

# **GOC response to our consultation on illegal practice strategy and protocol**

**May 2022**

---

## Contents page

---

<b>Introduction</b> .....	<b>1</b>
<b>Findings</b> .....	<b>3</b>
Closer link with the GOC's overarching objective of protecting the public.....	3
Improve sector awareness of the GOC's remit regarding illegal practice.....	5
Clarity on when we will act and what action will be taken .....	7
Is anything unclear or missing in the updated protocol? .....	8
Discrimination against stakeholders with specific characteristics .....	10
Positive impact on stakeholders with specific characteristics .....	12
Any other impacts .....	12
<b>Conclusions</b> .....	<b>15</b>
Closer link with the GOC's overarching objective of protecting the public.....	15
Improve sector awareness of the GOC's remit regarding illegal practice.....	16
Clarity on when we will act and what action will be taken .....	17
Is anything unclear or missing in the updated protocol? .....	17
Discrimination against stakeholders with specific characteristics .....	18
Positive impact on stakeholders with specific characteristics .....	18
Any other impacts .....	18

## **Introduction**

---

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.
2. We have four core 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**

3. The GOC's overarching objective is the protection of the public. Although not a specific statutory duty, or part of our core functions, we may act on reports about alleged illegal optical practice (illegal practice) when necessary to protect the public.
4. Illegal practice is conduct that amounts to a criminal offence under Part IV of the Opticians Act 1989 (the Act).
5. We have carried out a review of our illegal practice strategy and protocol because we want to be more proactive in our approach to illegal practice and provide clarity on when we will take action and what action will be taken.
6. We believe that more collaborative working to prevent illegal practice from occurring provides the best outcome for the public and our sector, and that we can better utilise our resource to develop an approach that links more closely with our overarching public protection function and enhance sector and public awareness of our remit.
7. We consulted on an updated illegal practice protocol which included the following changes:
  - the addition of acceptance criteria;
  - setting out our approach to illegal online sales;
  - requiring early lawyer input into investigations;
  - the introduction of a process for test purchases; and
  - greater clarity about when we will consider a prosecution.

## **Consultation process**

8. We undertook a full public consultation on our proposed updates to the policy, which was open for 12 weeks from 27 October 2021 to 24 January 2022.
9. We sought stakeholders' views on our proposed updates to the policy ahead of launching a revised illegal practice protocol.
10. We received 26 written consultation responses from a range of stakeholders. These were made up of:
  - 12 optometrists
  - two dispensing opticians
  - one contact lens optician
  - two business registrants / employers
  - six professional/representative bodies
  - one law firm
  - one education provider
  - one member of the public
11. The professional/representative bodies who were willing to be named were:
  - Association of British Dispensing Opticians (ABDO)
  - Association of Optometrists (AOP)
  - The College of Optometrists
  - Association for Eye Care Providers (FODO)
  - Association of Contact Lens Manufacturers (ACLM)
  - British Contact Lens Association (BCLA)
12. We are grateful for all the feedback we received and have taken this into account in deciding how to amend the protocol and continue to develop our approach to illegal practice.

## **Approach to producing this response**

13. 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 every comment within this report. A sample of comments have been included in this response. All comments received in response to the consultation (where permission to publish was given) are attached at Annex A.

