

# FtP FOCUS

A focus on Fitness to Practise from the General Optical Council

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## Hello, and a warm welcome to our fifth issue of FtP FOCUS, taking you all the way through to a final Fitness to Practise Committee (FtPC) hearing.

It's hard to believe that it's already been a year since we launched the bulletin and I'm really pleased with the positive reception it has received. It was designed to help demystify the FtP function within the General Optical Council – the part that we know causes so much anxiety to registrants – and it would appear that we are starting to achieve this objective.

In this issue, you'll get to meet some of the people who ensure our hearings are promptly scheduled, effectively supported, and conducted fairly. You'll also get some tips from those involved on why it's important that you engage with the process and make sure that you have your voice heard.

You'll learn about the outcomes or sanctions that are available to the Committee and as always, we have provided some case studies to show how this works in practice.

Finally, I'm delighted that some of our colleagues across the sector membership bodies, Association of British Dispensing Opticians, the Association of Optometrists and FODO, have written a summary of the services they provide for you if you find yourself facing an allegation about your fitness to practise, to train or to carry on in business.

Although this issue concludes our fitness to practise process, we are exploring topics to cover in future editions, so do let me know if there's anything else you'd be interested in at [focus@optical.org](mailto:focus@optical.org).

*Dionne*

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# Introduction to the Fitness to Practise Committee

Our hearings are held before an independent Fitness to Practise Committee (FtPC) who decide whether to place restrictions on a registrant's practise. This takes place during or to conclude the registrant's fitness to practise investigation.

The Committee consists of a lay chair, two registrant members and two other lay panel members. An independent legal advisor also attends, and the hearing is recorded by a shorthand writer. For health cases, a clinical advisor is present too.

Except for health cases, the final hearing is usually held in public at our London office. However, due to the COVID-19 emergency we've been holding remote hearings where possible. We call our final hearings substantive hearings.

When considering a case, the Committee follow a four-stage process.

Firstly, the Committee must decide whether the facts of the allegations are proven. If they are proven, the Committee then considers whether the facts amount to one of the grounds of impairment\* set out in section 13D of [the Opticians Acts 1989](#).

If the Committee finds one or more of the grounds of impairment is established, it must then decide whether the registrant's fitness to practise is currently impaired.

In reaching a decision, the Committee considers not only whether it is necessary to take action to protect members of the public from potential harm, but also whether it is necessary to take action in the wider public interest, for example, to maintain public confidence in the professions or to declare and uphold proper standards of conduct and behaviour.

If the Committee does find the registrant's fitness to practise, train or carry-on business to be currently impaired, they are required to consider one of the following outcomes:

1. No sanction
2. Conditions of Practice (up to three years)
3. Suspension (up to 12 months)
4. Financial penalty
5. Erasure

The sanction must be the least severe in order to protect the public or to mark the public interest.

In cases where the Committee finds the facts proven but no current impairment, they may impose a public warning for a set period which will be displayed on the public register.

A registrant can appeal against a decision of the Committee to the High Court.

*\*A finding that a registrant's fitness to practise is diminished, weakened, or damaged due to one of the grounds of impairment set out in section 13D of the Opticians Act such as misconduct, deficient professional performance, caution/conviction and adverse health.*

*In FtP proceedings, the Committee always looks to current impairment.*

# Fitness to Practise Committee stats

The table below shows the decisions made by the Committee following a hearing between 2017 and 2021.

	2017-18	2018-19	2019-20	2020-21
No Further Action / No case to answer	11	16	13	10
Suspension	9	9	7	19
Warning	4	6	1	1
Erasure	5	9	18	7
Conditions	2	1	3	3
Financial Penalty	1	1	0	0
<b>Total</b>	<b>32</b>	<b>42</b>	<b>42</b>	<b>40</b>

# FtPC Case Studies

In our last issue of FtP FOCUS, we explored the preparation of three cases on the road to a hearing. In this issue, we will be looking at the outcome of each hearing.

To preserve confidentiality, the case studies have been anonymised and modified. Only the key points of the referrals are noted.

## Case Study #1



### Complaint from Patient C\*

I had been attending the practice on several occasions. I visited the practice for a routine sight test and was advised by the optician that my prescription had changed so I ordered new glasses. A couple of years later, I attended a sight test at another optical practice as I had noticed a change in my vision and my glasses were not helping whilst I was driving. At this sight test, the optician was unable to achieve an accurate eye reading in my right eye and was concerned that the vision in my right eye was reduced compared to the left. I became very worried and thought my vision had seriously deteriorated. The optician was so concerned that I had not been referred sooner that

she phoned the hospital, and an appointment was made for me to see a consultant the following day. At the hospital, I was seen by a senior consultant who confirmed that I had advanced keratoconus. I needed to have surgery on the left eye to prevent the condition getting worse. However, in the right eye the treatment was no longer an option as it had progressed too far. The consultant confirmed that had the referral been done sooner, the remedial surgery would have been possible. As I'm sure you can imagine, I was very distressed as well as angry to hear this. I now must wear complex contact lenses and will most likely need a corneal graft in the future.

