

GOC response to our consultation on service of statutory notices by email policy

December 2021

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Executive summary

Introduction

1. The General Optical Council (GOC) is one of 13 organisations in the UK known as health and social care regulators. These organisations oversee the health and social care professions by regulating individual professionals. We are the regulator for the optical professions in the UK. We currently register around 30,000 optometrists, dispensing opticians, student opticians and optical businesses.
2. There are circumstances in which our legislation requires us to issue statutory notices or notifications ('notices') to our registrants (for example, removal of a registrant from the register, refusal to retain or restore a registrant on/to the register, or notice of an interim order hearing) or applicants seeking initial registration or to restore to the register. We are committed to doing this in a way that is fair to registrants/individuals and in line with the requirements of our legislation.
3. Email is becoming more widespread and convenient, and we have considered whether in some circumstances it would be appropriate to use email instead of post. As per our legislation, we will only consider serving notices by email where the individual/registrant has consented in writing and provided an email address for this purpose.
4. We recognised that there may be additional risks in sending notices by email and so we drafted a policy setting out the safeguards that we will apply to ensure fairness to our registrants and applicants seeking initial registration or restoration.
5. We undertook a full [public consultation](#) on our proposed policy, which was open for 12 weeks from 30 June to 22 September 2021. We received ten written consultation responses from a range of stakeholders including optical representative organisations.

Findings

6. Key findings from the consultation were:
 - 75% agreed or strongly agreed with the content of the policy;
 - 62.5% felt that there was something unclear or missing in the policy;
 - 62.5% did not think there were any aspects of the policy that could discriminate against stakeholders with specific characteristics;
 - 25% thought there were aspects of the policy that could have positive impacts on stakeholders with specific characteristics; and

- 37.5% told us that there were other impacts of the policy that they would like to tell us about.
7. We also received many free-text responses with suggestions for improving the policy that are outlined in the 'findings' section below.

Conclusions

8. Overall, there was support for the policy from our stakeholders, with suggestions for additions and amendments, particularly from the professional/representative and defence bodies.
9. We propose to make the following amendments to the policy based on feedback received during the consultation (see the 'amendments to the policy' part of the 'conclusions' section for more information):
- we will clarify that the policy ensures that we will comply with section 23A(3) of the Opticians Act 1989 when implementing The General Optical Council (Committee Constitution, Registration and Fitness to Practise) (Coronavirus) (Amendment) Rules 2020;
 - we will clarify when we will implement the policy on the MyGOC database;
 - we will update the consent clause to make it clear:
 - which email address registrants are consenting to and what to do if they wish to change their email address; and
 - that if they do not consent, they will continue to receive other communications except statutory notices by email;
 - we will clarify that the policy does not apply to our communications with other participants in the fitness to practise process (for example, complainants or witnesses) as this is outside its scope;
 - we will give examples of routine fitness to practise correspondence and what reasonable attempts the Fitness to Practise team will make in checking that a notice has been received;
 - we will make it clear that if we are not satisfied that notice of a hearing sent by email has been received by the individual/registrant, we will send the notice by first class post and, subject to our overriding duty of public protection, we will ensure there is sufficient time for the individual/registrant to prepare in line with statutory timescales;
 - we will clarify the attempts we will make to contact someone after sending a notice of failure to apply for renewal to anyone who has not renewed their registration in advance of the renewal deadline;

- we will make it clear that we will also serve notice by post if we are not satisfied that a registrant is aware of their removal from the register; and
 - we will amend the paragraph on reasonable adjustments to make it clear that where we receive information that a registrant who has previously consented to receive notices by email may find it difficult to process them in this way (for example, because of a health condition), we will endeavour to meet the needs of the registrant and will consider all reasonable adjustments on a case by case basis.
10. We also considered stakeholder feedback in the following areas which we decided not to implement:
- the suggestion for extra time for registrants who need to be followed up because they have not received the email notice they consented to – although we consider our safeguards are already sufficient, and it is open to a registrant or their defence to request extra time where they consider it appropriate, we will try to ensure that, subject to our overriding public protection duty, all our notices allow the individual/registrator sufficient time to prepare in line with statutory timescales, even if we have to follow up an emailed notice by post;
 - the assumption that someone who does not consent to notices by email will not want to receive routine fitness to practise correspondence by email – we do not think it appropriate to make such an assumption and it is open to a registrant to let us know if they would prefer not to communicate by email;
 - the suggestion to use read receipts to confirm delivery of an email – we do not consider these to be reliable and we cannot configure our system to record these;
 - the suggestion to send an initial warning by email prior to serving a notice by email – we are confident our safeguards are already sufficient and were concerned this would be unfair to a registrant and cause unnecessary delay; and
 - the suggestion for the policy to cover how we communicate with other parties in the fitness to practise process – this is outside the scope of the policy.