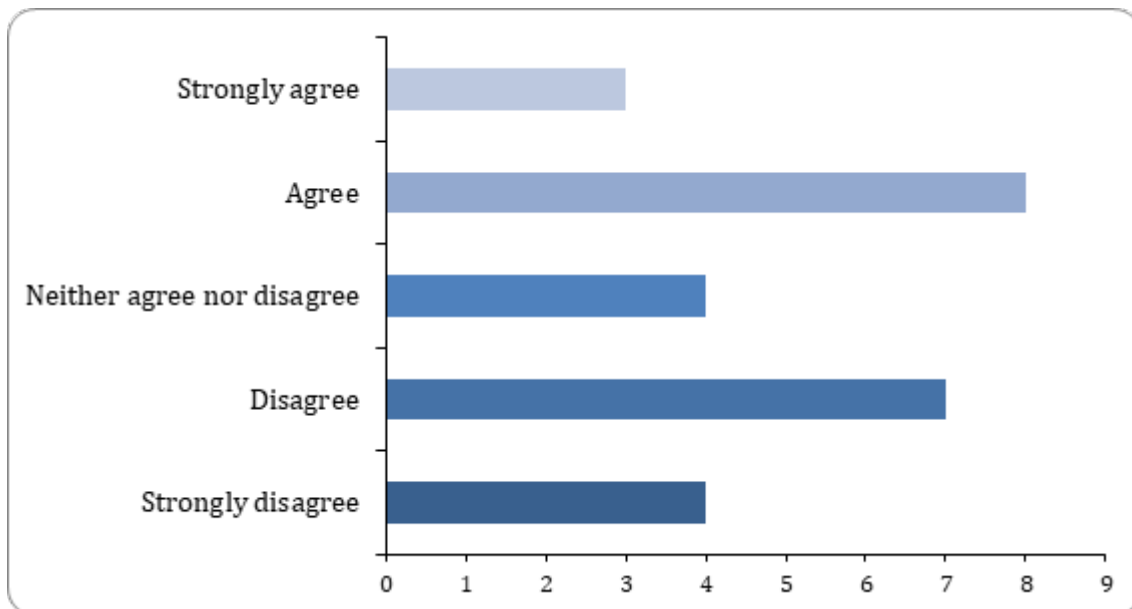
## Findings

---

### Closer link with the GOC's overarching objective of protecting the public

14. We asked respondents to what extent they agreed that the updated protocol links more closely with our overarching objective of protecting the public. Responses were split with 42.3% agreeing or strongly agreeing and 42.3% disagreeing or strongly disagreeing and 15.4% neither agreeing nor disagreeing.

*Graph 1: To what extent do you agree that the updated protocol links more closely with our overarching objective of protecting the public?*



15. A sample of comments is available in the box below. Most comments related to online sales of spectacles and contact lenses, particularly overseas sales, not being sufficiently addressed in the protocol.
16. It was suggested by The College of Optometrists, and other professional bodies, including ABDO and the AOP, that the GOC should do more in raising public awareness about contact lens safety and, more generally, the legislation in place to protect the public.

*"We also feel there is a key role for the GOC in advising patients: - on safety - that they should wear the contact lenses as advised by their original fitting optometrist or contact lens optician - on their rights and entitlements when buying online (including to return lenses that are not fit for purpose) - what to do if they encounter a problem. - Work with manufacturers, suppliers and retailers to produce, publish and distribute consumer information that educates the public about safe optical appliances supply in easily understandable language, and*

*highlights the risks of ordering a different lens from what was recommended.” The College of Optometrists*

*“Online sales of Spectacles and contact lenses from outside of the United Kingdom make a mockery of our profession, therefore, as per your statement to protect the public, you NEED to act on the reports of this.” Dispensing optician*

*“For this reason, action to promote patient awareness of the risks involved in buying products and services online is also required. We would like to understand what outcomes the GOC is seeking to achieve in line with its duty to protect the public and what activities it will be undertaking to achieve those outcomes.” ABDO*

*“In order to properly meet its objective for public protection the GOC’s illegal practice strategy needs to include the following:*

*...*

*Clear information for the public about the optical regulations that are in place to keep them safe, and how to identify regulated optical providers.*

*Clear information about how to raise complaints and concerns with the GOC about alleged illegal practice.*

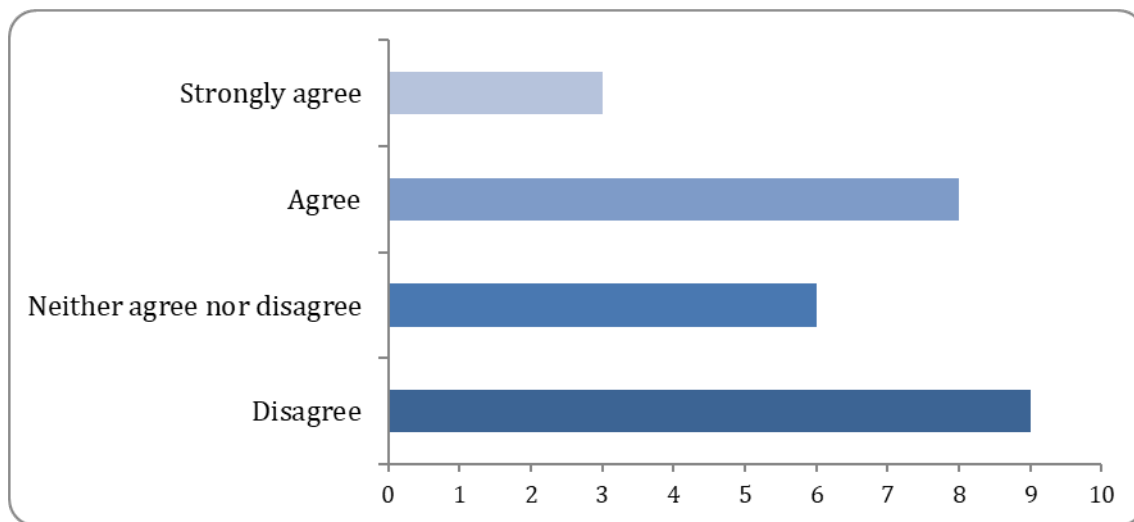
*...*

*Raising public awareness about the risks of illegal and unsafe practice.” AOP*

## Improve sector awareness of the GOC's remit regarding illegal practice

17. We asked respondents to what extent they agreed that the updated protocol will improve sector awareness of our remit regarding illegal practice. The same number of respondents strongly agreed or agreed, 42.3%, as with question one. 23.1% neither agreed nor disagreed. 34.6% disagreed and no respondents strongly disagreed.

