government and our advice was to consult widely, including with the optical sector and patient and public representatives, before considering any legislative change. We also recommended that any amendment should take place as part of a wider review of the legislation in order to minimise the risk of unintended consequences. It is our view, therefore, that we clearly acted within our statutory remit in providing advice to the Department and we do not agree with the Authority's view to the contrary.
6. We accept that we should have acted more quickly to update our website in order to make our position clear and we are committed to continuously improving the transparency of our activities. However, we do not believe that the report reflects the full range of actions that we took to ensure stakeholders understood our position, namely that a change in the law was a matter for Government and that we had advised the Department to carry out a public consultation before considering any change in the law:
 - We wrote to the chief executives of all the optical representative bodies in October 2015 to inform them of our position.
 - The Minister responsible for this area clearly understood our position when he spoke in the House of Lords debate on 8 February 2016.
 - We subsequently wrote to members of the House of Lords who participated in the debate to ensure that they understood our position.
 - We issued public statements in February and August 2016 that were covered in the optical sector's two main publications.

7. Furthermore, we would have been able to act more quickly to address any confusion about our position if the Authority had informed us sooner about the complaint it received on 24 February 2016. We were not informed about the existence of this complaint – nor how the Authority had responded – until 24 March 2017.

Annex 1 – The Functions and Powers of the GOC under the Act

PART I

- s1(2) *“The Council shall have the general function of promoting high standards of professional education, conduct and performance among registrants, and the additional functions assigned to the Council by or under this Act”.*
- s1(2A) *“The over-arching objective of the Council in exercising their functions is the protection of the public.*
- s1(2B) *“The pursuit by the Council of their over-riding objective involves the pursuit of the following objectives-*
- (a) to protect, promote and maintain the health, safety and well-being of the public;*
 - (b) to promote and maintain public confidence in the professions regulated under this Act; ...”*

PART IV

RESTRICTIONS ON TESTING OF SIGHT, FITTING OF CONTACT LENSES, SALE AND SUPPLY OF OPTICAL APPLIANCES AND USE OF TITLES AND DESCRIPTIONS

s27(1) contains restrictions on the sale of optical appliances, unless the sale is effected by or under the supervision of a registered medical practitioner, a registered optometrist or a registered dispensing optician.

s27(9) and (10) make it a criminal offence for a person to contravene s.27(1).

SCHEDULE 1 TO THE ACT

Paragraph 11(1) *“Subject to the following provisions of this Schedule, the Council shall have the power to do anything which in their opinion is calculated to facilitate the proper discharge of their functions.”*

Paragraph 11A *“In exercising their functions, the Council shall:-*

- (a) have proper regard for:-*
 - (i) the interests of persons using or needing the services of persons using or needing the services of registered optometrists, registered dispensing opticians or business registrants in the United Kingdom*
 - ...*
 - (b) co-operate, insofar as is appropriate and reasonably practicable, with public bodies or other persons concerned with:*
 - ...*
 - (iv) the regulation of health services, and*
 - (v) the provision, supervision or management of health services.”*