Introduction

11. The General Optical Council (GOC) is one of 13 organisations in the UK known as health and social care regulators. These organisations oversee the health and social care professions by regulating individual professionals. We are the regulator for the optical professions in the UK. We currently register around 30,000 optometrists, dispensing opticians, student opticians and optical businesses.
12. We have four primary functions:
 - setting standards for optical education and training, performance and conduct;
 - approving qualifications leading to registration;
 - maintaining a register of those who are qualified and fit to practise, train or carry on business as optometrists and dispensing opticians; and
 - investigating and acting where registrants' fitness to practise, train or carry on business is impaired.

Background to policy

13. There are circumstances in which our legislation requires us to issue statutory notices or notifications ('notices') to our registrants (for example, removal of a registrant from the register, refusal to retain or restore a registrant on/to the register, or notice of an interim order hearing) or applicants seeking initial registration or to restore to the register. We are committed to doing this in a way that is fair to registrants/individuals and in line with the requirements of our legislation.
14. Section 23A of the Opticians Act 1989 ('the Act') allows for the creation of rules in respect of the service of notices by email. Section 23A(3) requires that these rules shall secure that a notice cannot be served by email "unless the person consents in writing to the receipt of notices from the Council by electronic communication and the communication is sent to the...address specified by that person when giving consent".
15. Rules that relate to the service of notices under this section include [The General Optical Council \(Fitness to Practise\) Rules 2013](#) ('the Fitness to Practise Rules') and [The General Optical Council \(Registration\) Rules 2005](#) ('the Registration Rules').
16. The above rules were amended by The General Optical Council (Committee Constitution, Registration and Fitness to Practise) (Coronavirus) (Amendment) Rules 2020, with a new rule (2A) stating that "any notice, notification or other document which is required by these Rules to be served on another person

may be served by email if that person has provided an email address for communications”.

17. Email is becoming more widespread and convenient, and we have considered whether in some circumstances it would be appropriate to use email instead of post. As per our legislation, we will only consider serving notices by email where the individual/registrant has consented in writing and provided an email address for this purpose.
18. We recognised that there may be additional risks in sending notices by email and so we drafted a policy setting out the safeguards that we will apply to ensure fairness to our registrants and applicants seeking initial registration or restoration.

Consultation process

19. We undertook a full [public consultation](#) on our proposed policy, which was open for 12 weeks from 30 June to 22 September 2021.
20. We sought stakeholders’ views on the proposed new policy ahead of implementation of the policy in our next renewal period.
21. We received ten written consultation responses from a range of stakeholders. These were made up of:
 - one optometrist;
 - one Fitness to Practise Committee Chair;
 - three professional/representative bodies;
 - two defence law firms;
 - two healthcare regulators; and
 - one government arms-length body.
22. The organisations who were willing to be named were:
 - The Association of Optometrists (AOP)
 - BLM (law firm)
 - The College of Optometrists
 - FODO – The Association for Eye Care Providers
 - Nursing and Midwifery Council (NMC)
 - Professional Standards Authority
23. We are grateful for all the feedback we received and have taken this into account in deciding how to amend the policy for publication.