Graph 2: To what extent do you agree that the updated protocol will improve sector awareness of our remit regarding illegal optical practice?



18. A sample of comments is available in the box below. The issues raised included:

- how will the GOC engage with online suppliers to raise awareness of its remit and ensure compliance?
- how will the GOC address the growth of online service delivery?
- the GOC's remit in relation to non-UK businesses and individuals
- the GOC should communicate better and more regularly about illegal practice
- whether the GOC is seeking additional powers in relation to illegal practice

*“Without high street opticians, who conveniently gather all the necessary measurements for online traders to supply the correct contact lenses, online suppliers would not have existed – although even that is now changing with the advent of online refraction, about which the GOC was alerted through the 2016 Foresight Report. These suppliers have reaped the benefits of the hard work of others and given very little in return, and now it looks like turning into a full-blown free-for-all. Most particularly, their records are out of sight and so little is known*

*about cases of actual or potential harm (although the recent AOP survey of registrants' views of returning patients is illuminating in this regard: 80% with eye irritation, 57% with blurred vision and poorly-fitting lenses, 36% with eye infections and even 12% with sight-threatening conditions). 55% of high street practitioners report seeing evidence that the law is being broken by suppliers, so where is the feedback on this in more than simple total numbers? The GOC should determine where the system is being abused by illegal online suppliers, and then take appropriate action in the interests of patient protection. With the increasing numbers of online suppliers employing registrants how is the GOC monitoring and auditing them to ensure they are operating within the law?" ACLM*

*"The GOC needs to consider HOW it will communicate to a wider audience, not just within the professional optical sector." BCLA*

*"The protocol does not clearly explain the GOC's remit in relation to illegal optical practice. In particular, it does not explain the extent to which the GOC will be able to address future challenges, such as sight-tests offered online from outside the UK. Also, the protocol does not explore the challenges involved in pursuing non-UK businesses or individuals, suggesting simply that it would not be able to prosecute such companies." ABDO*

*"More proactive steps would be required to achieve this, including communication with registrants and professional bodies and the publication of data showing performance against objective criteria. In particular, a six-monthly report to the GOC Council would improve transparency and awareness of an area of activity that traditionally has had much less visibility than other areas..." ABDO*

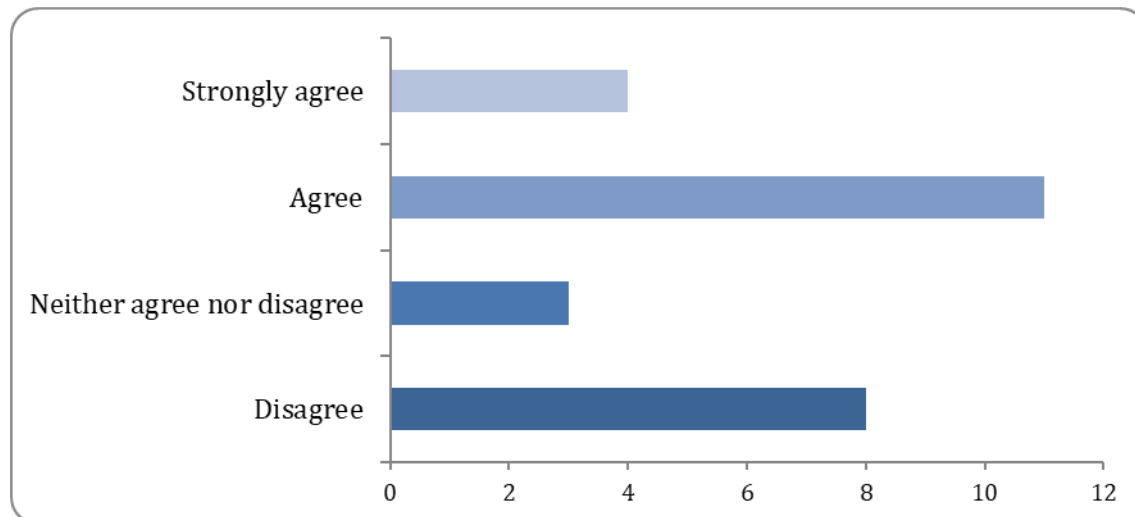
*"Unfortunately, beyond the protocol the consultation gives no context about what additional powers the GOC would reasonably like to have to help it protect patients against unsafe product sales and services." FODO*



## Clarity on when we will act and what action will be taken

19. We asked respondents to what extent they agreed that the updated protocol will provide clarity on when we will act and what action will be taken. Most respondents, 57.7%, either agreed or strongly agreed, 11.5% neither agreed nor disagreed and 30.8 % of respondents disagreed.

