

Acceptance Criteria for Business Registrants

1. **About us**

- 1.1 The General Optical Council “GOC” is the regulator for the optical professions in the UK. We currently register around 30,000 optometrists, dispensing opticians, student opticians and optical businesses.
- 1.2 We have four core functions:
- 1.2.1 setting standards for optical education and training, performance and conduct;
 - 1.2.2 approving qualifications leading to registration;
 - 1.2.3 maintaining a register of individuals who are qualified and fit to practise, train or carry on business as optometrists and dispensing opticians; and
 - 1.2.4 investigating and acting where registrants’ fitness to practise, train or carry on business is impaired.
- 1.3 Our overarching objective is the protection of the public. We take action when it is necessary in order to protect patients and/or maintain public confidence in the optical professions and/or declare and uphold professional standards.

Purpose of this document

- 1.4 The purpose of this document is to provide guidance to FTP staff members, registrants, complainants and members of the public. It has been designed to clarify those matters where we can open an investigation into whether a complaint in relation to a business registrant amounts to an allegation of impaired fitness to carry on business. Throughout this document, ‘business registrant’ is referred to as ‘registrant’.
- 1.5 In line with our overarching objective, the FTP procedures of the GOC are designed to protect the public. They are not intended to serve as a general complaint resolution process, nor are they designed to resolve civil disputes between registrants and patients.
- 1.6 There will be some complaints that are better dealt with by other bodies including consumer matters that are better dealt with by the Optical Consumer Complaints Service (OCCS). The OCCS have a wider range of resolution channels that may resolve certain complaints more appropriately. Equally, there may be matters referred to us from the OCCS which will then need to be assessed against these criteria. More information about the OCCS can be

found at <https://www.opticalcomplaints.co.uk>

- 1.7 A detailed explanation of our FTP procedures, including decision-making at the end of an investigation can be found on our website, https://www.optical.org/en/Investigating_complaints/index.cfm

Equality and diversity

- 1.8 The GOC is committed to ensuring that in exercising all of our functions we operate in a fair and transparent manner and in a way that is free from discrimination, harassment or victimisation. We strive to promote equality, value diversity and are inclusive regardless of age, disability, race, religion or belief, gender, gender identity, sexual orientation, marriage and civil partnership, pregnancy and maternity.

What are Acceptance Criteria?

- 1.9 These Acceptance Criteria are a case management tool used by us to decide whether a complaint may amount to an allegation of impaired fitness to carry on business as defined by section 13D Opticians Act 1989 and requires investigation. That section states that a business registrant can be impaired by any or all of the following:
- a. Misconduct by the business registrant or by one of its directors;
 - b. Practices or patterns of behaviour occurring within the business which –
 - The registrant knew or ought reasonably to have known of; and
 - amount to misconduct or deficient professional performance;
 - c. The instigation by the business registrant of practices or patterns of behaviour that would amount to, or would if implemented amount to misconduct or deficient professional performance;
 - d. Conviction or caution of the business registrant or one of its directors;
 - e. Scottish proceedings against the business registrant or one of its directors in line with section 13D(3)(e) and (f);
 - f. Determination of another body.
- 1.10 If a complaint meets the Acceptance Criteria, we will open an investigation into whether the registrant's fitness to carry on business is impaired. These Acceptance Criteria applies to business registrants only. There are separate criteria which apply to individual registrants.
- 1.11 This document will explore when a complaint should be opened against a business and/or when it should be opened against the director/s.

- 1.12 In performing this task, we are always mindful of:
 - 1.12.1 Our overarching objective;
 - 1.12.2 The protection of the public;
 - 1.12.3 Our Standards of Practice; Standards for Students and Standards for Optical Businesses; and
 - 1.12.4 The public interest.

- 1.13 We will regularly review the criteria to take account of changes to legislation and case law, to make sure they are consistent with other associated guidance documents. We will make sure they are fit for purpose and accessible to all who use them.

Actions the GOC can take at the Acceptance Criteria stage

- 1.14 When considering a new complaint, there are a number of different actions we can take:
 - 1.14.1 open an investigation;
 - 1.14.2 open an investigation and refer to the Interim Orders Committee;
 - 1.14.3 close with no further action; and/or
 - 1.14.4 close and refer on to another body.

- 1.15 In some cases, it is clear from the outset that there is no need for us to investigate because the complaint is about matters that cannot raise an issue of impaired fitness to carry on business. We will normally close these cases without taking any further action. There may be occasions when a complaint is better dealt with by the OCCS as stated at paragraph 1.6.

- 1.16 If the complaint is closed, it will remain on the registrant's internal file in line with the GOC's retention policy. The complaint may be reconsidered later in light of any new/ further complaints being raised against the registrant.

- 1.17 If we are unable to make an assessment about whether or not to open a case on receipt of the initial information, we will ask for further information to assist with the assessment. The complaint may also be closed because we are unable to obtain information to substantiate an investigation.

