

Draft Illegal Practice Protocol

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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. Although not a specific statutory duty, we may act on reports about alleged illegal optical practice when necessary to protect the public.

2. Purpose of this document

- 2.1 The purpose of this document is to provide guidance on when we will open an investigation into a report about alleged illegal optical practice ('illegal practice') and when we will consider bringing a prosecution.
- 2.2 Our illegal practice protocol is designed to protect the public from risks caused by illegal practice in accordance with our overarching objective, and the principles of good regulation.
- 2.3 Some reports that we receive will be better dealt with by other bodies, including the Advertising Standards Agency (ASA), where the complaint is about advertising. [What we cover - ASA | CAP](#)
- 2.4 And there will be some reports that are more appropriately dealt with by our Fitness to Practise (FtP) procedures:
https://www.optical.org/en/Investigating_complaints/fitness-to-practise-guidance/index.cfm

3. Stage 1: assessment

Acceptance criteria

- 3.1 The following acceptance criteria are a case management tool used by the GOC to decide whether a report about alleged illegal practice falls within the scope of the

criminal offences created by the Opticians Act 1989 (the Act), and what action is necessary to protect the public.

- 3.2 All reports of alleged illegal practice will be considered on a case-by-case basis. The acceptance criteria are intended as a guide to ensure the GOC is proportionate, targeted and consistent in its approach to illegal practice.
- 3.3 There are a number of different actions the GOC can take when considering a new report:
 - 3.3.1 close with no further action;
 - 3.3.2 close and refer to another body; or
 - 3.3.3 open an investigation.
- 3.4 In some cases, it will be clear from the outset that there is no need for us to investigate because the report is about an issue that does not amount to an offence under the Act. We will normally close these cases without taking any further action or refer to FtP or another body if appropriate.
- 3.5 If we are unable to make an assessment about whether to open a case on receipt of the initial information, we will ask for further information to assist with the assessment. A complaint may be closed if we are unable to obtain information to substantiate an investigation into an alleged offence.
- 3.6 Upon receipt of a report about alleged illegal practice, we will first consider whether the alleged behaviour amounts to an offence under the Part IV of the Act.
- 3.7 The Act creates criminal offences in relation to:
 - 3.7.1 activities that are restricted to persons registered with the GOC or the General Medical Council; and
 - 3.7.2 titles that are restricted to persons registered with the GOC.
- 3.8 The Act creates the following criminal offences:
 - 3.8.1 unlawfully conducting sight tests (section 24);
 - 3.8.2 unlawfully fitting contact lenses (section 25);
 - 3.8.3 unlawfully supplying spectacles (section 27);
 - 3.8.4 unlawfully supplying prescription contact lenses (section 27);
 - 3.8.5 unlawfully supplying cosmetic (zero powered) contact lenses (section 27); and
 - 3.8.6 misuse of protected title or misrepresentation of registration status with the GOC (section 28).
- 3.9 If an assessment of the report leads us to suspect an offence under the Act, we will complete a risk assessment to determine whether there are risks to the public and/or risks to maintaining public confidence in the profession (see annex A).

- 3.10 Factors that will indicate a higher risk are:
- 3.10.1 intent to misuse a protected title;
 - 3.10.2 offences involving vulnerable patients / restricted categories eg under 16s, the elderly and sight impaired patients; and
 - 3.10.3 actual harm caused because of illegal practice.
- 3.11 A case plan will be completed by the assessor (see annex A), which will include the assessment decision, set out the issue(s), alleged offence(s), risk assessment and recommended action. Once the assessment has been completed, the case plan will be referred to a lawyer for review to consider the recommended action and set the direction for an investigation as appropriate.