*Graph 3: To what extent do you agree that the updated protocol will provide clarity on when we will act and what action will be taken?*



20. Areas that were considered to require further clarification were:

- approach to internet sales
- approach to non-UK businesses
- assessment of risk of harm, particularly failure to include potential risk of harm
- if, following referral to a third party the third party does not investigate, whether the GOC will re-open its case
- bias towards not taking action

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

*“Uncertainty until you actually act on internet sales.”* Dispensing optician

*“The GOC’s statements are clear, but not forward-thinking enough do deal with the prevailing problems of illegal online supply.”* ACLM

*“Furthermore, it is not clear which cases may be judged as suitable for referral to Trading Standards and what the GOC would do if no positive outcome is reported by Trading Standards. The GOC should be able to reopen a case if Trading*

*Standards are not able to act or not able to act successfully. We recommend the protocol to include such provision.”* The College of Optometrists

*“We query whether the GOC would have the necessary funds available to bring a prosecution should that be required.”* BLM solicitors

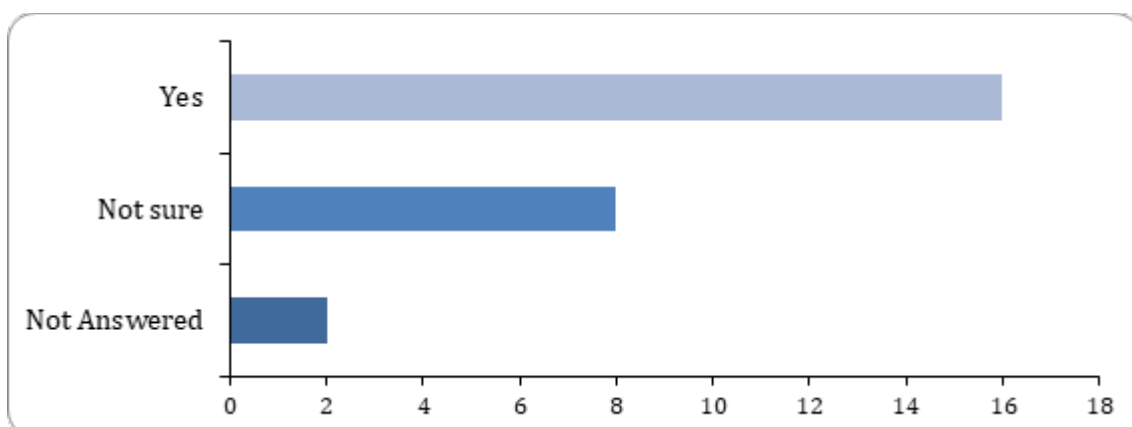
*“It is not clear what is the significance of the GOC adjudging that a case carries a higher risk in line with the factors set out in paragraph 3.10 – intent to misuse a protected title, offences involving vulnerable patients and actual – and how this informs the GOC’s assessment decision. Presumably in cases that are adjudged to be lower risk, there is more likely to be a recommendation that no further action should be taken by the GOC. This would be problematic in that the public interest test criteria include potential harm, meaning that it could be in the public interest to prosecute a case where there is potential but not actual harm. However, this will not be possible if the case has been closed or referred elsewhere at an earlier stage. It is also not clear which cases may be judged as suitable for referral to trading standards and what the GOC will do in such cases if trading standards do not report a positive outcome. As mentioned above, the GOC should also clarify its position in relation to non-UK businesses and individuals as the protocol suggests that in no circumstances will it be possible to take any formal action against such entities.”* ABDO

*“The protocol is clear in terms of when and how the GOC will consider taking action although, as noted, it reads overall as if there is a bias towards not taking action if at all possible.”* FODO

### **Is anything unclear or missing in the updated protocol?**

22. We asked respondents whether there is anything unclear or missing in the updated protocol. 61% of respondent felt that there were matters unclear or missing from the protocol, 31% of respondents were unsure and 8% did not answer this question.

*Graph 4: Is there anything unclear or missing in the updated protocol?*



23. Areas that respondents felt were unclear included:

- general comments that the protocol is too vague and not positive enough in its drafting towards taking action
- whether all decisions relating to illegal practice will be referred to a lawyer
- no definition of harm

24. Areas that respondents felt were missing included:

- addressing sales by non-UK companies to UK consumers including provision for enforcement where non-UK companies use UK distribution centres
- the GOC's timescales for action
- addressing areas of the Act that need reform
- reference to contact lens substitution
- requirement to seek clinical advice in appropriate cases

25. A sample of comments is available in the box below:

*"It is our view that a lawyer should be involved in any decisions regarding illegal practice."* BLM solicitors

