

Accessibility of Fitness to Practise information

We are seeking feedback on how we display information about the fitness to practise of our registrants.

June 2010



About the General Optical Council

Introduction

The General Optical Council (GOC) is one of 13 organisations in the UK known as health and social care regulators. These organisations oversee the health and social care professions by regulating individual professionals. We are the regulator for the optical professions in the UK. The Council currently registers around 23,500 optometrists, dispensing opticians, student opticians and optical businesses.

Mission and values

The GOC's mission is to protect the public by promoting high standards of education, conduct and performance amongst opticians. Our work is built on a foundation of six core values. These values are based on the Better Regulation Commission's criteria for good regulation.

Proportionate:

We will identify and target the issues of greatest risk to public safety.
We will remove unnecessary bureaucracy.

Accountable:

We will seek, and respond to, the views of stakeholders and partners.
We will consider and review the consequences of our actions.

Consistent:

We will work in collaboration with UK health regulatory bodies and other partners to develop consistent policies and procedures.

Transparent:

We will explain and publicise decisions, and make public, wherever possible, Council information, activities and proceedings.

Targeted:

We will ensure that our activity is focused on the areas of greatest risk, or where there is most benefit to public health and safety.

Organisational Excellence:

We will provide good value for money.
We will pursue high standards of customer service.
We will ensure that the Council is a good place to work, particularly through developing and training our staff and members.
We will promote and develop equality and diversity in all our work.

Responding to the consultation

Respond to

Please send your responses to **Matthew Tait**, Policy and Projects Manager, no later than **Friday 27 August 2010**. An electronic response form is available in the Consultations section of the GOC website, www.optical.org. A consultation response form is also attached to this document. Responses should be sent to:

Post: 41 Harley Street, London, W1G 8DJ. Email: mtait@optical.org

This document is an open consultation on the accessibility of information related to the fitness to practise of optometrists and dispensing opticians, students and optical businesses registered with the GOC.

We will use your responses to help us to decide whether changes are required to the way we currently make fitness to practise information available, particularly on the GOC website and our publicly-searchable online register information.

Please include contact details so that we can follow up any relevant aspect of your response. Unless you state otherwise (and an automatic disclaimer generated by your IT system will not be taken as such) we will assume you are happy for us to publish your response and to share it with other appropriate bodies and stakeholders.

Further information

Where possible, please provide evidence to support your response. If you are a representative group, it would be helpful if you could include a summary of the people and organisations that you represent.

A copy of this consultation has been sent to a large number of stakeholder groups representing our registrants, the public, patients, partner organisations and other groups. If you have any queries about the consultation then please contact Matthew Tait on 020 7307 3923 or mtait@optical.org

Our commitment to consultation

We believe it is important that the people affected by our work have a say in how we deliver it. We believe it is vital to consult with all the groups with an interest in the GOC; patients, the public, our registrants, optical organisations, healthcare organisations, employers, other regulators, staff and other stakeholders.

How we consult with our stakeholders is set out in our *Consultation Framework*, available in the consultation section of our website.

Feedback on the consultation process itself would be welcome. If you have any comments then please contact **Simon Grier** on sgrier@optical.org

GOC Accessibility of Fitness to Practise information consultation

Start date: 7 June 2010

End date: 27 August 2010

Results published: A summary of responses will be published following the end of the consultation period. Decisions on any changes will be announced following decisions by Council.

Contact: Matthew Tait. 020 7307 3923, mtait@optical.org

Consultation summary

1. We are currently considering whether we should change the information that we display about the fitness to practise of registered optometrists and dispensing opticians, students and optical businesses.
2. We currently make all public Fitness to Practise Committee and Interim Order hearing decisions and transcripts available on the GOC website. Warnings and registration conditions imposed by the Committee that are currently in force can also be viewed against the individual records of GOC registrants on the publicly-searchable registers.
3. It has been recommended that we should consider including all expired Fitness to Practise Committee warnings and sanctions on registrants' individual records on the public registers. This might provide additional protection for the public, by making information about any past fitness to practise issues of these health professionals more accessible.
4. It has also been recommended that we begin retaining the records on the public registers of all registrants who have been suspended or erased, in order to provide clarity about the status of those individuals (or businesses). At present their records are removed from the public registers while the suspension or erasure is in force.
5. We are also considering whether our current policies on the accessibility of past Fitness to Practise Committee and Interim Order hearing decisions and transcripts on the GOC website are appropriately balanced. We are considering a range of options for how we make these decisions and transcripts available on the website, for how long, and whether they should be accessible from outside the GOC website (ie via external internet search engines).
6. We are seeking feedback from stakeholders on these issues, and any other comments that may be relevant. We will issue a consultation summary document following the end of the consultation period in July 2010. Responses to this consultation will inform decisions by Council at its meeting in September 2010. Any changes to current policy will be announced following that meeting.