*\*This case study continues from case study #1 in the fourth FtP FOCUS bulletin on the road to a hearing.*

### Case Examiner Decision: Referred to the Fitness to Practise Committee

The concerns considered by Case Examiners centred around the registrant's alleged failure to detect signs of keratoconus in Patient C. The Case Examiners also noted that the GOC had identified an associated allegation relating to record keeping and the dishonest amendment of patient records. They therefore decided the case should be referred to the FtPC.

The registrant admitted the facts of the allegations.

### Fitness to Practise Committee: What was considered

#### Findings in relation to misconduct

The Committee noted that in relation to the patient, the registrant missed three opportunities to make a referral, carry out appropriate tests, communicate effectively with Patient C and make appropriate clinical records. The Committee reviewed the expert report and highlighted the seriousness of the registrant failing to diagnose and assess keratoconus in Patient C, given that specialist treatment options may have been appropriate if detected earlier. The Committee also considered the dishonesty element and agreed that the registrant's conduct was not an isolated incident, and the deception was maintained over a period of time.

#### Findings regarding impairment

The Committee considered the registrant's clinical failings and that their lack of up-to-date knowledge of surgery for early keratoconus did not fully explain why they repeatedly failed to refer Patient C. The Committee noted that the registrant had taken appropriate medial action and demonstrated insight into their clinical failings.

The Committee therefore found that the registrant's fitness to practise as an optometrist was currently impaired.

### Standards for Optometrists and Dispensing Opticians

- 2. Communicate effectively with your patient.
- 7.1 Conduct an adequate assessment for the purpose of the optical consultation, including where necessary any relevant medical, family and social history of the patient. This may include current symptoms, personal beliefs or cultural factors.
- 7.2 Provide or arrange any further examinations, advice, investigations or treatment if required for your patient. This should be done in a timescale that does not compromise patient safety and care.
- 8. Maintain adequate patient records.
- 8.1 Maintain clear, legible, and contemporaneous patient records, which are accessible for all those involved in the patient's care.
- 16. Be honest and trustworthy.

### Standards for Optical Businesses

- 1.3.4 Communicates effectively with a variety of persons, including patients, carers, professional colleagues and others.
- 2.2.3 Ensures that all data is obtained, processed, stored and destroyed in a manner compliant with the law.
- 3.4.5 Supports its staff to keep patient records that are clear, legible, contemporaneous and sufficiently detailed to be accessible to another healthcare professional.

## Sanction: Immediate Suspension Order for 12 months

The Committee considered the aggravating features of the matter including dishonesty, harm to the patient and clinical deficiency over time, alongside the mitigating features such as the registrant's previous unblemished record and full admission, their full engagement with the GOC and their remediation and insight.

Although the risk of the registrant repeating the incident was considered low, the Committee agreed that the risk was sufficient for a suspension to be necessary on grounds of public protection.

## Case Study #2

### Referral from GOC\*

The GOC was informed that the registrant undertook restricted duties without appropriate supervision. The GOC was advised that the registrant failed to notify their education provider that they did not have an appropriate supervisor, and on more than one occasion submitted case record forms which incorrectly represented that they had been appropriately supervised.

Whilst the investigation was ongoing, the FtPC imposed an Interim Suspension Order for a period of 12 months which was later revoked and replaced with a Conditions of Practice Order.

#### Case Examiner Decision: Referred to the Fitness to Practise Committee

The Case Examiners agreed that there was a realistic prospect of establishing that the registrant's fitness to train was currently impaired, to a degree that justified action being taken against their registration, and that this allegation as a whole ought to be referred to the Fitness to Practise Committee.

The registrant did not admit any particulars of this allegation.

#### Fitness To Practise Committee: What was considered?

##### Findings in relation to facts

The Committee determined that the registrant was performing restricted duties and was under an obligation to inform their education provider of any such changes but identified that the obligation could only exist once the registrant was aware that their supervisor had been removed from the register.

The Committee therefore concluded that, for a short period of time, the registrant failed to inform their provider that they did not have a qualified supervisor. They did not, however, consider the registrant's actions to be dishonest.



#### Findings in relation to misconduct

The Committee noted that a breach of professional standards does not automatically result in a finding of misconduct and was satisfied that the registrant's actions and omissions were not sufficiently serious to amount to misconduct. Therefore, the Committee was not required to go on to consider the issue of impairment and the case was concluded.

The Committee revoked the Interim Suspension Order that was imposed on the registrant.