*"Your own timescales for action need to be published."* Optometrist

*"All parties, including the GOC, have acknowledged for some time that the Optician' Act is not fit for purpose, certainly so far as contact lenses are concerned, but what is being done to remedy this? The reported review of optical legislation in 2022 will be most welcome, but how will this draft protocol fit with it? How, for example, will the enforcement of 'replication' and the banning of inappropriate contact lens substitution (clearly written and intended in the Opticians' Act but strangely unenforceable) be handled?"* ACLM

*"We note that the protocol specifies the need for a risk assessment to be carried out on receipt of a complaint and says that this will be carried out by the case assessor with legal input. There should also be a requirement to seek clinical input in appropriate cases... We would also like the GOC to seek statutory powers of investigation and enforcement as part of the Government's regulatory reform programme. Paragraph 3.5 of the protocol states that, "A complaint may be closed if we are unable to obtain information to substantiate an investigation." To avoid this outcome, the GOC should seek powers to require information to be provided. It is also incongruous for the GOC, as the statutory regulator for the optical professions, to be in a position where in relation to illegal optical practice it is limited to pursuing a private prosecution in the Magistrates court. This should be*

*rectified, with the prospect of legislative reform providing an opportunity to do so.”*

ABDO

*“Although “risk of harm” is called out as a determining factor for prosecution, there is no clear definition of what constitutes risk of harm within this context.”*

Optometrist

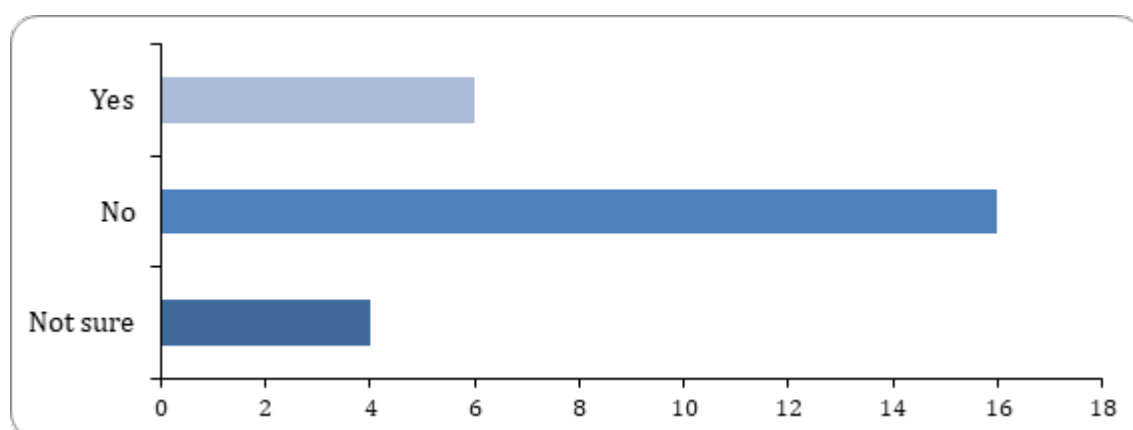
*“We appreciate that it is not possible for the GOC to undertake prosecutions against sellers which are operating illegally and based outside the UK. However, the GOC should do more to protect the public from harm. Where an overseas business appears to be supplying illegally to people in the UK – and particularly where its website gives the impression the business is based in the UK – we think that as a minimum, the GOC should contact the supplier to highlight UK optical regulation and, where relevant, local enforcement authorities to try to resolve the matter. The GOC should also revisit the use of an optical sector code or kitemark to provide assurance to the public about providers which are operating within UK regulation. The GOC also needs to include provisions in the protocol for enforcement where sellers are based overseas but use distribution centres in the UK, especially where sellers are basing part of their operation overseas to deliberately circumvent UK regulations.”* AOP

*“...the focus on ‘actual harm’, although understandable in managing expectations, is nevertheless limiting and unsafe and that, in some cases ‘potential for harm’, may pose a greater risk to the public. We suggest ‘potential for harm’ be added as a criterion”* FODO

### **Discrimination against stakeholders with specific characteristics**

26. We asked respondents whether there were any aspects of the updated protocol that could discriminate against stakeholders with specific characteristics and gave the list of protected characteristics from the Equality Act 2010 as examples.
27. 23% of respondents felt that the updated protocol could discriminate against stakeholders with specific characteristics. 62% of respondents felt there were no aspects that could discriminate and 15% of respondents were not sure whether any aspects could discriminate.

Graph 5: Are there any aspects of the updated protocol that could discriminate against stakeholders with specific characteristics?