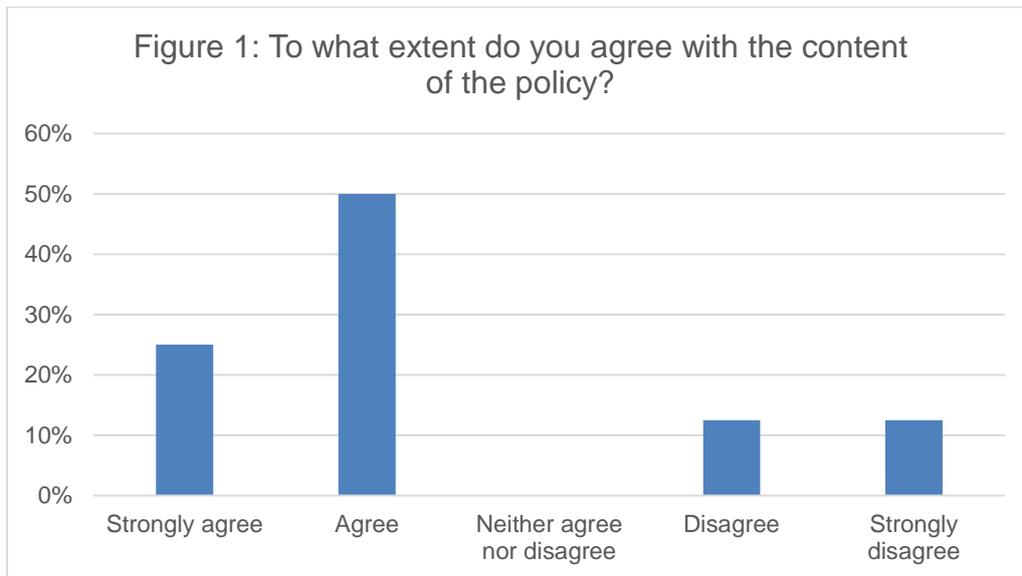
Approach to producing this response

24. Respondents were encouraged to provide comments where they did not support our proposed approach. We did not actively seek comments where respondents indicated support for our approach but some respondents gave these anyway. We reviewed every comment received. We are unable to include individual responses to all of these comments within this report. Any comments that have been included are produced verbatim.

Findings

Content of the policy

26. We asked respondents to what extent they agreed with the content of the policy. Of the eight respondents, the majority (75%) agreed or strongly agreed with the content of the policy. The AOP responded that they disagreed, although they commented that they thought the overall content of the policy was reasonable.



27. The AOP felt that the policy should be amended to:

- make it clearer that section 23A(3) of the Act was taken into account, with regard to only serving notices to the specific email address provided by the registrant for that purpose; and
- address whether a registrant receiving a notice by means other than email (who had previously consented to receiving notices by email) will have the time needed to prepare.

28. A sample of comments is available in the box below.

“Something more serious and specific should be communicated by email and letter. There are thousands of emails.” Optometrist

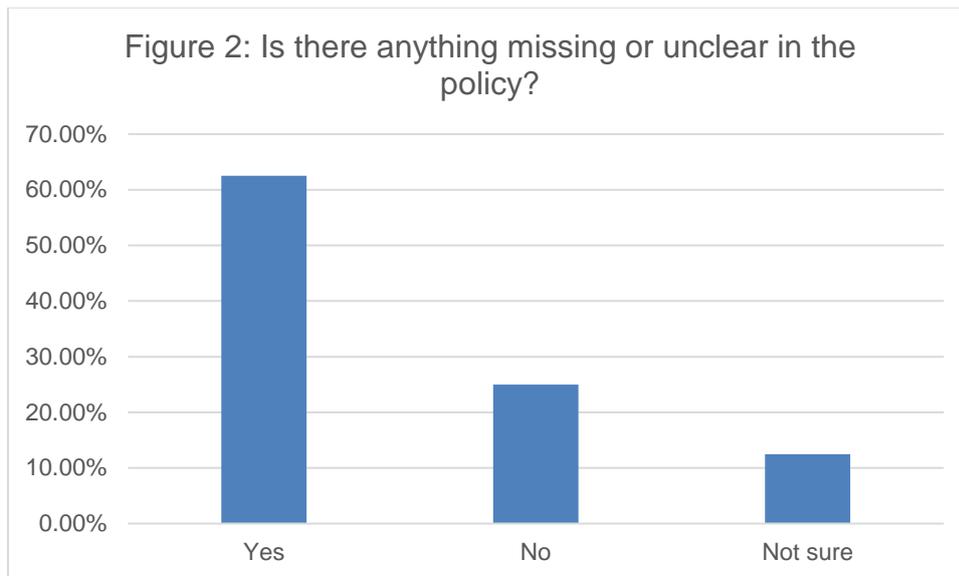
“...the draft policy should be amended to make it clear that the GOC will only use an email address for the service of statutory notices where a registrant has explicitly consented to the use of that specific address for the purpose...” AOP

“We are also concerned that although the draft policy sets out safeguards to check the receipt of notices sent by email, it is not clear whether those safeguards will give a registrant who has not received an email notice adequate time to prepare to

deal with the consequences of a notice subsequently received by other means.”
AOP

Clarity of the policy

29. We asked respondents whether there was anything unclear or missing in the policy. Of the eight who responded to the question, almost two thirds (62.5%) felt that there was something unclear or missing in the policy.



