

Professional Standards Authority response to the General Optical Council's consultation on draft Indicative Sanctions Guidance

1. About us

- 1.1. The Professional Standards Authority for Health and Social Care (PSA) is the UK's oversight body for the regulation of people working in health and social care. Our statutory remit, independence and expertise underpin our commitment to the safety of patients and service-users, and to the protection of the public.
- 1.2. There are 10 organisations that regulate health professionals in the UK and social workers in England by law. We audit their performance and review their decisions on practitioners' fitness to practise. We also accredit and set standards for organisations holding registers of health and care practitioners not regulated by law.
- 1.3. We collaborate with all of these organisations to improve standards. We share good practice, knowledge and our right-touch regulation expertise. We also conduct and promote research on regulation. We monitor policy developments in the UK and internationally, providing guidance to governments and stakeholders. Through our UK and international consultancy, we share our expertise and broaden our regulatory insights.
- 1.4. Our core values of integrity, transparency, respect, fairness, and teamwork, guide our work. We are accountable to the UK Parliament. More information about our activities and approach is available at www.professionalstandards.org.uk

2. Key points

- 2.1. We welcome the General Optical Council's (GOC's) draft Indicative Sanctions Guidance. However, we believe that aspects of the guidance should be improved to prevent clear negative impacts on fairness, promoting equality diversity and inclusion, and public protection. These points relate to the definition of vulnerable witnesses, which we believe should be expanded in line with a modern understanding of vulnerability, and the need for improvements to the clarity of the guidance in relation to hearsay, review hearings and sexual misconduct.

3. Detailed comments

3. Is there anything unclear or missing in the updated guidance?

3.1. Yes.

4. If you answered 'Yes', please provide details about what is unclear or missing.

Vulnerable witnesses

3.2. The section of the guidance detailing who may be counted as a vulnerable witness (starting at paragraph 14.17) is based on a very narrow definition of vulnerability which is not in line with our emerging understanding of the nature of vulnerability. This, in our view, does not reflect best practice and has the potential to impact negatively on those who in engage with the fitness to practise process as witnesses. The negative impacts may be particularly felt by certain groups with shared protected characteristics and more detail about this is provided in response to question six.

3.3. Whilst we appreciate that the definition of a vulnerable witness is set out in the GOC's Rules, we believe regulators need to take a more nuanced approach to vulnerability, recognising that a witness may be 'situationally vulnerable' as opposed to (or in addition to) being 'inherently' vulnerable, and in addition that levels of vulnerability may change over time. Many witnesses may benefit from special measures during a hearing, for example because they are anxious about giving evidence or due to the nature of their evidence. This is recognised in the criminal courts in England and Wales where the court is able to grant special measures to any witness where it is "*satisfied that the quality of evidence given by the witness is likely to be diminished by reason of fear or distress on the part of the witness in connection with testifying in the proceedings*".¹

3.4. The definition of vulnerability has also been explored in the specific context of professional regulation, for example in the 2024 academic study *(Re)constructing 'witness vulnerability': An analysis of the legal and policy frameworks of the statutory regulators of social work and social care professionals in the UK*. The study concluded that defining vulnerability based on inherent characteristics is problematic. It highlighted that witnesses may become vulnerable due to context, for example as a result of loss or trauma, or continued stressful interactions with services or investigative processes.² Further, a new approach to vulnerability is now in use in official guidance to which the GOC is subject, such as the Referral Guidance of the Disclosure & Barring Service.³ This guidance notes that the term

¹ [Special Measures | The Crown Prosecution Service](#)

² Sorbie, A & Garippa, L, 2024, *(Re)constructing 'witness vulnerability': An analysis of the legal and policy frameworks of the statutory regulators of social work and social care professionals in the UK*:

[\(Re\)constructing 'witness vulnerability': An analysis of the legal and policy frameworks of the statutory regulators of social work and social care professionals in the UK | The British Journal of Social Work | Oxford Academic](#)

³ [dbs-referral-faq.pdf](#)

‘vulnerable adult’ has been amended as it was felt to be inappropriate to label an adult as vulnerable solely due to their circumstances, age or disability. The DBS definition of a vulnerable adult includes those in receipt of certain services such as health care.