28. Some respondents, including the ACLM and BCLA, felt that the protocol could discriminate against vulnerable users including those under 16 due to no provision to ensure online sellers, including sellers based outside of the UK, adhere to the requirements under the Act.
29. ABDO raised that the illegal practice complaint form should be more accessible and updated to include “member of the public”.
30. A sample of comments is available in the box below:

*“Most definitely yes – on caring responsibilities. High street practitioners are required to carry out all the testing and pre-sales work, including trial fittings and producing and handing over a contact lens specification, only to see, in very many cases, the potential patient lost to an illegal online supplier. The patient is very unlikely to return to the high street. This has a very corrosive effect on the high street safety net and provides a strong disincentive for all but the most determined practitioners to engage in contact lens fitting. There is no assurance that online suppliers are processing applications from minors or those with learning difficulties adequately, and certainly no way of ensuring that the requirements of ‘supervision’ are being met (where the practitioner is on site and in a position to intervene). There is no point in having rules or guidelines which cannot be overseen and enforced where appropriate. With the expected inclusion of non-prescription contact lenses into the category of medical device it is even more important that the law is vigorously maintained and the public is kept informed of the dangers inherent in unrestricted illegal online supply.” ACLM*

*“Age Many online suppliers will carry out orders to those under the age of 16. A partial solution would be the requirement of suppliers to require evidence of a valid specification, which should have a date of birth on it. Again, test purchases may help, but the issue here is that of those suppliers operating from outside the UK. The supply of zero powered ‘cosmetic’ contact lenses is also an area that is of*

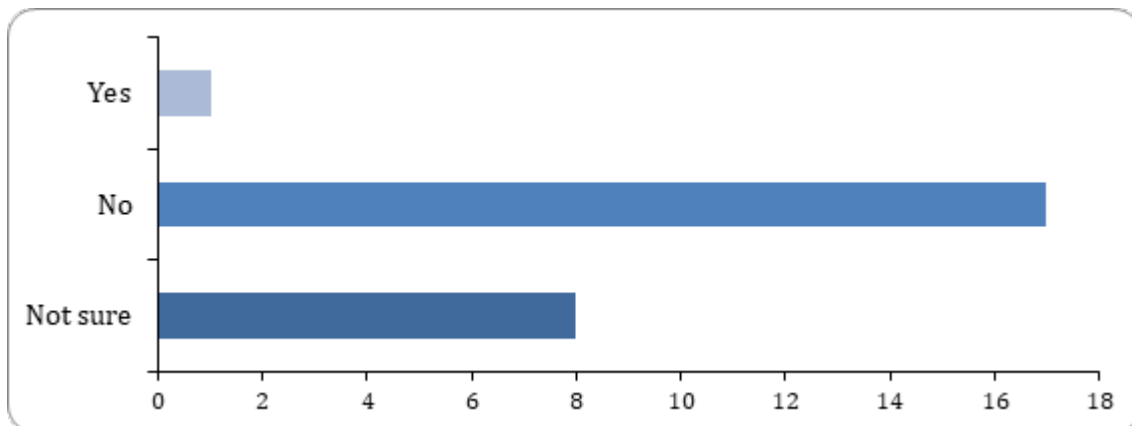
*grave concern. Although in recent years there has been some public health awareness about these lenses.” BCLA*

*“There should be greater focus on ensuring that the process for reporting possible instances of illegal practice is as accessible and inclusive as possible, including for members of the public with any of the relevant characteristics. It should not be necessary to download and complete a long word form that assumes considerable knowledge of illegal practice. The GOC should also make clear that it welcomes input from the public, whereas the form does not even appear to consider that a member of the public might want to raise an issue...” ABDO*

### **Positive impact on stakeholders with specific characteristics**

31. We asked respondents whether there were any aspects of the updated protocol 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.
32. Only 4% of respondents answered yes to this question. 65% answered no and 31% of respondents were not sure if there are any aspects of the updated protocol that could have a positive impact on stakeholders with specific characteristics.

*Graph 6: Are there any aspects of the updated protocol that could have a positive impact on stakeholders with specific characteristics?*



33. There were only two comments made in response to this question. Both were general comments about the protocol not about stakeholders with specific characteristics who may be positively impacted.

### **Any other impacts**

34. We asked respondents if there were any other impacts of the updated protocol that they would like to tell us about. This question allowed for free-text comments only.

35. Areas raised under this question were as follows:

- the GOC's relationship with Trading Standards and whether only non-registered businesses are referred (assumption registered businesses would be referred to the Fitness to Practise team)
- verification requirements for online purchases, including onus on the original prescriber to verify requirements
- protocol can only be effective as part of wider illegal practice strategy that engages with the sector and the public

36. A sample of comments is available in the box below – please see Annex A for comments in full.

*"I do hope that the updated protocol results in online retailers having to adopt the same standards as bricks-and-mortar practices ie only dispensing contact lenses or spectacles to a physical prescription. My impression is that anyone can order contact lenses or spectacles of any type and prescription from numerous websites merely by typing in whichever prescription they want..."* Optometrist