2 What complaints will be accepted by the GOC

- 2.1 There are 12 standards that businesses must meet as a registered optical business.

- 2.2 Business registrants are subject to a Code of Conduct for Business Registrants for any complaint raised (and relating to conduct) prior to 1 October 2019. Business registrants are subject to the Standards for Optical Businesses for any complaint raised (and relating to conduct) from 1 October 2019.

- 2.3 These standards aim to provide a framework that enables the registrant to apply their professional judgment within the context of the business.
- 2.4 In respect of all complaints, we will first consider whether there may have been a breach of the relevant standards. If so, we will then go on to consider whether the breach would amount to an allegation under s.13D(3) Opticians Act 1989.
- 2.5 We will also assess risk in respect of the complaint received to determine whether there are risks to the public, risks to maintaining public confidence in the professions and risks to upholding standards of conduct and behaviour should a matter not be opened.
- 2.6 In some cases, the complaint about a registrant presents a serious or immediate risk to public protection such that an interim order referral might be needed.

Allegations under section 13D Opticians Act 1989

Misconduct

- 2.7 An allegation of misconduct can be brought against a business registrant or one of its directors. There is no statutory definition of 'misconduct' and we rely on case law which has developed when defining 'misconduct.' The following will be considered in turn to decide whether a complaint amounts to an allegation of misconduct:
 - 2.7.1 is there a complaint about a business registrant's conduct? If so,
 - 2.7.2 the misconduct complained of must be serious, this could include:
 - i. conduct which would be regarded as reprehensible/ deplorable/ of sufficient concern by fellow registrants.
 - ii. a course of conduct or a particularly grave one-off incident.
- 2.8 It's important to distinguish between the misconduct of a business and the misconduct of one of its directors and consider when it is appropriate to investigate a complaint against the business registrant or investigate a complaint against one of its directors. The same allegation should not be brought against the business registrant and one of its directors; it should be either the business or the director.
- 2.9 This will always be considered on a case by case basis and examples (this list is not exhaustive) of misconduct may include:
 - 2.9.1 Persistent failings in keeping patient data secure (allegation against the business registrant);
 - 2.9.2 Failing to declare a caution/conviction of one of the registrant directors (allegation against the registrant director);
 - 2.9.3 Failing to declare a caution/conviction of a lay director (allegation against the business and/or registrant director);
 - 2.9.4 Failure to have robust and clear policies in place and/or failure to

- 2.9.5 ensure adherence to them (allegation against the business registrant);
 - 2.9.5 A registered director taking money inappropriately/ dishonestly from the business (allegation against the registrant director);
 - 2.9.6 Failure to notify the GOC of serious misconduct by an individual GOC registrant(s) (allegation against the business registrant);
 - 2.9.7 Permitting unregistered individuals to undertake functions that are restricted by the Opticians Act 1989 to GOC registrants (allegation against the business registrant);
 - 2.9.8 Failure to manage whistleblowing appropriately (allegation against the business registrant);
 - 2.9.9 Inaccurate or misleading advertising leading to a potential risk to the public (allegation against the business registrant) [Note: GOC likely to refer complaints to the Advertising Standards Authority in the first instance].
- 2.10 Examples of cases that are unlikely to amount to misconduct (where there are no aggravating features, and no ongoing risks to patient safety, or to the public interest), include:
- 2.10.1 Concerns that have been appropriately addressed at a local level and regulatory intervention would be disproportionate;
 - 2.10.2 Minor non-clinical matters – such as poor complaint handling;
 - 2.10.3 Monetary or contractual disputes;
 - 2.10.4 Employment matters;
 - 2.10.5 Complaints about the cost of sight tests/ treatment and/or the cost of optical devices;
 - 2.10.6 Complaints about eye surgery performed by a registrant of the General Medical Council (these will be signposted to the GMC).
- a) Practices or patterns of behaviour leading to misconduct or Deficient Professional Performance and/or
- b) The instigation by the business registrant of practices or patterns of behaviour within the business where that practice or behaviour amounts, or would if implemented amount, to misconduct or deficient professional performance.
- 2.11 These allegations relate to repetitive conduct by the business and may be relevant where we receive multiple complaints regarding the same or similar issues. They include practices or patterns that are ongoing within the business or are being instigated by the business. These behaviours can amount to misconduct or deficient professional performance. Deficient professional performance is different to misconduct in that it connotes a standard of professional performance which is unacceptably low and which has (save in exceptional circumstances) been demonstrated by reference to a fair sample of the registrant’s work. The same process at 2.7 will be followed for misconduct.
- 2.12 Where there is an allegation of deficient professional performance the

following will be considered in turn to decide whether a complaint amounts to an allegation:

- 2.12.1 is there a complaint about the registrant's professional performance (whether that be an individual registrant or business registrant)?
- 2.12.2 the performance is unacceptably low and has been demonstrated by reference to a fair sample of work.