Allegations under Part IV of the Act

- 3.12 All offences under the Act are summary only, which means they can only be tried in a Magistrates' Court. They carry a penalty of an unlimited fine on conviction.
- 3.13 Each category of offence is summarised below to assist the assessment of whether an offence under the Act is established. It is not intended to be a comprehensive summary of all relevant legislation.
- 3.14 A lawyer will review each stage of the process to ensure correct application of the legislation.
- a. Carrying out a sight test when not a registered optometrist or medical practitioner (section 24)
- 3.15 Sight testing can be conducted only by a registered optometrist or registered medical practitioner, with special provision for students.¹
- 3.16 Sight testing is defined in section 36(2) of the Act as assessing visual acuity and health of the eye and issuing a prescription if appropriate.
- b. Fitting contact lenses when not a registered optometrist, dispensing optician or medical practitioner (section 25)
- 3.17 Contact lenses can be fitted only by a registered dispensing optician, registered optometrist or registered medical practitioner (section 25(1)), with special provision for students.
- 3.18 Fitting must begin before the re-examination date specified in a valid prescription (dated less than two years ago) (section 25(1A)(b)).

¹ See rule 3 of the Testing of Sight By Persons Training as Optometrist Rules 1993 which permits student optometrists to test sight under supervision.

c. Illegal spectacles sales (section 27 of the Act and articles 2 and 3 Sale of Optical Appliances Order)

3.19 Illegal spectacles sales are split into four categories.

i. Restricted categories

3.20 If the user is:

3.20.1 under 16 years of age; or

3.20.2 registered sight impaired / severely sight impaired

spectacles can be sold only by or under the supervision of a registered dispensing optician, registered optometrist or registered medical practitioner.

3.21 Caselaw requires that the supervisor must be on the premises at the time of the sale, exercising their professional judgement as a clinician and in a position to intervene in the patient's interests.

ii. "Ready reader" spectacles

3.22 Ready reader spectacles are defined by section 27(2)(a) of the Act as spectacles to remedy near sight defects with single vision lenses of equal spherical power between 0 and +4 dioptries.

3.23 Ready readers as defined in the Act may be sold by a non-registrant without clinical supervision for alleviating presbyopia (age-related long sightedness), as long as the intended user is not aged under 16 or registered sight impaired or severely sight impaired.

iii. Reading spectacles up to +5 dioptries

3.24 Spectacles to remedy near sight defects with single vision lenses of equal or unequal spherical powers between 0 and +5 dioptries (see article 3(1)(d) of the Sale of Optical Appliances Order of Council 1984) may be sold by a non-registrant without clinical supervision, if:

3.24.1 the supply is in accordance with a written prescription issued within the previous two years; and

3.24.2 the intended user is not aged under 16 or registered visually impaired.

iv. Prescription spectacles outside above categories

3.25 Otherwise, anyone can sell spectacles in accordance with a prescription issued within two years subject to additional requirements for spectacles with certain prescriptions set out in article 3(3) of the Order.

d. Prescription contact lenses sales (section 27)

3.26 Prescription contact lenses can be sold only to someone with a valid in-date contact lens specification.

- 3.27 They can be sold by or under the **supervision** of a registered dispensing optician, registered optometrist or registered medical practitioner.
- 3.28 **Or**, under the **general direction** of a registered dispensing optician, registered optometrist or registered medical practitioner, who need not be on the premises at the time, if the supplier receives the original specification or verifies the specification with the prescriber.
- 3.29 If the user is under 16 years or registered sight impaired / severely sight impaired, prescription lenses can be sold only by, or under the supervision of a registered dispensing optician, registered optometrist or registered medical practitioner, to someone with a valid in-date specification.

e. Zero powered contact lenses sales (section 27)

- 3.30 Zero powered contact lenses can be sold only by, or under the **supervision** of a registered dispensing optician, registered optometrist or registered medical practitioner (section 27 (1)(b)).
- 3.31 Caselaw requires that the supervisor must be on the premises at the time of the sale, exercising their professional judgement as a clinician and in a position to intervene in the patient's interests.

f. Misuse of a protected title / misrepresentation of registration status (section 28)

- 3.32 A business or individual not registered with the GOC cannot claim or imply to be registered with the GOC.
- 3.33 An unregistered individual cannot use the titles: "optometrist", "dispensing optician" or "registered optometrist".
- 3.34 An individual cannot pretend to be a student registrant when they are not GOC registered.
- 3.35 An individual cannot pretend to have a speciality or proficiency which qualifies for entry in the appropriate register when they have no such registration.
- 3.36 An unregistered business cannot use the titles: "ophthalmic optician", "optometrist", "dispensing optician", or "registered optician".
- 3.37 Unregistered businesses and individuals cannot use the title "optician" unless nobody could reasonably think that they are registered with the GOC.