#### Standards for Optical Students

- 8. Ensure that supervision is undertaken appropriately and complies with the law.
- 9. Work collaboratively with your peers, tutors, supervisors or other colleagues in the interests of patients.
- 16. Do not damage the reputation of your profession through your conduct.
- 18. Be candid when things have gone wrong.

**Outcome:** The Committee revoked the Interim Suspension Order that was imposed on the registrant.

\*This Case Study continues from case study #2 in the fourth FtP FOCUS bulletin on the road to a hearing.

# Case Study #3

## Complaint from Patient E\*

I attended an optical practice for an emergency appointment as I had woken up with central vision loss in my left eye. I was seen by an optician who conducted a sight test, OCT scan and visual fields test. I struggled with the fields testing of my left eye, however the optician suspected a visual migraine, recommended painkillers, and suggested I see my GP if my vision did not improve.

My vision continued to deteriorate and when I attended the practice again to collect my new prescription glasses, I complained that my vision had not improved and was re-examined. The examination and a second OCT scan identified a raised area in my left eye, and I was urgently referred to the hospital where I was diagnosed with having a branch retinal arterial occlusion (BRAO), resulting in a loss of vision.

### Case Examiner Decision: Referred to the Fitness to Practise Committee

Having considered the registrant's admissions in respect of the alleged clinical failings, the Case Examiners decided that the case should be referred to the FtPC.

### Fitness To Practise Committee: What was considered?

#### Findings in relation to facts

The Committee heard evidence from Patient E and the expert witness who considered the case at the investigation stage.

The Committee found the allegations proved on the basis of the admissions made and the documents presented before them, and noted that as per the expert's review, the registrant's conduct fell below the standard required in not identifying abnormalities needing urgent referral, but not far below the standard required\*.

### Standards of Practice for Optometrists and Dispensing Opticians

- 5. Keep your knowledge and skills up to date.



- 6. Recognise, and work within, your limits of competence.
- 7. Conduct appropriate assessments, examinations, treatments and referrals.
- 17.1 Ensure your conduct, whether or not connected to your professional practice, does not damage public confidence in you or your profession.

*\*Our Standards of Practice define the standard of behaviour and performance we expect of all registered optometrists and dispensing opticians.*

*In this case, the Committee agreed there were some subtle signs that a BRAO had occurred, but it was not obvious. The Committee concluded that although the Registrant had not acted as expected in making the correct identification, this could not be fairly categorised as misconduct, which is why the expert's review indicated that this failure fell below the standard and not far below which could amount to the Registrant's fitness to practise being currently impaired.*

**Outcome:** The Committee did not find that the admitted facts amounted to misconduct either individually or collectively, and therefore the matter was concluded.

\* This case study continues from case study #3 in the fourth FtP FOCUS bulletin on the road to a hearing

# Interview with the Hearings Team

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Our Hearings Team operates independently from the investigative process and play an important part in ensuring our hearings run smoothly and to the agreed time estimate. Our Hearings and Scheduling Officer Abigail Strong-Perrin and Hearings Officer Terence Yates tell us more about their roles.

# Interview

## Abigail Strong-Perrin – Hearings and Scheduling Officer



Abigail Strong-Perrin

### 1. How long have you worked at the GOC?

I've been in my role for about two years and it is quite varied. I facilitate hearings, handle scheduling and am responsible for the hearings team's administrative tasks. I am currently training up two new team members who will support with administration. My role is quite varied and I've been in the role for about two years.

### 2. What do you enjoy the most about working in hearings?

My favourite part is working on the criminal conviction cases and facilitating those hearings. I find them incredibly interesting and much easier to follow.

### 3. How has the hearings process changed over the last 18 months?

Due to the pandemic, we have switched 90% of our hearings to remote via Microsoft Teams. Personally, I much prefer remote hearings now as they are much more time efficient, and I enjoy being able to facilitate from the comfort of my own home. However, with remote hearings there's more admin work involved in the pre and post hearing tasks, such as sending out remote links, sorting out technical issues, and sending paperwork in various ways so the recipient can open them etc.

### 4. Do you have any advice for registrants who may have an upcoming hearing?

My top tip would be to attend the hearing. It creates a much more positive impression than if you don't engage. I completely understand if they have no interest in continuing in the profession, but if you have the opportunity to address the FtPC to explain this, then I strongly recommend attending. The fitness to practise process can be lengthy, so I can understand why some registrants may stop engaging, but having legal representation is useful as this alleviates most of the tasks of the registrant. My last tip would be to be honest. The FtPC can see through any facades, and they respect honesty, in line with our Standards of Practice.