2.13 This will be considered on a case by case basis and deficient professional performance can arise from the business registrant's own performance or the performance of an individual registrant due to the practices or behaviours encouraged by the business. Examples of deficient professional performance may include:

- 2.13.1 Multiple failings to ensure appropriate standards of hygiene;
- 2.13.2 Widespread failings to ensure staff are appropriately trained to use equipment;
- 2.13.3 Promoting the use of equipment that is not fit for intended use and/or in a good state of repair;
- 2.13.4 Introducing a policy that will cause an individual registrant to breach professional standards.

A Conviction or Caution

2.14 An allegation can be brought against a registrant if the business or one of its directors have accepted a caution and / or been convicted of an offence.

2.15 A certified copy of a conviction shall be 'conclusive evidence' of the offence.

2.16 The following will be considered in turn to decide whether a conviction /caution could constitute an allegation that fitness to carry on business is impaired:

- 2.16.1 Is there a criminal conviction / caution?
- 2.16.2 Is the conviction/ caution linked to the registrant's professional practice and/or carry on of business?
- 2.16.3 Is it in the wider public interest to investigate the conviction / caution? (For example, offences that are on the list of 'autobar' offences held by the Disclosure and Barring Service).

2.17 There are categories of caution/ conviction that are unlikely to amount to fitness to carry on a business being impaired and are therefore unlikely to be investigated further. These will be considered carefully on a case by case basis having regard to all the circumstances.

2.18 Cautions/ convictions against a director are unlikely to be investigated further if they are not connected to the practice and it is not in the public interest to do so. These may include:

- 2.18.1 minor motoring offences;
- 2.18.2 low level criminal damage;
- 2.18.3 convictions / cautions against a lay director;

- 2.18.4 youth cautions;
- 2.18.5 conditional cautions;
- 2.18.6 Protected convictions and cautions (we will never investigate these).

Acceptance of a conditional offer or agreement to pay a penalty

- 2.19 An allegation can be brought against a registrant if: ‘the registrant or one of its directors having accepted a conditional offer under section 302 of the Criminal Procedure (Scotland) Act 1995 or agreed to pay a penalty under section 115A of the Social Security Administration Act 1992.’¹

Scottish proceedings

- 2.20 An allegation can be brought against a registrant if: ‘the registrant or one of its directors, in proceedings in Scotland for an offence, having been the subject of an order under section 246(2) or (3) of the Criminal Procedure (Scotland) Act 1995 discharging it or him absolutely.’²

Determination of another body

- 2.21 An allegation can be brought against a registrant if: ‘a determination by a body in the United Kingdom responsible under any enactment for the regulation of health or social care profession to the effect that:
- i) the business registrant’s fitness to carry on business as a member of that profession is impaired; or
 - ii) the fitness of a director of the business registrant to practise that profession is impaired.’
- Or a determination by a regulatory body elsewhere to the same effect.’³

- 2.22 In all cases, the Council will not bring a duplicate allegation against the business/director and the registrant as an individual optometrist or dispensing optician.

3 Communication of GOC’s findings

- 3.1 After an assessment is made the GOC will notify both the Complainant and Registrant in writing, where applicable.
- 3.2 We aim to make sure that we make appropriate and consistent assessments, and these will be covered by our internal quality assurance processes.

¹ Section 13D(3)(e) Opticians Act 1989

² Section 13D(3)(f) Opticians Act 1989

³ Section 13D(g) Opticians Act 1989

4 Right of review after an assessment is made

- 4.1 Any person who is dissatisfied by the decision **not** to investigate their complaint further may request a review of the decision.
- 4.2 Any person who is dissatisfied by the decision **to** investigate a complaint may also request a review of the decision.
- 4.3 The review will be of the decision made and not the information received. Please be aware that any information provided in support of a request for a review of the decision will form part of the GOC's investigation (if an investigation is commenced) and could therefore be referred to Case Examiners.
- 4.4 We therefore urge registrants to seek advice if they wish to request a review of the decision to open an investigation.
- 4.3 Requests should be made, in writing with reasons, within 28 days of the date of the decision. The decision will be reviewed by the Director of Casework and Resolution and a formal review decision issued within 21 days of receipt of the request for a review.
- 4.4 If a complaint has been referred for investigation, the investigation will not pause during the review period and we will continue to conduct an investigation during that time.

Requests should be sent to:
Head of Case Progression
Fitness to Practise
General Optical
Council
10 Old Bailey
London EC4M 7NG

Or by email to ftp@optical.org

Useful Links

Optical Consumer Complaints Service:

Web: <http://www.opticalcomplaints.co.uk/>

Email: enquiries@opticalcomplaints.co.uk

Tel: 0344 800 5071

Citizens Advice Bureau:

Web: <https://www.citizensadvice.org.uk/>

Helpline: 03454 04 05 06