30. Areas that were considered to be unclear or missing were as follows:

- a request to give examples of “routine” fitness to practise correspondence and fair to assume that if someone doesn’t want a notice by email, they probably don’t want routine FTP correspondence by email either;
- in relation to a notice of removal from the register, a suggestion to always follow up by post if we cannot contact the registrant by phone to check receipt;
- a request to define “reasonable attempts” to check receipt in paragraph 5.5.3;
- a suggestion of a read receipt to confirm delivery of an email;
- two suggestions that prior to sending a notice by email, we should send an initial email warning that we will shortly be contacting them – if we do not receive confirmation within 48 hours, we should send the letter by post as the email might have gone into the registrant’s ‘junk’ email folder; and
- a suggestion for the policy to cover how the GOC will communicate with other parties in the fitness to practise process.

31. A sample of comments is available in the box below.

“Section 4 Para 4.5 – states that if a registrant opts out of e-service for statutory notices, other communications including registration reminders will still be sent by email, and routine fitness to practise correspondence will continue to be sent “by email or post”. We think this paragraph should be expanded to set out what “routine” correspondence involves, and how the GOC will decide whether to send a notice by post or email in any given case. Where a registrant has opted out of e-service for statutory notices it seems reasonable to assume that they will prefer to receive all GOC correspondence about fitness to practise issues by post rather than email.” AOP

“Registration notices will only get a routine check that emails haven’t been blocked or sent to spam, followed in the case of removal notices by “an additional attempt to contact the person by telephone and leave a voicemail if necessary” (5.4.3).

We do not think this is a robust enough safeguard in the case of removal notices; instead the policy should state that the GOC will always follow up by post if it cannot contact the registrant by phone.” AOP

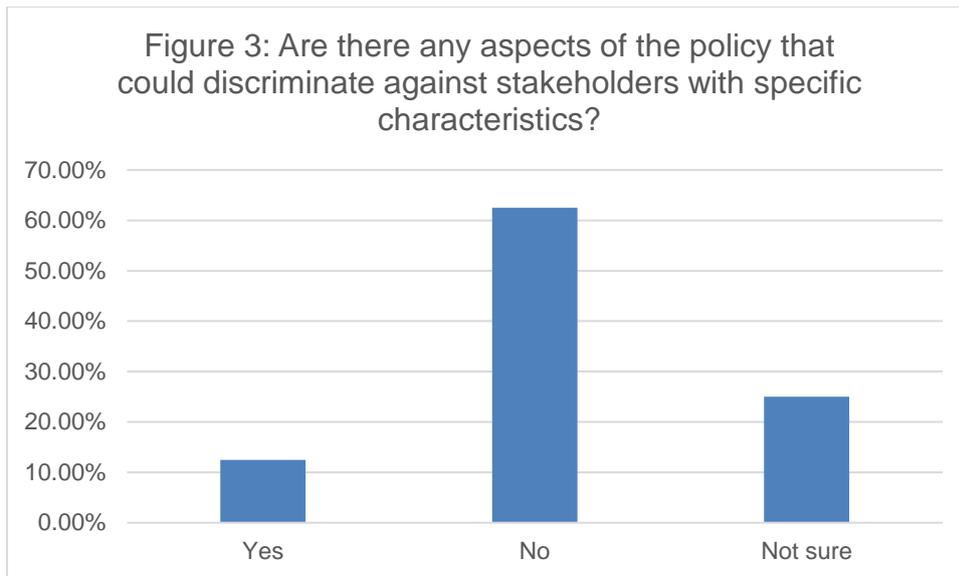
“Although we understand that electronic checks are available to the Registration team when sending bulk emails, delivery notifications are not always systematic and reliable. We would suggest adding, at the very least, a read receipt notification to confirm effective delivery.” The College of Optometrists

“We consider that a check should be added to the process whereby the GOC send an email to the registrant’s registered email address (providing that the registrant has previously consented to statutory notices being sent by email) setting out that the GOC will shortly be sending a notice by email and asking the registrant to confirm, within 48 hours, that that original email has been received. Once the registrant has replied to confirm receipt, the statutory notice can then be sent. Should the registrant not respond, we consider that the notice should be sent by post.” BLM

“It is crucial in our view that, in the world of electronic communications overload, the GOC is assured that electronic communications are received and by the correct recipient. These are key registrant protections and will also ensure that registration and FtP processes run smoothly for the public benefit.” FODO

Discrimination against stakeholders with specific characteristics

32. We asked respondents whether there were any aspects of the policy that could discriminate against stakeholders with specific characteristics, and gave the list of protected characteristics from the Equality Act 2010 as examples. Of the eight that responded to the question, almost two thirds (62.5%) did not think there were any aspects of the policy that could discriminate.



