

Response to General Optical Council consultation on draft guidance for registrants: Speaking up

March 2021

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- 2.1 We welcome the opportunity to comment on the General Optical Council (GOC) draft guidance for registrants on speaking up. We support the GOC's decision to produce this guidance. We note that the draft guidance expands on the GOC's requirement in its standards of practice for registrants and students and standards for optical businesses to raise concerns about risks to patient and public safety if necessary. We welcome the GOC's effort to address the ongoing challenges identified in numerous inquiries in relation to staff speaking up.
- 2.2 In general, the guidance seems clear and easy to follow and should help registrants better understand the requirements around speaking up when there is a risk to patient or public safety. Assuming that the requirements on speaking up are mirrored both in initial education and training for registrants and subsequent CPD requirements this should help to embed speaking up within the culture of optical practice and hopefully have a positive impact on patient and public safety.
- 2.3 We have made a few suggestions below to help to clarify the guidance further, primarily in relation to highlighting more fully the difference between the duty of candour and the duty to speak up which are related but distinct.

- 2.4 We have also suggested that it may be helpful for the guidance to reference more explicitly any barriers that registrants might face in exercising their duty to speak up including from an EDI perspective any particular challenges that those with protected characteristics might face. It could also highlight potential mitigations or support that could be provided in workplaces to address these issues.

3. Detailed comments

The duty of candour and the duty to speak up

- 3.1 We note that the guidance references the duty of candour which requires professionals to be open and honest with patients when things have gone wrong which the GOC has separate guidance on. We suggest that it may be helpful to expand this section and outline more clearly the difference between being candid with patients and families when things have gone wrong (or when there has been a near miss) and speaking up *within the workplace* when something has gone wrong or when there may be a potential risk of harm that could be addressed.
- 3.2 The two duties are clearly related, and an open, transparent workplace culture is likely to support professionals in exercising their judgement in both areas. However, it will be important for professionals to understand the difference between speaking up within the workplace to raise concerns about risks or to seek to avoid further harm occurring and being candid with patients and families which is usually when something has already gone wrong or harm has already occurred or nearly occurred.
- 3.3 It may also be helpful to highlight the difference between the professional and statutory duty of candour. This should include any variations for professionals to be aware of in the framing of the statutory duty of candour across the parts of the UK where it has been introduced (England, Scotland) and Wales when the duty comes into force (currently expected in spring 2022).

Guidance for registrant recipients of disclosures

- 3.4 We note that some registrants in senior or managerial roles may be in a position to receive such disclosures from other professionals. It may be worth covering this in the guidance or referring to any other relevant guidance covering this issue. This should cover both organisational and individual responsibilities in this area.

UK-wide application

- 3.5 In general terms the guidance appears to be broadly applicable across the UK. It is helpful that the guidance references the minor differences relating to 'protected disclosures' in Northern Ireland.
- 3.6 As noted above, it may be helpful for the guidance to more clearly distinguish between the duty of candour and the duty to speak up and in relation to the duty of candour, the difference between the statutory and professional duties. If this is added, it would be necessary to outline how the statutory duty of

candour applies in the different countries of the UK i.e. that it has now been introduced in England, Scotland (and is due to be introduced in Wales) but that there are slight differences in the threshold for application.

Issues or barriers which would prevent registrants from using the guidance

- 3.7 We note that the barriers to speaking up are likely to be similar to the barriers to candour some of which were identified in our 2013 literature review to support advice to the Secretary of State on implementation of a professional duty of candour.¹ These include:
- the diffusion of responsibility to act when multiple people are involved
 - specific differences between professions in the propensity to be candid/speak up
 - divided loyalties when speaking up or being candid may involve undermining/speaking out about the behaviour of a colleague or employer
 - poor organisational culture which may lead to fear of personal repercussions for speaking up
 - concern about the impact on an individual's career of speaking out.
- 3.8 It may be helpful for the guidance to more clearly acknowledge some of these barriers when outlining the different avenues for registrants to consider when they identify the need to speak up.
- 3.9 It may also be helpful for the guidance to acknowledge that structural inequalities including whether individuals are from a BAME background or have other protected characteristics may have an impact on their willingness to speak up, see further detail on this point at 3.14-3.15.

Other

- 3.10 There are a number of other areas that it may be helpful for the GOC to consider covering or emphasising more strongly within the guidance. These include:
- that speaking up when necessary is a central part of the job rather than an optional add-on to professional responsibilities
 - that the requirement for professionals to be open and honest and speak up when they are concerned about risks to patients is a shared duty for all professionals working in health and care
 - that as concerns tend to grow over time, the very earliest opportunity to speak up is likely to be the best for professionals, patients and organisations/businesses
 - that speaking up (in the correct way) is likely to be a self-protective measure for registrants where things are going wrong

¹ https://www.professionalstandards.org.uk/docs/default-source/publications/research-paper/candour-research-paper-2013.pdf?sfvrsn=5b957120_8

- that difficult situations are stressful. There may be a temptation for professionals to make disclosures inappropriately, but they should always seek to use the appropriate channels.

- 3.11 It may be helpful to outline more fully the role of Freedom to Speak Up guardians in the workplace and clarify the link with the National Guardian's office. It is helpful to see the link provided to the additional resources and sources of information for registrants in section G.
- 3.12 It may be helpful for the GOC to review the language within the guidance for consistency. In some places, for example paragraphs 1 and 11, there is reference to speaking up when patient safety 'may be at risk'. However, elsewhere (e.g. paragraphs 18 and 23) the guidance refers to a belief that patient safety 'is at risk'.
- 3.13 In terms of activity to support the guidance or to help embed an open supportive culture if it is not already it would be useful to consider whether the requirements around speaking up should be included with CPD or continuing fitness to practise provisions. In addition, we assume that these requirements are already embedded within standards for initial education and training to ensure that optical students gain a good grounding on this issue prior to starting practice.

EDI considerations

- 3.14 As noted above, it is possible that guidance on speaking up and speaking up itself may have particular implications for those with protected characteristics. For example, it may be the case that structural inequalities including whether individuals are from a BAME background or have other protected characteristics may have an impact on their willingness to speak up. This may be due to individuals within these groups being in more junior or less secure roles or because individuals find themselves less likely to be listened to and/or may be more concerned about adverse consequences if they do.
- 3.15 It would be helpful for the guidance to acknowledge this issue and ensure that individuals and organisations are aware of this and are encouraged to foster a culture where everybody is comfortable making such disclosures. It may also be appropriate for the guidance to remind organisations and managers that, while the guidance itself imposes equal duties, people with protected characteristics may find it more difficult to follow this and, therefore, they need to be specially mindful of this.
- 3.16 It may also be helpful for the GOC to consider whether there are likely to any EDI implications of encouraging registrants to speak up with regard to raising complaints or concerns about fellow registrants. There is research demonstrating that BAME registrants are often more likely to be the subject of complaints and FTP proceedings, so it is possible that this could have an impact in this area. It may be helpful for the GOC to consider how or whether to reference this within the guidance, along with any research in this area or how they might address any possible impacts.

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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