1. Background

The GOC registers

The GOC maintains registers of all registered optometrists, dispensing opticians, student registrants and bodies corporate who are eligible to practise, train or carry on business in the United Kingdom. Publicly-searchable registers are published online on the GOC website www.optical.org.

The information in the registers enables members of the public and employers to ensure that health professionals are qualified and fit to practise. The GOC's online registers currently include:

- Information to enable the registrant to be identified – name, gender, location/practice address.
- Information about each registrant's professional qualifications and any registered specialties.
- Information related to GOC registration – GOC registration number, date of registration, and registration status (including any current warnings or restrictions imposed by the Fitness to Practise Committee).

Fitness to Practise

As part of our duty to protect the public, the GOC is able to take action against registrants who do not meet the standards set for performance, education and conduct. These powers are given to us by Parliament, through the Opticians Act 1989. We can take action if a registrant's fitness to practise is impaired as a result of any one or more of a number of factors, including:

- Misconduct;
- Deficient professional performance;
- A caution or conviction in relation to a criminal offence;
- Physical or mental health problems; or
- A finding by another regulatory body.

Anyone can complain to us if they have concerns about any of our registrants. Each complaint is considered by the GOC's Investigation Committee, and may be referred by the Investigation Committee for adjudication by the independent Fitness to Practise Committee at a formal hearing (usually held in public).

Additionally, if the Investigation Committee considers that a GOC registrant may be a risk to the public or themselves, or if they think there is another reason that is in the public interest, they can instruct the GOC to ask the Fitness to Practise Committee to impose an interim order until the complaint against the registrant has been considered at a public hearing. An interim order either immediately suspends the registrant from the register, or restricts the work the registrant is allowed to do by imposing conditions on their ability to practise.

If the Fitness to Practise Committee decides that the registrant's fitness to practise is impaired, there are various sanctions it can impose. These include:

- Financial penalties of up to £50,000;
- Conditional registration – restrictions imposed on the types of practice that the registrant can undertake (such as stipulating that the registrant must undertake further training or must practise only under supervision);
- Suspension from the registers (which means that the registrant is not entitled to practise in the UK for the period of the suspension); or
- Erasure from the registers (known as being 'struck off').

If the Fitness to Practise Committee decides that the registrant's fitness to practise is not impaired, it may still issue the registrant with a warning.

2. Fitness to practise information on the GOC registers

Current GOC policies

As noted above, we currently display information about any current sanction that has been imposed by the Fitness to Practise Committee as part of that registrant's entry on the publicly-searchable register. Conditions imposed following an interim order hearing also appear on the public registers.

The publicly-searchable registers do not currently display any information regarding any previous fitness to practise sanctions that are no longer in force. The registers also do not display any information regarding complaints that have been concluded without consideration by the Fitness to Practise Committee (including complaints that have resulted in warnings being issued by the Investigation Committee).

The public registers also do not provide any information about whether or not a registrant is either currently under investigation or has been referred for a Fitness to Practise Committee hearing.

Where a registrant has been suspended or erased from the registers following a decision by the Fitness to Practise Committee, their entire entry will be removed from the publicly-searchable registers for the period of the suspension (or in the case of erasure, until such time as the registrant successfully appeals the erasure or is restored to the register).

Review of current policies

GOC consultation events

We have been conducting research into the content and accessibility of our registers. Several consultation events were held in 2009 around the UK (attended by optical professionals, educational and industry representatives, members of the public and patients), in order to identify issues that we should consider in our review of current policies.

The consultation events highlighted various issues and perspectives that need to be balanced in setting policies about the accessibility of information about registrants' fitness to practise, past and present. Feedback received on these issues has been incorporated within the discussion section below. A document summarising the outcomes of the consultation events is available from the GOC website.