### 5. Can you tell us more about how the Hearings are scheduled?

I manage the Interim Orders and the substantive reviews. When I schedule them, I choose appropriate dates and create a notice of hearing. Substantive reviews are simple as I select a date near to the condition / suspension expiry date, and then send a notice. For interim order reviews, this goes through a review to see if the case is eligible for a hearing on the papers\*. If it's not (for example, if the registrant has not been complying with their conditions or doesn't submit CET requirements, etc.), then it has to be a live hearing. I have a slightly different process for both options where I have to calculate when the hearing must be heard by, calculate listing window dates, when the Case Progression team need to send the paperwork to me by, and by which date I have to send the notice out for the registrant to have 28 days' notice.

For substantive hearings, we send a Hearings Questionnaire for both the registrant and legal representative to complete. Completion of this questionnaire will assist the Hearings team to determine when a substantive hearing should take place, how long it will need to last and what steps must be taken before it can be held.

For all hearings, once we have found appropriate dates, we have to find Committee members, an independent legal adviser, and a transcriber to complete conflict checks and book them in.

*\*Hearing on the papers is a case management tool used to process cases that may be suitable for concluding and progressing without the need for the attendance of parties.*

# Interview

## Terence Yates – Hearings Officer



Terence Yates

### 1. How long have you worked at the GOC?

I've been at the GOC for almost 11 years.

### 2. What does your role involve?

My role involves preparing, overseeing, and publishing details for Fitness to Practise hearing events. The hearing cases are passed over to me from the Hearing Scheduling Officers on my team. I ensure every part of the hearing is run efficiently through preparation and careful coordination. This includes continuously liaising with participants and FtPC members, ensuring the hearings process is adhered to and acting as a FtPC secretary. You can call me the “middle-man” or “Switzerland”, the one who connects everyone and keeps the hearing going. I subsequently ensure that hearing details are recorded and published for the GOC and the public. This is key as the public, stakeholders and employers must be aware of restrictions such as suspensions and registration conditions.

### 3. What is the most challenging part of your role?

Managing and coordinating everything and everyone, including hearings participants and observers to ensure the smooth running of each hearing – basically being omnipresent (or at least it feels like it!). The role requires me to foresee the hearing to prevent things that may affect the event. For example, it is very important that the process for giving evidence is made as comfortable as possible for vulnerable witnesses. In doing so, we take great care to ensure measures are put in place such as regular check-ups, privacy screens (if necessary), and working with our Facilities team (they are our heroes) to ensure witnesses are kept separate and looked after in a secure space when giving evidence.

### 4. How have hearings adapted or changed over the last year?

Hearings have now shifted to being primarily remote and conducted via Microsoft Teams. Remote hearings have made hearings more manageable in the sense that everyone is a click of a button away, depending on whether the internet is on your side on the hearing day. There have been a few “hybrid” hearing days, a combination of in-person and remote participants, held in the GOC office which gives a slight breather from developing square eyes. We try to accommodate for physical hearings for those that prefer that option.

### 5. What advice would you give registrants that have upcoming hearings?

It is highly recommended to seek advice from their member association which saves a lot of time, energy and sometimes heartache. Registrants should engage, carefully pay attention to the process, and ask questions about anything they are unsure about. It is also recommended that registrants familiarise themselves with us and our Standards of Practice.

### 6. What do you consider to be the best part of your role?

Being in an independent position to see a hearing from all angles, especially with the interesting cases (usually the private cases that are on a need-to-know basis). It's also good to see the relief from some registrants, especially those who work hard to remediate themselves, at the conclusion of what can be a difficult process.

# Interview with the Legal Team

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Most fitness to practise cases are presented to the FtPC by a lawyer for the GOC. Dean Taylor is one of our in-house lawyers who regularly presents cases before the Committee.

# Interview

## Dean Taylor – Lawyer



Dean Taylor

### 1. How long have you worked at the GOC and what drew you to the role?

I qualified as a barrister in 1999 but only started using my advocacy skills when I joined the GOC in March 2020. My most fulfilling roles have been working for organisations that, for want of a better phrase, do public good. This role suited my experience and requirements perfectly. Many of my previous jobs had allowed me to work from home whilst my children were very young. Now that they are older, I wanted a role that involved a return to an office environment, mingling with adults! Ironically, the first lockdown began around this time, and I spent just two days in the office and have been working remotely from home ever since.

### 2. How would you describe your responsibilities as an advocate?

The overarching aim in everything I do at the GOC is to protect the public. It is not about winning every case. The presentation of a case to a Fitness to Practice Committee should be fair, balanced and, most importantly, accurate. If a fair outcome is achieved, I consider that both advocates and the Committee have done their jobs correctly.

### 3. How does the GOC approach hearings and its relationship with the Defence?

The aim of any hearing is to ensure that the public is adequately protected; it is not to punish a registrant, though this can be a by-product of the process. Every case is different, as is the relationship that you develop with the registrant and/or their legal representatives. Sometimes the relationship can be quite adversarial and/or distant, but on other occasions it is more co-operative with both parties pushing in the same direction. No two cases are ever the same and that keeps you on your toes!