*"In conclusion, it is all very well for the GOC to trumpet its legally watertight, low risk protocol for dealing with illegal practice but it is effectively excusing itself from robust action at the start of the process and is therefore highly unlikely to achieve the result required. The limitations are well-understood, but what the optical world needs is an outward-looking strategy and not an inward-looking protocol. People are dropping out of contact lens wear, probably 30% every 3 years according to the most consistent research, often early in their lives, and so are likely being denied a lifetime of better vision to suit their lifestyles. With the rapid growth of myopia worldwide this ineffective protocol will do nothing to lessen the long-term catastrophic forecast for the sight of future generations."* ACLM

*"Although the protocols are a slight improvement, for the GOC to fulfil its 'protection of the public' role it needs to make an effort to engage with 'the public'. If they are unaware of the rules then they will have no idea about what is illegal practice. Therefore any GOC response is reactive, not proactive. Therefore illegal practice has to be part of a wider GOC communication strategy. If the GOC does not engage with the public, then how can it protect the public?"* BCLA

*"As stated above in answer to question four, the impact of updated protocol will be the lessened by the fact that it does not form part of a wider illegal practice strategy...The Government has consulted on legislative changes relating to how healthcare regulators carry out their functions and we understand that the GOC will be carrying out a review of the Opticians Act. This creates an opportunity to consider whether there are changes to legislation that would enable the GOC to tackle illegal practice more effectively."* ABDO

*“The GOC’s illegal practice strategy Illegal practice can lead to a range of risks of harm for patients, undermine professional regulation and lead to reputational damage for the optical professions. The GOC therefore has a vital role of public protection to minimise these risks by taking action when breaches of the Opticians Act could lead to harms. The AOP has engaged regularly with the GOC about its approach to tackling illegal practice and its protocol for prosecutions in recent years. Our public position statement on illegal practice and evidence to the GOC’s illegal practice strategy review set out our longstanding concerns about the GOC’s current approach and the changes we want to see, as well as the range of risks of harm that illegal and unsafe practice can lead to... We believe the GOC needs an improved set of tools and remit to tackle illegal and unsafe optical. In our response to the Government commissioned KPMG survey on healthcare regulation in September 2021 we explained that the GOC should be supported in taking agile action against illegal practice to meet its responsibility for public protection. This should include an evolved regulatory remit from Government to allow the GOC to meet the increasing challenges of healthcare in the forum of products and services being marketed online, facilitated by improvements in technology and artificial intelligence.” AOP*

*“Without the context of a wider strategy, the protocol, although informative to the sector, will also send a clear signal to committed law evaders that there is, in reality, very little likelihood of the GOC taking a prosecution against them.” FODO*



## Conclusions

---

### Amendments to the protocol

37. Based on feedback received during the consultation we have decided to make the following amendments to the protocol that we consulted on:
- potential for serious harm has been included as a factor indicating higher risk in addition to actual harm caused by illegal practice
  - the case assessor and/or reviewing lawyer will seek advice from the GOC's clinical advisers about clinical risk in appropriate cases
  - sections about legislation relating to the testing of sight and sale of prescription spectacles have been made clearer
  - provision that the GOC may re-open a complaint following a referral to a third party if the third party is unable to act and the statutory time limit for bringing a prosecution has not expired

### Closer link with the GOC's overarching objective of protecting the public

38. Just under half of the respondents agreed that the protocol achieved a closer link with the GOC's overarching objective of protecting the public. Most of the respondents who disagreed felt that the GOC should do more to address illegal online sales including act against businesses based outside of the UK who sell to UK customers and/or have UK distribution centres.
39. The Opticians Act applies only in the UK. It is difficult to use UK law to prosecute an overseas company even where the purchaser is in the UK. There would be practical problems in presenting a hearing without the power to compel the defendant to attend a UK court. It would also be extremely hard to enforce any conviction or order.
40. In addition, the criminal offences relating to supply do not arise at distribution stage - they arise at the point of sale. The Act does not provide the GOC with any legislative basis on which to act against distribution centres and we consider that to do so would be beyond our statutory remit.
41. We note the comments seeking reform of the Act including additional powers for the GOC to act against illegal practice. An extension of our remit through legislative reform will require a clear evidence base linking illegal online supply and risk of harm, or risk of potential harm, to the public. The GOC encourages the sector to provide evidence of harm caused by illegal online supply as part of our [call for evidence on the Opticians Act and consultation on associated GOC policies](#) and explain how the evidence base necessitates additional offences and enforcement powers in order for the GOC to protect the public.

42. We also note the comments asking the GOC to run public awareness campaigns about the risks of purchasing online. The GOC will continue to raise awareness of our legislation as part of our ongoing approach to illegal practice so that users are aware of the legislation in place to keep them safe. The protocol is the first part of this work and we have clarified sections on the legislation relating to the testing of sight and sale of prescription spectacles to make them clearer in response to feedback received as part of the consultation.
43. The GOC cannot engage in public awareness campaigns that do not fall within our core regulatory function under the Act. The GOC is not aware of sufficient evidence of increased risk of harm from online purchases to necessitate such action under the GOC's overarching objective to protect the public.
44. We agree that communication about action taken against illegal practice and the ease with which illegal practice can be reported can be improved and will take these actions as part of the ongoing review of our approach to illegal practice.