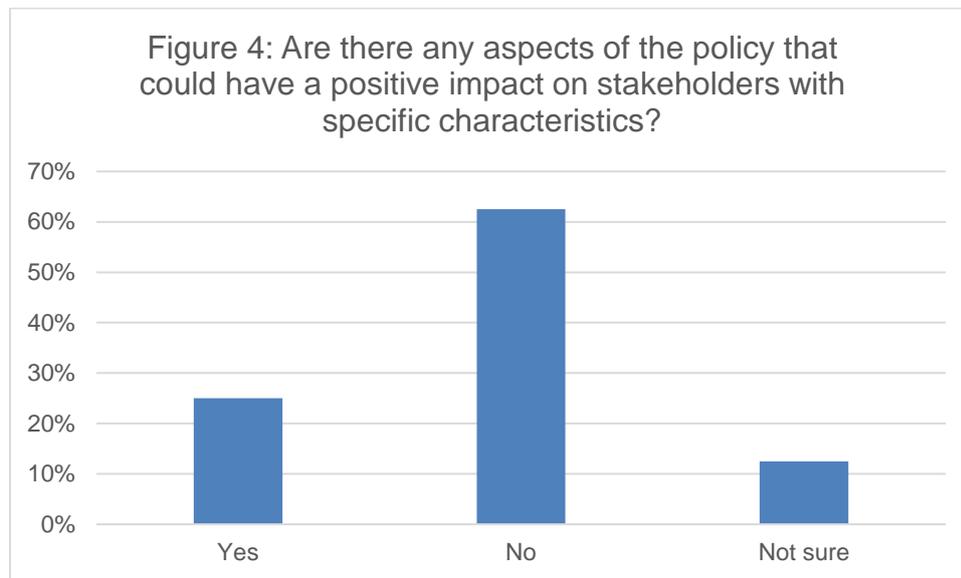
33. A sample of comments is available in the box below. All comments received were supportive of the policy.

“There is always the possibility that someone may be or feel that this method is not satisfactory for their needs, but overall, if managed appropriately then it is fair and proportionate.” Fitness to Practise Committee Chair

“The GOC has recognised that serving notices by email could discriminate against certain registrant groups who may be less likely to have access to or habitually use email. Their policy lays out clearly the approach that the GOC will take to ensure that registrants are happy to receive notices in this way and the alternatives that will be used if they are not.” Professional Standards Authority

Positive impact on stakeholders with specific characteristics

34. We asked respondents whether there were any aspects of the policy that could have a positive impact on stakeholders with specific characteristics, and gave the list of protected characteristics from the Equality Act 2010 as examples. Of the eight who responded to the question, only a quarter (25%) thought there were any positive impacts on stakeholders with specific characteristics.