- 3.5. In addition to wishing to see an expanded definition of vulnerability, we also believe that there should be more latitude for the Practice Committee to prevent the registrant from undertaking cross-examination in person. Paragraph 14.19 states that a registrant shall not be allowed to cross examine the witness (where they are the victim) in relation to allegations of a sexual nature. There may be many more circumstances where it would not be appropriate for the registrant to conduct cross-examination in person, for example where the allegation relates to violence, bullying, abuse or intimidation. This may be especially relevant where the victim is a colleague working under the direction of the registrant and where the hierarchical nature of the workplace may have contributed to the alleged wrongdoing.
- 3.6. In our view, consideration should be given to either widening the list of allegations for which cross-examination in person is not allowed, or giving Practice Committees discretion to determine this based on the individual circumstances of the case. These circumstances may include the vulnerability of the witness, recognising, as set out above, that witnesses may be vulnerable for many reasons, irrespective of the nature or seriousness of the case in question. We appreciate that to make such changes would require changes to the GOC’s Rules.

Hearsay

- 3.7. Where the guidance addresses hearsay (para 14.12 onwards) it only makes reference to one obvious example where hearsay is likely to arise in fitness to practise proceedings. We suggest that the start of this sub-section should provide the definition of hearsay before moving into the example given re witness evidence. A failure to properly understand and apply the hearsay test could create issues both for the Panel and the registrant in terms of fairness in proceedings. The one example given is admittedly the one the Panel is most likely to see, but it would be inaccurate to only provide this as an example, especially in lieu of any definition.

Directing a review hearing

- 3.8. We suggest that the section about review hearings (Para 22.34) should include information about when a review would be appropriate. For example, when a substantive sanction of suspension is imposed for a longer duration, and as such the registrant has been out of practice for some time – under such circumstances there may be a greater need for a review in order for a review committee to reassure itself that the registrant has kept their skills up to date. Further, in matters where the committee concluded remediation is not complete in the substantive proceedings, a review might be required so that a review committee has the opportunity to evaluate remediation before the registrant returns to unrestricted practice.

Sexual misconduct

3.9. Sexual misconduct / sexual harassment (Para 23.7 onwards): We do not think it is helpful to distinguish sexual harassment from sexual motivation as detailed here, as following in the PSA appeal in *Dugboyele* there are scenarios where we would expect actions to constitute both sexual harassment and be sexually motivated. One of the key grounds in the PSA appeal in *Dugboyele* was that the regulator failed to include a charge of sexual motivation when charging sexual harassment – the way this is currently drafted risks that repetition. This part of the guidance should also outline the difference between sexual misconduct and sexual harassment.

5. Do you think any aspect of the guidance could have a negative impact on stakeholders with specific protected characteristics?

(Please consider: age, sex, race, religion or belief, disability, sexual orientation, gender reassignment, pregnancy or maternity, caring responsibilities, or other relevant characteristics.)

3.10. Yes.

6. If you answered 'Yes', please explain which characteristic(s) might be affected and how.

3.11. The limited definition of vulnerability in the guidance has the potential to negatively impact on groups with shared protected characteristics which may include sex. This may occur, for example, where a junior member of staff who is not entitled to additional measures afforded to vulnerable witnesses is giving evidence in relation to a more senior registrant. Research indicates that female registrants are less likely than male registrants to hold senior positions.⁴

3.12. The lack of clarity in relation to the paragraphs covering sexual misconduct has the potential to negatively impact on women, who are disproportionately likely to be victims of sexual misconduct.⁵

⁴ [optical-workforce-survey-executive-summary.pdf](#)

⁵ [Experiences of harassment in England and Wales - Office for National Statistics](#)