#### **Improve sector awareness of the GOC's remit regarding illegal practice**

45. Again, just under half of the respondents agreed that the protocol would help improve awareness of the GOC's remit regarding illegal practice. Generally, the comments in response to this question relate to issues wider than the protocol such as the GOC's ability to address the growth of the online market, including optical service delivery, the work the GOC is doing with online suppliers and matters requiring legislative reform, such as increased powers.
46. Concerns about the impact of the online market were again raised in responses, particularly the unlevel playing field between online suppliers and high street practices. The reality is that the enforcement of the criminal offences under the Act relating to sales – bringing a prosecution in the magistrates' court – is not practicable for an organisation the size of the GOC or in relation to sales in a global online market. The protocol can only apply current legislation and we are being realistic about how we can achieve the best outcomes within our current legislation and resource.
47. Several respondents asked for clarity on how the GOC will communicate with a wider audience to ensure public safety. As part of the ongoing review of our approach to illegal practice, we are working with online platforms to raise awareness of our legislation and include relevant sections of the Act on sales information pages so that users are aware of the legislation that must be complied with. We recognise we need to communicate more effectively and more widely about our remit and approach to illegal practice and will consider how best this can be achieved.

48. We know our legislation does not match the realities of the market and are seeking views and evidence in the call for evidence to support any case for retaining or changing legislation.

### **Clarity on when we will act and what action will be taken**

49. Most respondents agreed that the protocol provides clarity on when we will act and what action will be taken against illegal practice. Again, general comments concerning the online market, approach to non-UK businesses and matters requiring legislative reform were received which have been addressed in earlier sections.
50. Several respondents asked for potential harm to be included as a factor indicating higher risk. We have made this change and are grateful for this omission being brought to our attention.
51. We also received some comments that the protocol was drafted with a bias towards not acting. We have revised drafting and believe that it balances the need for public protection with a proportionate, risk-based approach.
52. A few respondents also queried whether the GOC would re-open complaints closed and referred to a third party if the third party was unable to act. We have added a provision stating that a complaint referred to a third party may be re-opened if the third party does not act and the statutory time limit for bringing a prosecution for a summary only offence has not expired.<sup>1</sup>

### **Is anything unclear or missing in the updated protocol?**

53. Most respondents felt that there were matters that were unclear or missing from the protocol.
54. General comments related to drafting have already been addressed as have the areas respondents felt were missing, other than the GOC's timescales for action. Aside from the statutory time limit for laying an information, we will consider our timescales for action as part of our illegal practice objectives.
55. It is our view that all decisions relating to illegal practice should be referred to a lawyer for review for consistency and to ensure correct application of the legislation. We consider the protocol is appropriately worded to implement this approach.
56. It was mentioned by some respondents that a definition of harm would be helpful to aid understanding of when a complaint was likely to be assessed as requiring further investigation. Fairness demands that cases are assessed on a case-by-case basis and a definition of harm would add an unfair element of

---

<sup>1</sup> See section 127 of the Magistrates' Courts Act 1980

objectivity to a test that demands subjectivity based on the facts of the case. We have, therefore, not included a definition of harm in the protocol.

### **Discrimination against stakeholders with specific characteristics**

57. Most respondents felt that there were no aspects of the protocol that could discriminate against stakeholders with specific characteristics.
58. Of the respondents who felt that the protocol could discriminate, under 16s and vulnerable users were identified as stakeholders who could be impacted by the protocol's failure to ensure compliance in the online market, particularly by overseas sellers. The protocol sets out current legislation which offers greater safeguards for restricted categories (under 16s and those registered sight impaired). We are working with online suppliers to ensure awareness of our legislation and notification of the relevant legislation to their customers.
59. It was also mentioned that the illegal practice complaint form could be more accessible. We will update the complaint form accordingly and publish it on our website.

### **Positive impact on stakeholders with specific characteristics**

60. There were responses about positive impact on stakeholders with specific characteristics. Responses to this question were about positive impact on stakeholders generally.

### **Any other impacts**

61. The protocol is the foundation for ongoing work to develop our approach to illegal practice within our current legislative constraints to deliver the best outcome for the public and the sector.
62. We recognise the need to develop a communications plan as part of this work and will consider how best to share information on our approach to and action against illegal practice more widely.
63. It was queried whether only unregistered businesses would be referred to Trading Standards. If a registered business was suspected of illegal practice, a referral would be made to the Fitness to Practise team; however, the impact on the illegal practice case would depend on the facts of the case.