### 4. Which types of cases do you present?

My caseload consists of three main types of cases:

1. Interim Order applications, which is where a suspension or conditions are sought prior to any substantive hearing taking place.
2. Substantive hearings, mainly conviction and misconduct cases, but also some clinical matters.

3. Substantive order reviews, where the Committee determine whether an existing substantive order remains necessary.

### 5. What is the most challenging part of your role and which types of cases have you found to be the most challenging and why?

Advocates need to understand and explain the issues that the Committee are being asked to determine. For clinical cases, this usually requires a level of understanding of optometry or dispensing processes, which optical professionals have spent years learning and developing. Just getting to grips with the specialist terminology used and pronouncing it correctly can be a challenge when presenting a case.

### 6. What positive outcomes have you seen from the investigation process?

Being an optical professional is an incredibly demanding job. The slightest omission or oversight has the potential to have a devastating effect on a patient's health. Being involved in fitness to practise hearings inevitably involves dealing with some poor examples of patient care, and the consequences of this. However, it is encouraging when a registrant works hard to learn from their mistakes and is able to convince a FtPC at a review hearing that they are fit to return to unrestricted practice. One of the key aims of the regulatory process is to safely return optical professionals back to unrestricted practice, when possible.

### 7. What advice would you give to a registrant who is subject to an investigation?

Participate fully. If you put your side of the story across to a Committee, they will listen. A strong argument will often carry the same weight, whether put forward by an experienced barrister or a registrant. If you do not turn up and make those submissions, the Committee cannot make assumptions, and this can often result in the situation worsening. If you are a member of a professional association, consult it as early as possible.

# Interview with the Committee

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For all substantive hearings, the Fitness to Practise Committee is made up of five Committee members, including two registrants and at least three lay people (individuals who are not opticians), one of whom will be the Chair. Their role is to hear the evidence and make decisions.

In this issue we ask Dr Amit Jinabhai (registrant member) and Anne Johnstone (lay Chair) to give us some insight into their roles.

# Interview

## Dr Amit Jinabhai – registrant member



Dr Amit Jinabhai

### 1. Please tell us a little about your professional background and what drew you to become an FtPC member?

I registered with the GOC in 2005. Having worked in clinical practice for several years, in many different roles, I returned to university as a research optometrist, graduating with a PhD in 2012. That same year I joined The University of Manchester, where I currently hold the position of Senior Lecturer.

I hold fellowship of the European Academy of Optometry and Optics (EAOO) and the British Contact Lens Association (BCLA).

I joined the Hearings Panel in 2018. I was keen to gain a better understanding as to how FtP proceedings worked and learn more about the different types of hearings that the GOC held. I've found this invaluable when working with student optometrists, as I am in a better position to inform them about how the GOC upholds its core functions.

### 2. What are your responsibilities as an FtPC member?

Naturally, Committee members are collectively responsible for making several crucial decisions during a hearing. Important member responsibilities include reviewing all of the presented evidence (written and oral) thoroughly, and making all decisions impartially, whilst always acting in the public interest.

The Committee also collectively ensures that hearings are conducted fairly; for example, by double-checking that witnesses and registrants have fully understood all of the questions put to them. This is of paramount importance in cases where a vulnerable witness is giving evidence, or if the registrant is unrepresented during their hearing.

Committee members receive annual training based around important issues related to conducting hearings fairly and with transparency. This includes key aspects such as equality, diversity and inclusion training, and unconscious bias training. Committee members are therefore also responsible for ensuring that this specialist training is applied appropriately throughout all stages of any hearing.

### 3. Can you give us some insight into how the FtPC reaches its decisions?

Committee members are trained to always act in the public interest when making any decisions. When considering the case facts, the Committee will apply the 'Civil Standard of Proof\*'.

During their deliberations, Committee members carefully listen to each other's viewpoints. This 'teamwork approach' helps to overcome potential biases whilst promoting equality, diversity, and inclusion.

Committee members will typically review the GOC's Standards of Practice during the course of a substantive hearing, which assists when deciding on whether the registrant's fitness to practise, train, or carry-on business is impaired.

When deciding on sanctions, the Committee must fully justify why they selected a given sanction, by clearly explaining their reasoning for why a 'lesser' or 'greater' sanction would have been inappropriate.

Committee members also consider what a member of the public, with all the case facts, would think about their decisions too. Having a mixture of 'lay' and 'registrant' Committee members is extremely helpful for such considerations.

*\* The standard of proof in civil cases is the balance of probabilities. The burden is on the GOC to prove the facts in a substantive hearing.*

#### 4. What are some of the challenges you've faced in the role?

A challenge that I recall facing in this role was when one of three expert witnesses changed their position during the hearing, such that their oral evidence varied substantially from their written report. Although rare, in such cases the Committee are always mindful to carefully document the reasons behind why they chose to accept one expert's evidence whilst rejecting that of another.

