



GOC Consultation

Illegal practice strategy review – FODO response

About us

FODO – The Association for Eye Care Providers is the leading national association for eye care providers working in primary and community care settings. Each year our members provide over 18 million eye examinations and offer a wide range of other eye care services across the UK. We have seen the responses of BLM, our major legal defence provider, which we fully support and reproduce below, with our additional comments.

Questions

1. To what extent do you agree that the updated protocol links more closely with our overarching public protection function?

a) Strongly agree b) Agree c) Neither agree nor disagree d) Disagree e) Strongly disagree

Please explain your reasons.

This consultation is welcome and the protocol helpful and mostly clear.

The consultation itself however is slightly disappointing.

On the positive side, the protocol contains a helpful summary of the offences under the Opticians Act, and the new clarity brought by the acceptance criteria is very welcome as is the approach to test purchasing where it is suspected that illegal practices is continuing after 'cease and desist'.

However, the protocol in isolation falls short of the strategy of which it is supposed to be part (as mentioned on the GOC consultation hub). Nor does it give any evidence of the scale and depth of the review which GOC has carried out (consultation hub again). Without that broader context it is hard to be convinced that the protocol – solid and helpful though it is - is an integral part of an overarching strategy to protect the public.

We fully appreciate and empathise with the limitations of the GOC's powers. Unfortunately the drafting gives the overriding impression of an eagerness to be shot of cases, rather than to resolve them to protect the public. For example, in paragraph 3.39, the eagerness to close precedes referral to another agency - which

is must be the wrong way round - and there is nothing about following-up with those agencies to ensure that the public has been protected.

The GOC is at pains to be proportionate, targeted and consistent (3.2) – which we fully support – but there is no mention in the document about 'effectiveness' for example an aim to be 'as effective as possible' in terms of addressing illegal practice within limited powers.

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

a) Strongly agree b) Agree c) Neither agree nor disagree d) Disagree e) Strongly disagree

Please explain your reasons.

We agree the protocol is clear and will help prevent unrealistic expectations which have caused frustration amongst registrants in the past. It is also pleasing that the GOC is seeking to work with online platforms to protect patients.

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. This bigger picture might better help convince the public and the sector of the GOC's commitment to address illegal practice wherever feasible.

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?

a) Strongly agree b) Agree c) Neither agree nor disagree d) Disagree e) Strongly disagree

Please explain your reasons.

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. There is clearly a drafting problem here which should be amended in the final version.

4. Is there anything unclear or missing in the updated protocol?

a) Yes b) No c) Not sure

If you answered 'yes', please give details.

In addition to our points about 'effectiveness' in response to Question 1 – we believe that

- a. 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 (paragraphs 3.10.3 and 5.2.5)

- b. as well as lawyer input (paragraphs 3.11 and 3.14) which we welcome, the case office should also have access to professional advice in respect of risk
- c. the fact that sight-testing includes the immediate vicinity of the eye should be included for completeness (paragraph 3.16)
- d. the definition of supervision reads rather oddly (paragraphs 3.21 and 3.31).
Would "on the premises and in a position to intervene and use their professional judgement as a clinician in the patient 's interest" be better?
- e. if illegal practice is not found but the case referred to FtP (paragraph 3.39.3), in fairness, the case should be assessed with completely fresh eyes
- f. it would be helpful to explain why reputational damage (paragraph 5.2.4) presents a risk to the public i.e. it could undermine public confidence in coming forward for eye care (cf paragraph 3.9)
- g. it is important that decisions to prosecute or not to prosecute (paragraph 5.12) are discussed by the Council in public session – albeit in aggregate and anonymised form - rather than being buried in papers. This would enable Council members to demonstrate improved oversight of the issue and stakeholders to build an understanding of where the GOC's powers might need to be strengthened
- h. there is no justification for not including all protected characteristics (paragraph 5.9.6)
- i. the Registrar should be able to issue criminal proceedings where there is sufficient evidence for a realistic prospect of conviction against at least one defendant on one charge (paragraph 5.5). Requiring 'realistic prospect' against all defendants on all charges is unduly limiting of the Registrar's ability to take action to protect the public
- j. Annex A should have been included.

5. Are there any aspects of the updated protocol that could discriminate against stakeholders with specific characteristics? (Please consider age, sex, race, religion or belief, disability, sexual orientation, gender reassignment, pregnancy or maternity, caring responsibilities or any other characteristics.)

a) Yes b) No c) Not sure

If you answered 'yes', please give details.

Only 'Age and infirmity' are listed as factors that might be relevant to the public interest test (paragraph 5.9.6) but this would apply to all protected characteristics.

6. Are there any aspects of the updated protocol that could have a positive impact on stakeholders with specific characteristics? (Please consider age, sex, race, religion or belief, disability, sexual orientation, gender reassignment, pregnancy or maternity, caring responsibilities or any other characteristics.)

a) Yes b) No c) Not sure

7. Are there any other impacts of the updated protocol that you would like to tell us about?

a) Yes b) No c) Not sure

If you answered 'yes', please give details.

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.

The accompanying impact assessment seems to be an internally focused GOC management tool and makes no assessment of the protocol's anticipated benefit for legal operators or impact on reducing illegal practice.