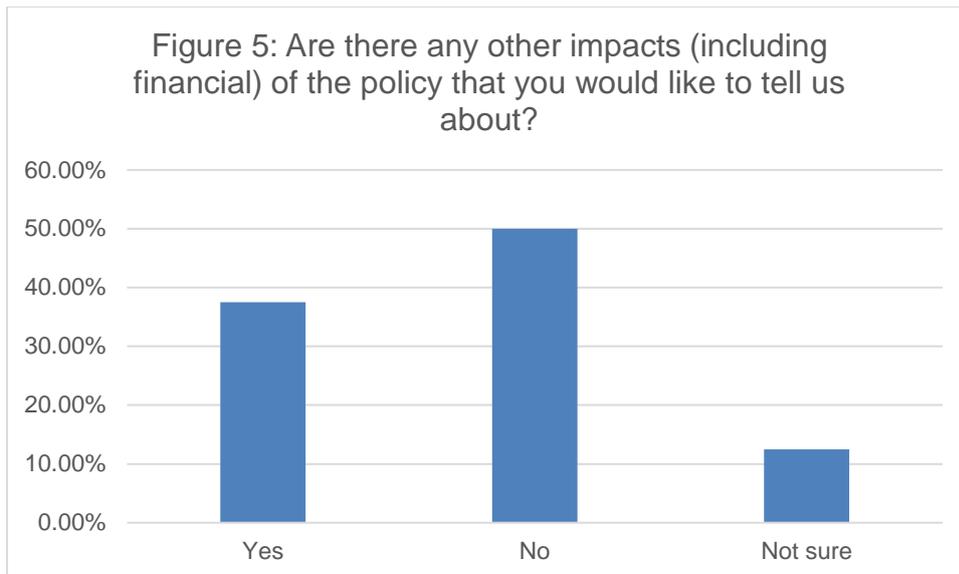
35. It was suggested that the policy could benefit stakeholders with protected characteristics by making it easier to receive communications.
36. A sample of comments is available in the box below. All of the comments we received under this question pointed out positive aspects.

“Many people these days can access email easily at any time convenient to them, wherever they are in the world. Personal service requires a person either to be in when the post person calls or to collect a letter from the Post Office.” Fitness to Practise Committee Chair

“...there is the potential for service of documents by email to be more convenient for those that prefer to receive communications in this way. This may include stakeholder with protected characteristics such as those with disabilities.” Professional Standards Authority

Any other impacts

37. We asked respondents if there were any other impacts of the policy that they would like to tell us about. Of the eight who responded to the question, just under half of respondents (37.5%) told us about other impacts.



38. Areas raised under this question were as follows:

- could potentially save some money provided the notice has been served appropriately;
- ensuring sufficient resources are allocated for ensuring the register is up to date and accurate, and that the correct email address is used; and
- a suggestion that notices regarding removal from the register be sent by post to reduce the risk of an individual committing a criminal offence by continuing to practise.

39. A sample of comments is available in the box below.

"...It will be important for the GOC to be very careful in terms of consistently using the correct email address for a registrant. We are aware of circumstances in which correspondence has been sent to one email address and then subsequent, important correspondence has been sent to a different email address..." BLM

"It will be important for sufficient resources to be allocated to the task of reviewing registration renewal forms and keeping registrant's consent details up to date.

We consider that notices regarding removal from the register should still be sent by post, as well as email, to reduce the risk of an individual practising without appropriate registration, which constitutes a criminal offence." FODO

"...it seems entirely appropriate that the GOC use email more routinely and we recognise the potential benefits. However, we welcome the safeguards outlined to ensure that registrants consent to this and that adjustments can be put in place if required." Professional Standards Authority

Conclusions

Amendments to the policy

40. On the basis of feedback received during the consultation and a review of the policy since consultation, we have decided to make the following amendments to the policy:
- we will clarify that the policy ensures that we will comply with section 23A(3) of the Opticians Act 1989 when implementing The General Optical Council (Committee Constitution, Registration and Fitness to Practise) (Coronavirus) (Amendment) Rules 2020;
 - we will clarify when we will implement the policy on the MyGOC database;
 - we will update the consent clause to make it clear:
 - which email address registrants are consenting to and what to do if they wish to change their email address; and
 - that if they do not consent, they will continue to receive other communications except statutory notices by email;
 - we will clarify that the policy does not apply to our communications with other participants in the fitness to practise process (for example, complainants or witnesses);
 - we will give examples of routine fitness to practise correspondence and what reasonable attempts the Fitness to Practise team will make in checking that a notice has been received;
 - we will make it clear that if we are not satisfied that notice of a hearing sent by email has been received by the individual/registrant, we will send the notice by first class post and, subject to our overriding duty of public protection, we will ensure there is sufficient time for the individual/registrant to prepare in line with statutory timescales;
 - we will clarify the attempts we will make to contact someone after sending a notice of failure to apply for renewal to anyone who has not renewed their registration in advance of the renewal deadline;
 - we will make it clear that we will also serve notice by post if we are not satisfied that a registrant is aware of their removal from the register; and
 - we will amend the paragraph on reasonable adjustments to make it clear that where we receive information that a registrant who has previously consented to receive notices by email may find it difficult to process them in this way (for example, because of a health condition), we will endeavour

to meet the needs of the registrant and will consider all reasonable adjustments on a case by case basis, which may include sending paper copies or using increased font size etc.