Another challenge is that the volume of paperwork for 'complex' hearings can sometimes be tremendously large. However, the GOC usually provides extra reading time to support Committee members who are sitting on such hearings, which helps considerably.

#### 5. What do you think are some of the common misconceptions about FtPC substantive hearings?

I believe that the following points are perhaps unknown amongst members of our noble profession:

- Hearings Panel members are completely independent of the GOC.
- If there are an equal number of Committee member views (i.e., no clear majority view) on any given key decision, then the Committee must decide in favour of the registrant and the Committee Chair does not have "a casting vote".
- The FtP Committee Chair is always a lay member.
- FtP Committees are comprised of more 'lay' members than 'registrant' members.

#### 6. What has been your experience of hearing FtPC cases since the start of the pandemic?

My personal experience of the FtP hearings during the pandemic has been simply superb! The GOC already had significant experience of witnesses giving evidence over 'video-link', so it is perhaps fair to write that they were "one step ahead" of most other industries that I regularly liaise with in my main line of work.

The Hearings Team very quickly opted to use Microsoft Teams, which works rather well for conducting hearings, in view of its screen-sharing and security functions, as well as its audio-video capabilities. The Hearings Team also promptly set up online training for all Hearings Panel Members so that we gained familiarity with this new method of working.

The Hearings Team also swiftly consulted all Hearings Panel members for their input into the brand new 'Remote Hearings Protocol', which was specifically designed to support FtP Committees in continuing with hearings throughout the pandemic.

#### 7. What would you advise a registrant who is subject to an investigation?

I would advise the following:

- Take legal advice at the earliest opportunity as it can help for you to be represented throughout the GOC's proceedings including the hearing itself.
- Engage with all of the GOC's processes from the very start, including acknowledgement of their initial complaint documentation.
- Consider giving evidence during your hearing, so that the Committee members can hear from you directly.
- If during any point of the hearing you do not understand a question that you are asked (by any party), ask for the question to be repeated or rephrased, or alert the Committee Chair who can request the question to be clarified further.

#### 8. Do you have any general advice for our registrants?

I would recommend the following points:

- If using traditional record cards, ensure that your handwriting is legible to other readers.
- During every eye examination, ensure that you document all of the actions that you took, and all of the advice that you gave to your patient too. Such detailed notes will help support you should any future complaint(s) ever arise, because accurate and detailed records can help explain your version of the events for that particular patient interaction.
- Not all complaints will result in an FtP hearing, so do not be tempted to amend a patient's record(s) upon receiving any form of complaint/grievance. Instead, talk to your peers for advice, or, even better still, if you are a member of a professional body, seek their expert advice and support.
- Try to communicate with any complaint-maker promptly, sometimes a timely apology for a genuine error can go a long way.

# Interview

## Anne Johnstone – Lay Chair



Anne Johnstone

### 1. Please tell us a little about your professional background and what drew you to become an FtPC member?

I practised as a litigation solicitor before joining the Criminal Injuries Compensation Board, initially preparing, and presenting oral appeal hearings before running, for 20 years, the nationwide appeals process as Head of Law and Policy.

I am extremely interested in people, what makes them tick and how they can maximise their resources to achieve the best outcomes. As an advanced neuro-linguistic programming trainer, I have trained many hundreds of professionals in negotiation, advanced communication, team dynamics, managing unconscious bias and high conflict personalities. I was drawn to the panellist's role as my personal and professional interests and skills seemed a good fit for it.

My first FtPC appointment was in 2008, on the General Osteopathic Council Investigation Committee, and since then as Chair/panellist for the Nursing and Midwifery Council, The Health and Care Professions Council and General Pharmaceutical Council. My comparatively wide experience across the regulatory spectrum has widened my perspective and helps inform my decision making and promulgate best practice.

### 2. What are your responsibilities as an FtPC member?

All panellists, but particularly the Chair, must ensure that all parties, the registrant, representatives, all witnesses, panellists and the legal adviser are given the opportunity to participate in proceedings fully and fairly. Regulatory proceedings can be very daunting, particularly for unrepresented registrants and witnesses and ensuring that they can give of their best and feel supported is vital. I strive to ensure a level playing field and to ensure that proceedings are not only fair but are perceived to be fair.

Being able to quickly establish rapport, recognise the thinking and working styles, emotional needs, and responses of all participants, and being flexible enough in my behaviour to bring out the best in them are skills I hope I bring to bear, so everyone feels their views have been properly aired, genuinely respected and fully considered.

### 3. Can you give us some insight into how the FtPC reaches its decisions?

Working collaboratively, with great care, compassion, and consideration of all the relevant evidence. I think my overarching responsibility as Chair is to be facilitative, fair, firm, and focussed while carrying out the role with a lightness of touch that doesn't detract from the seriousness of the proceedings.

