

PROTOCOL FOR THE INVESTIGATION AND PROSECUTION OF SUSPECTED CRIMINAL OFFENCES

1. Receipt of evidence

If the Council receives information that an individual or corporate body may have committed a criminal offence by contravening one of the sections in Part 4 of the Opticians Act 1989, the Registrar (or a person nominated on his behalf) will deal with the information, on behalf of the Council, in accordance with the following paragraphs.

2. Investigation of suspected offences

2.1 If possible, members of the public or registrants who notify the Council of a potential offence will not be called upon to give evidence.

2.2 The Registrar will liaise with any body which he believes may have an interest in being notified of the facts of the case in order to consider prosecution of other criminal charges or the bringing of fitness to practise proceedings (whether or not described as such) and may agree to investigate the Opticians Act offence in co-operation with that body.

2.3 The Registrar will therefore seek to gather evidence of an offence via the obtaining of relevant documents, photographs or goods etc. (via the instruction of enquiry agents) and the interviewing of relevant witnesses (via the instruction of external solicitors or otherwise). The Registrar shall (in order to obtain guidance on relevant clinical or professional matters) consult with the Council Members nominated by the Standards Committee from time to time.

3. Assessment of evidence

3.1 Once evidence has been obtained, the Registrar will consult with the Chairmen of the Council's committees and make an assessment as to whether to proceed in light of:

(a) the evidential test set out in the Crown Prosecution Service Code for Crown Prosecutors (if the suspected offence took place in England and Wales),

(b) the evidential test set out in the Public Prosecution Service Code for Prosecutors (if the suspected offence took place in Northern Ireland), or

(c) the evidential considerations set out in the Crown Office and Procurator Fiscal Service Prosecution Code (if the suspected offence took place in Scotland),

or the like provisions of any replacement guidance.

- 3.2 The Registrar may take such legal advice as he deems necessary in order to undertake that assessment.
- 3.3 If the Registrar determines that the matter should not proceed, he will:
- (a) if it appears that the activities investigated may have involved a current registrant of the Council, refer the evidence to the Fitness to Practise Investigations Manager;
 - (b) if it appears that the activities investigated did not involve any current registrant of the Council, close the Council's file.

4. Notification to the suspect

- 4.1 If the Registrar determines that the matter should proceed, he will write to the suspect, disclosing the evidence upon which the Council would seek to rely and offer him 14 days to make representations in relation to the evidence. The evidence may also be disclosed to the Fitness to Practise Investigations Manager for investigation under section 13D(5) or 13E(3).
- 4.2 If the suspected offence arises from a continuing act or omission, the Registrar will also invite the suspect to provide an undertaking that any such act or omission will cease forthwith (or within such reasonable timescale as the Registrar may determine).

5. Report to the Investigation Committee

Once the timescale for the receipt of representations and/or cessation of prohibited activity has expired, the Registrar will provide the Investigation Committee with the following information:

- (a) details of the suspect;
- (b) details of the suspected offence and the circumstances of its commission;
- (c) details of the evidence available;
- (d) any representations made by the suspect;
- (e) confirmation that the matter is not subject to investigation by the police or the NHS Counter Fraud and Security Management Service, or, having been so investigated, is not to be the subject of a prosecution;
- (f) his opinion that sufficient evidence is available to support a reasonable prospect of conviction.

6. Decision to prosecute

- 6.1 The Investigation Committee will consider whether, in the interests of protecting, promoting and maintaining the health and safety of the public, a recommendation for the issue of court proceedings should be made to
- (a) the Crown Prosecution Service (in England and Wales),
 - (b) the Public Prosecution Service (in Northern Ireland), or

(c) the Crown Office and Procurator Fiscal Service (in Scotland).

Other than in Scotland, the Investigation Committee may decide to issue court proceedings in the name of the Council.

6.2 This decision should be made, taking into account:

- (a) the evidential and public interest tests set out in the Crown Prosecution Service Code for Crown Prosecutors (if the suspected offence took place in England and Wales),
- (b) the evidential and public interest tests set out in the Public Prosecution Service Code for Prosecutors (if the suspected offence took place in Northern Ireland), or
- (c) the evidential and public interest considerations set out in the Crown Office and Procurator Fiscal Service Prosecution Code (if the suspected offence took place in Scotland),

or the like provisions of any replacement guidance.

6.3 The following additional matters should also be considered:

- (a) whether the suspect was qualified to undertake the activity in question, or, in the case of a body corporate, was eligible for registration at the time of the alleged offence;
- (b) whether the suspect is eligible for registration;
- (c) whether the suspect is now registered;
- (d) the registration history of the suspect, if any;
- (e) whether this would be the first occasion upon which the suspect would have committed an offence under section 24, 25, 27 or 28.

6.4 The Committee may take such legal advice as they deem necessary in order to make that decision.

7. Applications for compensation orders, confiscation orders and costs

7.1 In any case which results in a conviction, the Council may seek any of the following orders if satisfied that it is appropriate to do so:

- (a) a compensation order;
- (b) a confiscation order;
- (c) a costs order.

7.2 In determining whether or not it is appropriate to apply for a compensation order, the following should be considered:

- (a) whether the loss can be quantified;
- (b) the impact of the quantified loss;
- (c) whether there is evidence to support the quantified loss;

- (d) whether the quantified loss can be shown to be wholly attributable to the conduct of the convicted person.
- 7.3 In determining whether or not it is appropriate to apply for a confiscation order, the following should be considered:
- (a) whether the convicted person has profited from the criminal activity;
 - (b) whether the profit can be quantified;
 - (c) whether there is evidence to support the quantified profit.
- 7.4 In determining whether or not it is appropriate to apply for a costs order, the following should be considered:
- (a) the extent to which the prosecution has been funded by the Council and therefore, indirectly, by registrants
 - (b) compliance with this protocol in the bringing of the prosecution.
- 8. Failure to pay costs orders imposed in the Magistrates' Court**
- 8.1 The Council will pursue the payment of any costs ordered to be paid to it by a convicted individual or body corporate if satisfied that -
- (a) it is reasonable to do so, taking into account the amount of the costs awarded; and.
 - (b) the convicted individual or body corporate has sufficient means to pay the amount ordered (or such other amount as is agreed subsequently).
- 8.2 If the person against whom the order was made has since become registered, the Investigation Committee will be notified of the non-payment and will consider whether the matter ought to be referred to the Fitness to Practise Committee.
- 9. Document retention**
- Case files relating to prosecutions, whether successful or not, will be held (in electronic form only) for a period of not less than 5 years from the date upon which evidence was received by the Council and for such longer period as the Registrar may think fit.
- 10. Further information**
- Further information may be obtained from the Registrar of the General Optical Council, 41 Harley Street, London, W1G 8DJ (Telephone: 020 7580 3898, Fax: 020 7436 3525).

Approved by the General Optical Council on 22nd June 2006

APPENDIX

Codes referred to in the Protocol

England and Wales

Crown Prosecution Service Code for Crown Prosecutors

http://www.cps.gov.uk/victims_witnesses/code.html

Northern Ireland

Public Prosecution Service Code for Prosecutors

<http://www.ppsni.gov.uk/site/default.asp?CATID=77>

Scotland

Crown Office and Procurator Fiscal Service Prosecution Code

<http://www.procuratorfiscal.gov.uk/Publications/2001/05/prosecutioncode>