The Council for Healthcare Regulatory Excellence reports

The Council for Healthcare Regulatory Excellence (CHRE) is the body that provides oversight and advice regarding the activities of the UK health and social care regulators.

CHRE has recently examined the policies of the regulators regarding the content of their professional registers. In February 2010 CHRE issued a report that included a number of recommendations for the regulators, including regarding the information to be displayed concerning decisions made and sanctions imposed by Fitness to Practise Committees.

If we were to implement the recommendations within CHRE's report, that would mean making some significant changes to our current policies. The recommendations of the CHRE report are not binding on healthcare regulators; however, the regulators' performance is assessed annually by CHRE in a report to Parliament, and we have a statutory duty to cooperate with CHRE. We work to implement CHRE recommendations wherever possible.

Before making significant changes to our current policies, we want to consult with our registrants, interested members of the public and other stakeholders. Issues that we would like your feedback on are set out in the following sections of this document.

Discussion and request for views

Suspensions and erasures

As previously noted, our publicly-searchable registers do not display any records in relation to suspended registrants. The reason for this is that, in principle, the public registers are intended to be a definitive record of all those who are qualified and fit to practise in the UK - and only those people. Since suspended registrants (and former registrants whose names have been erased) are not entitled to practise, their records are removed from the publicly-searchable registers. They therefore do not show up in a register search.

Information about the outcomes of all public hearings of the Fitness to Practise Committee, including transcripts of the Committee's decisions, is available in the 'Past Hearings' section of the GOC website. Decisions regarding suspensions and erasures can be accessed here.

The CHRE report recommended that regulators' public registers should include records relating to those registrants who are currently suspended (rather than removing their records for the duration of the suspension). At present, there is a mixture of policies among the regulators on this issue.

The CHRE report recommends that retaining the records of suspended registrants registers would help to avoid any possible confusion over the status of suspended registrants. At present, if a member of the public searches the register and fails to find the record of a suspended registrant, they may conclude that this is an error on the register. Retaining the record, clearly marked to show that the registrant is suspended, would help protect the public by removing any uncertainty over why that registrant has not appeared in the register search.

Similarly, CHRE recommends that the records of all those who have been erased following a decision of the Fitness to Practise Committee should be retained on the public registers for at least five years following their erasure, to provide clarity regarding their status. This proposal might be particularly relevant for the optical professions. Due to the partly deregulated nature of dispensing, it is possible for a dispensing optician who has been erased from the register to legally continue to practise in the field, as long as he or she only performs non-restricted dispensing activities. Retaining the records of struck-off former registrants on the public registers would provide clarity where this was occurring. However, it might also create some confusion as to why an optician who had been erased was able to continue practising.

We agree in principle with the arguments and recommendations set out in the CHRE report. We propose that the publicly-searchable GOC registers be changed to include the records of all those registrants who are currently suspended. A note would be included against the 'Status' item in their record to show that they have been suspended and are not lawfully able to practise.

We also agree that it would increase clarity if the public registers also included the records of those individuals who have been erased as the result of a decision by the Fitness to Practise Committee. This may not, however, currently be possible under our existing Registration Rules. If necessary we intend to seek legal advice and a change in the wording of the Rules to enable the records of erased former registrants to be displayed on the public registers.

We are interested in feedback on these proposals.

Question 1 Do you agree that the GOC's publicly-searchable registers should include the records of registrants who are currently suspended?

Question 2 Do you agree that the GOC's publicly-searchable registers should include the records of former registrants who have been erased as the result of a decision of the Fitness to Practise Committee?

Fitness to practise history

At present, individual records on the GOC's public registers only provide links to information about those Fitness to Practise Committee warnings and sanctions that are currently in force.

For example, once a period of conditional registration has been completed, the registrant's record on the publicly-searchable register is updated to show that the registrant has 'Active' registration status and is able to practise unrestricted in the UK. No indication appears on the registrant's public record to show the previous conditions that were imposed.

A number of attendees at our registers consultation events in 2009 (particularly members of the public and patients) argued that consideration should be given to making previous Fitness to Practise Committee warnings and sanctions accessible on registrants' individual records on the publicly-searchable registers. The CHRE report also recommends that regulators who do not currently publish fitness to practise histories should begin to take a proportionate approach to providing the public with this information.