In terms of facilitation, particularly in Committee discussions, it's a bit like being the conductor of an orchestra, everyone knows the score, or at least they should do, but the conductor is there to recognise and minimise any discord, achieve harmony and ensure that the whole ensemble is a triumph. Wisdom comes from many perspectives and, naturally, views about the evidence often differ. Respectful, focused, and robust debate ensures the fairness and efficacy of the process. Firmness and focus are required in so many respects, but particularly in terms of time management and precluding speculation from informing the determination.

### 4. What are some of the challenges you've faced in the role?

GOC substantive hearings can be trickier than those of other regulators, not least because of some of the clinical/technical aspects, which can be difficult for a lay person to grasp, but because they comprise of five members instead of three, which makes the role of the Chair slightly more challenging, in terms of facilitating time efficiently and effective collaborative team working.

Panellists are in the privileged position of learning about the many personal and deeply affecting circumstances in which registrants, patients, and witnesses have found or find themselves and of making important and often sad decisions affecting their lives. When faced with understandable upset and raw emotion, it can be hard to hold our own emotions and responses in check. Panellists are only human and whilst we must always be professional and remain composed, we are certainly not without compassion and empathy, therefore strategies for managing our own state are vital.

### **5. What do you think are some of the common misconceptions about FtPC substantive hearings?**

I suspect that many think that the FtP committees are an extension of the regulator and don't realise that panellists are totally independent. I also gather that there is a tendency for registrants to think the regulator is 'out to get them' when nothing could be further from the truth.

In every one of the hundreds of cases I have been involved in, the individual committees/panellists have bent over backwards to reach a finding that enables the continuation/return to practise of a registrant who engages, acknowledges failings, whether admitted or found proved, demonstrates genuine remorse and insight into how they arose, the impact on the public and wider public interest and has undertaken appropriate remediation. Many registrants may understandably be terrified of facing a hearing because of the relative formality of the process. However, every effort is made to ensure that they are given a fair hearing and feel supported during it.

### **6. What has been your experience of hearing FtPC cases since the start of the pandemic?**

Remote hearings initially proved a little more challenging, not least because of technological issues but because they throw up some interesting differences between how parties perceive proceedings and behave in the different settings.

I have been very impressed with how well the GOC and colleagues have managed to function largely remotely over the last 18 months and encouraged by the many benefits of holding hearings remotely. GOC and many other regulatory proceedings are undeniably London centric and working remotely has resulted in a welcome and significant increase in registrant/witness engagement. Nevertheless, I have missed the more personal connection with my much-valued committee and council colleagues and the many benefits face to face interaction brings. I accept, however, that we now have a new normal and embrace it with optimism.

### **7. What would you advise a registrant who is subject to an investigation?**

Engage, engage, engage, no matter how serious a matter appears to be. By engaging you optimise your chances of a desirable outcome. By failing to engage you hamper the Committee's ability to help you. If you recognise failings on your part, acknowledge them as soon as possible. Being a professional involves having the courage and the ability to recognise and admit to mistakes, shortcomings, or poor judgement. To err is human; to do all you can to remain in the profession you love will feel, if not divine, certainly much better than sabotaging your own chances of being permitted to practise ultimately without restriction. Seek support from family, friends, colleagues, and a legal representative, if possible. Legal assistance points you in the right direction and takes some of the burden off you in terms of understanding the process and doing what you need to do to optimise your situation.

### **8. Do you have any general advice for our registrants?**

Lead by example. Be open, honest, and transparent. Be brave and face up to your mistakes. If you find yourself in trouble, the GOC and the independent FtPC panellists want to do everything in their power to help you to help yourself. Keep yourself fully up to date with all policies, procedures, referral pathways and protocols. Keep clear, appropriate records. Familiarise yourself with the GOC Standards of Practice and follow them. The best way to get out of trouble is not to get into it in the first place. Keep up the good work!

# Insights from professional bodies

We asked some of the professional bodies who support registrants to provide us with some insight into their role and any advice they have for registrants facing a fitness to practise investigation or hearing.

## The Association for British Dispensing Opticians

The Association for British Dispensing Opticians (ABDO) is the professional body for dispensing opticians (DOs) and student DOs in the UK. Alongside a range of member benefits, ABDO's membership department is also the first port of call for members referred to the General Optical Council.

ABDO's Head of Membership, Katie Docker says, "Fortunately only a small number of dispensing opticians are referred to the GOC each year, but that doesn't diminish the potential stress for an individual if this happens." She continues, "When a fitness to practise letter arrives in the post stating that a member is under investigation for something that has been alleged it can cause massive anxiety."

Katie, Ed Fox, Membership Officer, and Aaron Holman, Membership Services Administrator are at the end of the phone from 9am to 5pm every weekday for any member who finds themselves in this situation. Katie says, "We talk it through with the member and explain the procedure the GOC has to follow when it receives a complaint. This call can take some time. It is our job to make you feel more at ease and not alone in the process."

