



**Health Care and Associated Professions (Miscellaneous Amendments)
Order 2008**

Consultation Response – General Optical Council (GOC)

Q1. Do you support having, as a main objective for all the regulators, a provision giving greater emphasis to the importance of public protection?

We support there being provisions which make public protection the main objective for all the health care regulators. GOC already has such an objective under Section 2A of the Opticians Act 1989:

'The main objective of the Council in exercising such of the Council's functions as affect the health and safety of members of the public is to protect, promote and maintain their health and safety.'

The consultation document states that the current objective is more narrowly worded than that proposed in the Order (para 5.1, p.27). We do not accept this. Indeed, we prefer the wording of the current objective for the following reasons:

- We would question that any particular focus needs to be placed on 'those members of the public who use or need the services of registrants', as an equally important aspect of GOC's public protection role is to protect those who use the services of non-registrants by prosecuting non-registrant service providers who undertake activities which are restricted to registrants under the Opticians Act 1989.
- The proposed provision gives the Council the role of 'ensuring that registrants adhere to such standards as the Council consider necessary for safe and effective practice'. The term 'ensuring' in this phrase may be understood to imply that we are able to make sure that all our registrants meet and maintain the standards we have set. We cannot do this, as no regulator can have that level of oversight of its registrants. We have systems and procedures which can give the public confidence that such standards are being met by the vast majority of our registrants, but this falls short of our being able to ensure that all meet those standards. We are therefore concerned that the use of the term 'ensuring' may mislead the public, and would prefer any description of our role to more accurately

reflect what we are able to do as a regulator in providing *assurance* to the public of the standards met by our registrants.

If we are not able to retain the current wording in the Opticians Act 1989, which we think satisfactorily captures GOC's public interest role, we would propose the following as an alternative:

'The main objective of the Council in exercising such of their functions as affect the health, safety or well-being of members of the public is to protect, promote and maintain the health, safety and well-being of members of the public. Such functions are to be exercised so as to provide assurance that registrants meet, prior to, and as a condition of entry to the register, minimum standards to demonstrate their competence to deliver safe and effective practice, and that those standards are maintained through the provision and management of a scheme for continuous education and training. Council will also provide assurance to the public by taking appropriate action against those who commit offences created by this Act and associated legislation.'

Q2. Do you agree that these standard duties will improve the co-operation and co-ordination between professional regulators and key stakeholders?

We believe that the proposed duties reflect our current practice. However, we can see that there are clear benefits to formalising this practice in the form of statutory duties. It will give stakeholders additional confidence that their interests will be given proper regard and that, wherever appropriate and practicable, we will co-operate with partner organisations with an interest in the health and safety of patients and the public.

Q3. Do you agree that Parliament should play an enhanced role in relation to the accountability of regulatory bodies, facilitated by improved arrangements for notification by the bodies of information relating to their past and future activities?

We agree with the provisions which will enhance our accountability to Parliament. However, it is important that GOC is seen to maintain its independence from Government, and the reports submitted to Privy Council should therefore have demonstrably wider scrutiny than their merely receiving consideration within the Department of Health. We therefore support the proposal, which we understand will be in Niall Dickson's report, that CHRE should provide Parliament with an annual performance assessment, in addition to our own reports, and that a standing committee of both Houses of Parliament should consider this information and be able to question CHRE, ourselves and other stakeholders on it.

Q4. Do you agree with the new, more flexible arrangements for establishing constitutions for the regulatory bodies?

We agree with the proposed arrangements, and welcome the new flexibility these will bring.

We note that the directions from the Privy Council to the Appointments Commission may include provisions 'setting out the background, qualifications, competencies, interests and experience that potential members of the Council, or categories of potential members of the Council, must have, or that it is desirable that they should have, in order to be considered for appointment' (Schedule 2, Section 8(2) of the Order). We note that provision has been put in the Order to require the Privy Council to consult with GOC before making any such direction. As Niall Dickson has recommended in his report, we are drawing up a generic skills and competency framework for Council members, and would expect this to form the basis of any directions from the Privy Council to the Appointments Commission. To this end, we would welcome a more strongly worded clause which would explicitly require the Privy Council to have regard to the views of GOC before issuing its directions.