Content of the policy

41. Overall, there was good support for the content of the policy, with some areas for suggestions.
42. As outlined in the section on 'amendments to the policy', we have noted the AOP's feedback around ensuring that the policy and consent provision makes it clear that section 23A(3) of the Act will be taken into account, thereby fulfilling the requirement that a notice will only be served to the specific email address provided by the registrant for that purpose.
43. We considered the AOP's feedback questioning whether the safeguards in the policy to check receipt of a notice by email will give a registrant who has not received an email notice enough time to prepare for a hearing. We note that, by the time we send a notice, the defence body will often be engaged and will likely be in touch with the registrant, and that emailing notices will usually give registrants more time to prepare than if the notice had been posted. If any registrant feels they do not have enough time to prepare for a hearing, they or their representatives can make an application to postpone. Nonetheless, we will try to ensure that in all cases, our internal processes when issuing notices are such that, subject to our overriding public protection duty, there is sufficient notice for the individual/registrant to prepare in line with statutory timescales.
44. Usually with interim orders we tell the registrant we are considering an interim order and encourage them to engage with their defence body. We would also copy the defence body in. Interim orders are emergency orders so it is not appropriate to push the timelines back. In any event, we will follow up on receipts of notices shortly after we have sent them so the timescale should not be a significant issue.

Clarity of the policy

45. Overall, most respondents thought that there was something unclear or missing in the policy.
46. As outlined in the section on 'amendments to the policy', we have taken on board suggestions to:
 - give examples of "routine" fitness to practise correspondence and "reasonable attempts" to check receipt; and
 - follow up by post if we are not satisfied that a registrant has not received a notice of removal from the register.

47. We considered the comment that it is fair to assume that if someone doesn't want a notice by email, they probably don't want routine fitness to practise correspondence by email either. We do not agree with this assumption. The benefits of email in routine correspondence are significant and this is how we carry out most of our correspondence with registrants. Where a registrant specifically requests for routine correspondence to be sent by post, we will be happy to consider this but would prefer not to make assumptions in this area.
48. We considered a suggestion of a read receipt to confirm delivery of an email. We do not wish to rely on read receipt notifications and it is not possible to configure our system to record read receipts, therefore we are not able to implement this suggestion. In addition, read receipts may not have been read by the registrant themselves if they are using a shared email address.
49. We considered two suggestions that, prior to sending a notice by email, we should send an initial email warning that we will shortly be contacting them. We consider that the safeguards set out in the policy are sufficient so as not to require what is being suggested (which we assume was intended only in relation to fitness to practise cases) – if we ask the registrant to confirm receipt of the notice we send them, this is already a check of receipt. The proposal to notify in advance would be an administrative burden and is unlikely to be workable. We do not think it would be fair on the registrant to contact them 48 hours in advance and then make them wait for a notice.
50. We also considered a suggestion for the policy to cover how the GOC will communicate with other parties in the fitness to practise process. This would be outside of the scope of the policy, which specifically deals with the service of statutory notices. We will add a sentence to the policy to this effect.

Discrimination against stakeholders with specific characteristics

51. Overall, most respondents did not think there were any aspects of the policy that could discriminate against stakeholders with specific characteristics, or were unsure about this. While one respondent thought that the policy could discriminate, they did not provide any detail in the comments. All comments received under this section were supportive of the policy and none required any further consideration or response.

Positive impact on stakeholders with specific characteristics

52. Overall, only a quarter of respondents thought that the policy had any positive impacts on stakeholders with specific characteristics. One example given in the comments was people who prefer to receive communications electronically, which could include those with specific characteristics such as those with disabilities.

Any other impacts

53. Some stakeholders outlined other impacts, which included the possibility of saving resources. It was also noted that we should ensure sufficient resources to maintain accuracy of the register and check we are communicating using the correct email address. It is already our priority that teams are sufficiently resourced to ensure that the register is accurate and that we are using up to date contact details for registrants when communicating with them. We have processes in place to check that this happens.
54. Another specific impact outlined was that a registrant could potentially commit a criminal offence by continuing to practise if they do not receive a notice to advise them that they have been removed from the register. It was therefore suggested that we continue to serve removal notices by post as well as email. As outlined above in the section on clarity of the policy, we will update the policy to ensure that we send a notice of removal from the register by post if we are not satisfied that the notice sent by email has been received.