There are legitimate public protection arguments in favour of displaying past Fitness to Practise Committee sanctions against individual records on the public registers. The key function of the GOC as set out in the Opticians Act is the protection of the public. There is a compelling argument that protection of the public and maintenance of the reputation of the optical professions can only be fully achieved if a member of the public can easily access information about the fitness to practise of their treating health professional, including information about any previous impairments.

Additionally, the decisions of the Fitness to Practise Committee are already in the public domain (they are delivered at the end of the public hearings and are also made available from the GOC's website). Making the same information accessible from the individual registrant's record on the publicly-searchable registers would only serve to improve transparency, by making the information as easily accessible to the public as possible.

The discussion at the GOC consultation events, however, highlighted the complexity of the arguments in this area, and the need to balance a number of different concerns.

As noted in the CHRE report, once the period of a sanction imposed by the Fitness to Practise Committee has expired, the fitness to practise of the registrant is no longer considered to be impaired. It could therefore be argued that there is no public protection requirement for these expired sanctions to be recorded on the public register.

Furthermore, the purpose of the fitness to practise process is not to punish registrants but to protect the public, uphold professional standards, and maintain confidence in the professions. There is an argument that it may not be proportionate for an expired warning or sanction to remain accessible on

an individual's public record for the remainder of their professional career, particularly where the registrant has never been subject to any other sanction.

Another issue raised in discussion at the GOC consultation events is that there may be a somewhat lower level of clinical risk associated with the optical professions relative to some other health professions. However, the potential consequences of clinical or any other form of misconduct in the optical professions are certainly not to be minimised.

Similar to some other health professions, the commercial context for most optical practise may also be a relevant factor. The availability of past fitness to practise sanctions on a registrant's public record might result in unintended and/or disproportionate adverse effects on their business. Again this does not imply, however, that a member of the public would be less in need of information about the past fitness to practise of an optician, as opposed to any other health professional.

We are aware that the other healthcare regulators currently adopt a range of approaches to the display of past fitness to practise sanctions on their public registers and websites. Currently among the other regulators, only the General Medical Council displays information on past fitness to practise outcomes directly on individual registrants' records on the public registers.

We have been advised that we may not currently be able to display information on warnings or expired sanctions under our existing Registration Rules. If it were decided to make this information available on the public registers, we would seek legal advice and a change in the wording of the Rules.

We would be interested in feedback on the most appropriate and proportionate policy for the GOC's registers in respect of these issues.

Question 3 Do you think that the GOC should begin including information on expired Fitness to Practise Committee warnings and sanctions on the individual records of all registrants on the publicly-searchable registers? Why/why not?

Question 4 If the GOC began including information on expired fitness to practise warnings and sanctions on the publicly-searchable registers, do you think that such information should remain on a registrant's record permanently? Or should information on past warnings and sanctions be removed after a certain period of time? Please give reasons for your answer.

3. Fitness to practise information on the GOC website

Current policies

Full transcripts of all previous public hearings and decisions of the GOC's Fitness to Practise Committee are currently made available on the 'Past Hearings' page of the GOC website, including those which do not result in a finding of impairment or sanction against the registrant.

Investigation Committee meetings are not public, and therefore no information concerning the Committee's decisions is made public. The GOC does however publish interim order hearing decisions, where the hearing is heard in public, even where no interim order is imposed (in which case the registrant is anonymised).

The GOC first began making Fitness to Practise Committee hearing decisions and transcripts available on the website in 2005. Decisions and transcripts of the previous Disciplinary Committee were circulated on request. We have not attempted to scan and upload all historical Disciplinary Committee decisions, hence only Fitness to Practise Committee decisions dating from 2005 are currently available on the website. Any older information will be supplied on request by the GOC.

Discussion and request for views

Questions have arisen about the most appropriate level of accessibility of past hearings decisions and transcripts online, particularly in relation to internet searches (such as through Google).

Since past public hearings decision notices and transcripts are currently available on the GOC website, a general internet search of a registrant's name will often bring up the Fitness to Practise Committee documentation, sometimes as the first result in the search. As we do not remove Fitness to Practise Committee decisions and transcripts from the GOC website, this could remain the case for many years into the future.