Assessment decision

- 3.38 If illegal practice suspected:
 - 3.38.1 Complete stage 1 case plan including risk assessment.
 - 3.38.2 Consider if case can be closed at stage 1, for example, inadvertent misuse of title due to forgetting to retain registration at end of retention period, or,

- illegal sales on Amazon, Facebook, Instagram, Google, TikTok – report to point of contact for removal.
- 3.38.3 Cases involving illegal sales of contact lenses and spectacles (online and/or physical sales) may be suitable for referral to Trading Standards. We will close our case once a referral to Trading Standards has been made and ask to be notified of the outcome.
 - 3.38.4 If concern against non-UK business or individual and cannot be referred elsewhere, close as outside jurisdiction of UK courts.
 - 3.38.5 If risk warrants further investigation, complete case plan and refer to a lawyer for review.
- 3.39 If no illegal practice, consider if matter can be referred internally / externally:
- 3.39.1 Reputational concerns for GOC / optical sector and consequential risk to public safety eg inaccurate article in the press. Close and refer to communications team.
 - 3.39.2 Concern about advertising. Close and refer to Advertising Standards Agency.
 - 3.39.3 Fitness to practise concern. Close and refer to FtP team.

4. Stage 2: investigation

- 4.1 We will investigate allegations by gathering evidence following the steps below:
 - 4.1.1 initial contact to gather evidence of illegal practice (may be satisfied by initial report / may be appropriate to bypass in clear high-risk cases);
 - 4.1.2 case specific research / enquiries as necessary;
 - 4.1.3 cease and desist letter if illegal practice continuing and supported by evidence; and
 - 4.1.4 test purchase following cease and desist letter in cases involving illegal supply of spectacles and/or contact lenses where the evidential and public interest tests are met (see stage 3).
- 4.2 Reasons for carrying out a test purchase should be stated on the case plan and approved by a lawyer.
- 4.3 The test purchase must be documented in a witness statement (see template witness statement at annex B) and the test purchaser must be willing to give evidence in the Magistrates' Court if necessary.
- 4.4 Following the investigation, the investigating officer will update the case plan to include findings and recommendation on next steps for review by a lawyer.

5. Stage 3: decision on prosecution

- 5.1 Having regard to the evidence and our overriding objective, we will decide whether to:
- 5.1.1 take no action;
 - 5.1.2 obtain an undertaking or take other informal action;
 - 5.1.3 refer the matter to our FtP team, another regulator, Trading Standards, online platform takedown team, the police or the Crown Office and Procurator Fiscal Service (in Scotland); or
 - 5.1.4 institute a prosecution (in England and Wales or Northern Ireland).
- 5.2 We will generally only consider bringing a prosecution in cases where one or more of the following factors are present:
- 5.2.1 intent;
 - 5.2.2 offences involving vulnerable patients / restricted categories under the Act;
 - 5.2.3 significant risk of harm;
 - 5.2.4 significant reputational damage to the profession;
 - 5.2.5 actual harm caused; and
 - 5.2.6 repeat offending.
- 5.3 The Registrar must have regard to the GOC's overriding objective of protecting, promoting and maintaining the health and safety of the public. This might result in the Registrar deciding that the GOC should not issue proceedings even where the allegations are serious or sensitive.
- 5.4 Two tests must be applied when deciding whether to bring a prosecution: the evidential test and the public interest test.

The evidential test

- 5.5 The Registrar may determine to issue criminal proceedings only where there is sufficient evidence for a realistic prospect of conviction against each defendant on each charge.
- 5.6 In assessing the evidence, the Registrar must have regard to the following factors:
- 5.6.1 whether it is more likely than not that a properly directed tribunal will be satisfied to the criminal standard of proof (beyond reasonable doubt) that the defendant committed the alleged offence;
 - 5.6.2 what the defendant's potential defences might be, whether general or specific, and how these defences might affect the prospect of conviction;
 - 5.6.3 any potential for any of the evidence to be excluded by the court, whether on the grounds of technical inadmissibility or on legal grounds, including abuse of process or breach of the Human Rights Act 1998;
 - 5.6.4 the reliability of the evidence, including the credibility of the witnesses and any conflict in the evidence; and
 - 5.6.5 the possibility of any further evidence becoming available.