We also note that the Appointments Commission will be given directions from the Privy Council relating to the removal or suspension members of Council. We welcome greater clarity on this issue. However, it is not clear to us whether the proposed Section 1A(5) of Schedule 1 of the Act (Schedule 2 Section 8 of the Order) will place a duty on the Privy Council to consult with GOC before issuing directions on the removal and suspension as well as the appointment of members. We therefore suggest that the proposed Section 1A(5) of Schedule 1 is worded to make it clear that, in relation to removal and suspension, such action should be exercised at the initiative of, and always in consultation with, the GOC.

Q5. Do you agree with adding appearance on a barred list to the grounds for which a health professional's fitness to practise may be considered to be impaired?

We agree with the proposal of appearance on a barred list being added to the grounds for which a health professional's fitness to practise may be considered to be impaired. However, we do not think this provision alone will necessarily mean that we are able to take action against those who appear on a barred list without the facts which led to their inclusion having to be proved in a fitness to practise hearing, as is stated in the consultation document.

The proposed provision would not have the effect of preventing a registrant from adducing evidence disputing the facts which led to their inclusion on a barred list as part of their defence that their fitness to practise was not impaired. We believe this would require a change to the Fitness to Practise Rules and Registration

Appeals Rules adding a provision that the Fitness to Practise Committee/Registration Appeals Committee take certification from the Independent Safeguarding Authority of a barring decision as conclusive evidence of the facts found proved relating to that decision. However, we do not think that the Opticians Act 1989 empowers Council to make a rule of this kind (e.g. no provision is made in Section 23C of the Act), and that an amendment to the Act may be required to achieve this. We suggest that this is addressed in a subsequent Section 60 Order as soon as possible.

We wish to discuss with the Department making membership of the vetting and barring scheme a condition of registration. GOC has a large number of self-employed registrants, including a growing number working as locums, who work with children and vulnerable adults but who, because of their self-employed status, will not be required to be members of the scheme. We believe a clear linkage between registration as a dispensing optician or optometrist and membership of the vetting and barring scheme would provide better protection for children and vulnerable adults. It would have the effect of requiring all dispensing opticians and optometrists to join the vetting and barring scheme and be subject to monitoring under the scheme, and would enable GOC to remove from the register those who had been barred or had not joined the scheme without recourse to fitness to practise proceedings. We would urge that consideration is given to making membership of the vetting and barring scheme a condition of registration as soon as possible.

We would also like to raise one technical drafting matter. We are unclear as to why the new sub-paragraphs to be added to Section 13D(2) use the term 'person' rather than 'registrant'.

Q6. Do you agree with the strategy for standardising the order and rule making powers of the regulators, and with the move towards giving them greater flexibility over internal process issues while increasing Parliamentary scrutiny of outcomes?

We agree with the proposals to standardise the order and rule making powers to create greater flexibility over internal processes.

Q7. Do you agree that all regulators of health care professionals should be under a legal duty to maintain registers of the private interests of their council members?

We agree with the proposals that regulators should be under a legal duty to maintain registers of the interests of their council members. However, we do not believe this should be limited to private interests, as members may have public roles which, on certain occasions, create a conflict of interest with their role as a member of Council. For example, it would not be appropriate for someone

holding a senior position within an academic institution to be party to a decision of Council to accredit a qualification offered by that institution.

We also believe that spouses or partners interests should be encompassed within the new statutory duty (the regulators should produce guidance on this), and that the duty should be widened to include not merely Council members, but Committee members, visitors etc.

Q8. Do you agree the regulators should have the option of engaging other bodies to assist them with their appointments functions?

We agree that regulators should have the option of engaging other bodies to assist them with their appointments functions, and welcome the flexibility that this provision will bring.

Drafting Matters

We believe the reference in new section 11A(2) should be to 'Council', not 'General Council'.