

Response to the General Optical Council consultation on acceptance criteria policy for business registrants

October 2020

1. Introduction

- 1.1 The Professional Standards Authority for Health and Social Care promotes the health, safety and wellbeing of patients, service users and the public by raising standards of regulation and registration of people working in health and care. We are an independent body, accountable to the UK Parliament. More information about our work and the approach we take is available at www.professionalstandards.org.uk
- 1.2 As part of our work we:
- Oversee the ten health and care professional regulators and report annually to Parliament on their performance
 - Accredit registers of healthcare practitioners working in occupations not regulated by law through the Accredited Registers programme
 - Conduct research and advise the four UK governments on improvements in regulation
 - Promote right-touch regulation and publish papers on regulatory policy and practice.

2. General comments

- 2.1 We welcome the opportunity to comment on the new acceptance criteria policy for optical businesses developed by the General Optical Council (GOC). As we highlighted in *Right-touch reform*, there is a lack of transparency generally in the initial stages of Fitness to Practise (FtP) across the regulators.¹ It is positive that the GOC are seeking to provide greater clarity on the process and tests to be applied when deciding whether complaints against business registrants should be taken forward.
- 2.2 We welcome the clear link to the Standards for Optical Businesses as the basis for considering whether a concern should go forward as well as the explicit reference to assessment of risks. It is also helpful to see the link to the Optical Consumer Complaints Service as an alternative option for cases that do not meet the threshold for the FtP process.
- 2.3 We support the GOC's decision to develop this policy and overall are of the view that it should help to provide clarity to registrants, complainants and wider

¹ Professional Standards Authority 2017, *Right-touch reform: A new framework for assurance of professions*. Available at: https://www.professionalstandards.org.uk/docs/default-source/publications/thought-paper/right-touch-reform-2017.pdf?sfvrsn=2e517320_5

stakeholders. There are a few areas where further clarity would be beneficial which we have outlined below.

3. Detailed comments

Overarching objective

- 3.1 At 1.12, it may be helpful for the GOC to reference the specific wording of their overarching objective. The legislation refers to the need to 'promote and maintain public confidence'. Currently the summary of this in the acceptance criteria policy document refers to 'the public interest'. As we have flagged in our report on how the regulators take into account public confidence in the FtP process, the phrase 'public interest' may be interpreted in different ways.²

Evidence threshold

- 3.2 At 1.17 the document states that the GOC may close a case 'because we are unable to obtain information to substantiate an investigation'. Whilst the GOC will need to have sufficient information to assess whether a case meets the threshold it is important that cases are not wrongly closed prior to a full investigation.
- 3.3 At this stage the decision should be about whether the concern raised constitutes an allegation – whether there has been a breach of the Standards and consideration of risk. This should not focus on whether there is sufficient evidence to prove or disprove the allegation which should come at a later stage. It may be helpful for the GOC to review the wording of this section or to clarify the nature of the assessment of evidence at this stage in the process.

Definition of misconduct

- 3.4 We suggest that the GOC may wish to review the wording relating to the definition of misconduct. At 2.7 the policy document quotes the Opticians Act: 'conduct which would be regarded as reprehensible/ deplorable/ of sufficient concern by fellow practitioners'.
- 3.5 The case studies provided are helpful in guiding both GOC staff and wider stakeholders on how this definition should be interpreted. However, it might be helpful to acknowledge that this wording may be open to different interpretations and consider whether any further clarity can be provided.

Allegations against an individual and business registrant

- 3.6 At 2.22 the policy document states that the GOC won't pursue identical allegations against an individual and a business registrant, but it doesn't say how it will decide which allegations to pursue. We note there are some examples given at 2.9, but these seem to include some 'and/or' options referring to both business and individual registrants.

² Professional Standards Authority 2019, *How is public confidence maintained when fitness to practise decisions are made?* Available at: https://www.professionalstandards.org.uk/docs/default-source/publications/how-is-public-confidence-maintained-when-fitness-to-practise-decisions-are-made.pdf?sfvrsn=c8c47420_0

- 3.7 It would be helpful for the policy to be explicit about whether different allegations could arise from the same set of facts against an individual and a business registrant and what the process would be when deciding how/when to pursue these.

Impact assessment

- 3.8 As this is a new policy it would be helpful to know if the GOC have carried out an impact assessment.

4. Further information

- 4.1 Please get in touch if you would like to discuss any aspect of this response in further detail. You can contact us at:

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