The public interest test

- 5.7 Even where there is sufficient evidence for a realistic prospect of conviction, the Registrar may not issue proceedings unless the public interest requires a prosecution.
- 5.8 The question for the Registrar is whether a prosecution is necessary to serve the interests of the public, not whether a prosecution would serve the interests of the optical sector or other professions. In considering this issue, the Registrar must have regard to all the circumstances of the case, including details of the offence, the circumstances of the defendant and the impact of the offending behaviour on the health and safety of the public and public confidence in the profession.
- 5.9 The following is a non-exhaustive list of factors that might be relevant to the public interest:
- 5.9.1 whether the offending activity is ongoing or has ceased;
 - 5.9.2 the length of time over which the offending activity continued;
 - 5.9.3 whether the offence was committed intentionally or as a result of a mistake or misunderstanding;
 - 5.9.4 whether the offending is likely to be continued or repeated;
 - 5.9.5 whether a member of the public was harmed or put at risk of harm by the offending;
 - 5.9.6 whether the person harmed, or put at risk of harm, was vulnerable by reason of age or infirmity;
 - 5.9.7 whether a prosecution is likely to have an adverse effect on the victim's physical or mental health;
 - 5.9.8 whether the prosecution is likely to have a significant effect on maintaining public confidence in the profession or in deterring others from committing an offence;
 - 5.9.9 whether the offending involved a breach of trust or abuse of position;
 - 5.9.10 whether the defendant has a previous conviction or other adverse finding, including a finding by a regulator;
 - 5.9.11 whether the defendant has breached an undertaking to the GOC or another body, or has declined an opportunity to provide an undertaking;
 - 5.9.12 whether the defendant was warned prior to committing the offence;
 - 5.9.13 whether the defendant is likely to be subject to a regulatory investigation, particularly for similar or related activities, whether by the GOC or another regulator;
 - 5.9.14 whether the defendant is likely to be subject to a separate criminal investigation, whether by the police or another prosecuting agency; and
 - 5.9.15 the likely sanction imposed by the court on conviction.
- 5.10 The above factors are not of equal importance, and the relative importance of a factor will be determined by the individual circumstances of each case.
- 5.11 In deciding whether the public interest test has been met, the Registrar must make an overall assessment in the light of all the circumstances. A prosecution might be in the public interest even where there are several factors pointing against a prosecution;

similarly, a prosecution might not be required in the public interest even where there are several factors pointing towards prosecution.

Recording the decision on prosecution

- 5.12 The Registrar's decision to prosecute must be recorded in writing as soon as possible and must be reported to the GOC's Council at the following Council meeting.
- 5.13 The Registrar must maintain a list of all decisions and provide copies of the list to the Chair of the Council, the Director of Casework and Resolutions and the Director of Resources.

Action following the decision on prosecution

- 5.14 Following the decision, the Registrar may:
 - 5.14.1 write to the defendant, including asking the defendant to cease the alleged activity and desist from continuing or repeating such activity;
 - 5.14.2 take other informal action, including asking the defendant for an undertaking;
 - 5.14.3 notify the informant (if known) and any other parties of the decision;
 - 5.14.4 report the matter to another agency;
 - 5.14.5 conduct such further investigation as might be appropriate; and
 - 5.14.6 institute a prosecution by laying an information in the Magistrates' court.

Delegation and consultation

- 5.15 The Registrar may delegate any or all the above functions to the Director of Casework and Resolutions, the Head of Legal and/or such other person as the Registrar considers appropriate.
- 5.16 The Registrar or delegate, if not legally qualified, must obtain legal advice from an in-house or external lawyer before deciding whether to issue proceedings.
- 5.17 The Registrar or delegate, whether legally qualified or not, may at any stage consult any additional sources, including obtaining specialist legal advice.
- 5.18 A decision that might (in the opinion of the decision maker) have major implications for the GOC, must be made or endorsed by the Registrar and must be notified to the Council Chair as soon as possible.

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