This might be considered a disproportionate or inconsistent level of access to this information, since there is the potential for a practitioner to remain linked in a very public way to an expired fitness to practise sanction for many years, despite that information not currently being available on their public record on the register. There can also be situations where information on third parties at hearings, such as witnesses, can be retrieved by accessing the transcripts via an internet search.

The CHRE report recommended the inclusion on regulators' websites of links to information about past decisions of Fitness to Practise Committees. The 'Past Hearings' section of the GOC website is already consistent with this recommendation (to the extent that it publishes hearing decisions/transcripts of the Fitness to Practise Committee, dating from 2005). We are, however, interested in views on whether we could improve our current approach, taking

account of the issue of internet searches and any potential changes to our policies regarding displaying historic fitness to practise information on the records on the public registers.

Other UK healthcare regulators have adopted a range of approaches to the display of hearings decisions and transcripts. Several regulators adopt the same policy as the GOC, in never removing decisions and transcripts from their websites. Others remove the information once the sanction is no longer in force, or following a set period of time after the hearing (generally ranging from 28 days to one year, depending on the regulator and sanction).

We are interested in feedback on the period for which past Fitness to Practise Committee hearings decisions and transcripts should remain available on the GOC website. If we were to begin including all past sanctions records on the public registers, it might be argued that it would be less necessary for all past hearings outcomes to be permanently available in the 'Past Hearings' section of the GOC website. On the other hand, the 'Past Hearings' page provides a valuable overview of all previous Fitness to Practise Committee decisions, which assists in maintaining professional standards.

Another approach would be to display past Fitness to Practise Committee decisions and transcripts on the hearings section of the GOC website only, rather than making them accessible via a general internet search. This would maintain the availability of this public information, while addressing any issues associated with past hearings decisions and transcripts appearing in general internet searches.

However, there are also arguments for making information on past hearings results as accessible as possible, including through general internet searches. Fitness to Practise Committee decisions are generally public information. For this reason, and to promote public safety, it could be argued that we should not take any steps that might restrict access to this information in any way.

Question 5 We would be interested in feedback on how we should display Fitness to Practise Committee decisions and transcripts on the GOC website. Should we:

- Maintain our current approach (transcripts and decisions of Fitness to Practise Committee hearings are made permanently available on the GOC website, including via external internet searches); or
- Make transcripts and decisions of some or all past Fitness to Practise Committee hearings available from the GOC website only; and/or
- Make past Fitness to Practise Committee decisions and transcripts available on the GOC website for a set period of time (please specify how long, and whether this depends on whether the information is made available on the GOC registers); or
- Consider some other approach?

Consultation response form

How to respond

Please send your responses no later than **Friday 27 August**. Responses should be sent to:

Matthew Tait
Policy and Projects Manager
General Optical Council
41 Harley Street
London
W1G 8DJ

By email: mtait@optical.org

Alternatively, visit www.optical.org, where you will find an electronic version of this form.

Response form template

Your details

Name:

Address:

Telephone number:

Email:

Are you replying on behalf of an organisation?

Name of the organisation:

Your position:

Nature of the organisation's work:

Keeping in touch

Because we value your input, we would like to contact you occasionally to let you know when we launch consultations and to invite you to future events. We will not pass your data on to any third party. Please tick here if you do not wish to be contacted in this way about the GOC's consultations:

Consultation Questions

Question 1 Do you agree that the GOC's publicly-searchable registers should include the records of registrants who are currently suspended?

Question 2 Do you agree that the GOC's publicly-searchable registers should include the records of former registrants who have been erased as the result of a decision of the Fitness to Practise Committee?

Question 3 Do you think that the GOC should begin including information on expired Fitness to Practise Committee warnings and sanctions on the individual records of all registrants on the publicly-searchable registers? Why/why not?

Question 4 If the GOC began including information on expired fitness to practise warnings and sanctions on the publicly-searchable registers, do you think that such information should remain on a registrant's record permanently? Or should information on past warnings and sanctions be removed after a certain period of time? Please explain your answer.

Question 5 We would be interested in feedback on how we should display Fitness to Practise Committee decisions and transcripts on the GOC website. Should we:

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- Make past Fitness to Practise Committee decisions and transcripts available on the GOC website for a set period of time (please specify how long, and whether this depends on whether the information is made available on the GOC registers); or
- Consider some other approach?

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