While the membership team is always there to provide a listening ear combined with years of experience, ABDO members also have access to legal support if needed. Katie says, "If a member receives a letter to say that they are being investigated with a full complaint, we then refer them to our legal team at JG Law who are well versed in helping members during fitness to practise hearings. The team takes over, collating information, talking to the member, making sure the member is fully updated with the timelines and any other relevant information. The team at JG Law represents the member at the hearings and the professional aspects are looked after by them."

Summing up, Katie advises, "If you receive a letter from the GOC, don't panic. Do give us a call and do remember that not all of those who are referred to fitness to practise will progress into a full investigation. We are here to support you and always have time to talk. Give us a call as soon as you can and we will give you the best advice for your situation."

## Association of Optometrists

The Association of Optometrists (AOP) is the largest membership body for optometrists and exists to ensure that members are supported throughout their careers. We have employment and clinical negligence teams, as well as a team entirely devoted to professional regulation, we are successful in our work and carefully monitor our members' experience of the AOP through regular surveys, and the feedback is consistently excellent.

As Head of Professional Discipline, I oversee my team's work carried out on behalf of optometrists at all stages of the GOC process. We assist our members throughout their cases and ensure that we are a constant source of support throughout.

The earlier we know about a case, the better as it allows the team to begin to plan a case strategy and advise our members on next steps as soon as possible. In cases that involve a clinical element, for example, an omission of a particular test such as IOPS, we will ask our team of in-house, expert optometrists to review clinical notes and work with us as we plan your case. We can (and often do) sign post our members to our educational resources where we believe this is necessary.

No two cases, or two optometrists for that matter, are ever the same, however at the AOP we work on behalf of many members who find being subject to a GOC investigation an extremely stressful and anxious time. In response to this common experience, we set up a Peer Support Line – a telephone helpline staffed by volunteer optometrists to offer callers an ear and informal, confidential pastoral support. This is a service open to all of the profession, regardless of membership of the AOP and Peer Support can be contacted on 0800 870 8401.

We also devoted time to feeding back our members' experience of the GOC to the Council itself. The first step to bringing about positive change for the profession is to share knowledge and this is why last year I attended a GOC staff training event to speak about our members' experience of being regulated by the GOC and to encourage the organisation to de-mystify its processes. The GOC's FtP FOCUS bulletin is a step towards that.

Although the GOC is often described as an ever-hovering sceptre in the lives of practising optometrists, it exists to perform a statutory function; this is why protecting the public is at the heart of everything they do. At the AOP, we ensure that we are in constant communication with the GOC and its staff by providing feedback and lobbying for change that will benefit the profession. Working in this way has helped to ensure that regulation is carried fairly and to the benefit of the optometry community.

### **FODO – The Association for Eye Care Providers**

FODO – The Association for Eye Care Providers – has always supported registrants with GOC complaints and fitness to practise issues. Our highly experienced in-house team works in partnership with Berryman's Lace Mawer LLP (and other top legal defence teams) to help members understand and respond to the GOC on a wide range of issues, including member defence.

The good news is that most GOC issues are readily dealt with, and we have an excellent record of doing just that with high member satisfaction. We find the most complicated issue with most complaints is helping registrants unlearn their fear of the GOC.

There is no reason to fear a healthcare regulator and that is certainly not the purpose of regulation. However, it is clear that many GOC registrants do. This is a real problem and is in part due to students not being taught enough about the GOC's role, legal defence marketing that has historically used fear to attract customers, and publication bias which means registrants read about the rare high-profile cases but not all the cases that are resolved early on and never progress to FtP.

That is why we focus on helping members unlearn their fear of the GOC and look at complaints as an opportunity to reflect on and learn from an event. We also provide context early on about similar cases and the likely outcomes. Doing this helps everybody involved and, perhaps most importantly, supports registrants' mental wellbeing through the entire process.

The vital thing to remember is that it is a privilege to be part of a regulated healthcare profession, and over a long career, most clinicians are likely to have a complaint made about something. In most cases, it will be readily resolved by taking a proactive approach and analysing and reflecting on the substance of the issues raised and correcting them. For our part, we are always there for members, seven days a week when they need it. We never use fear to promote our legal defence support and will do more in the years ahead to help people unlearn their fears of regulators.

Alan Tinger – FODO Director of Regulatory Affairs

# Useful Contacts:

## Association of British Dispensing Opticians

ABDO are a representative membership organisation for dispensing opticians, currently representing over 6,350 qualified dispensing opticians in the UK.

## ABDO College

ABDO College provides programmes leading to professional qualifications awarded by the Association of British Dispensing Opticians.

## Association of Contact Lens Manufacturers

Established to publicise the work of UK manufacturers, ACLM represents over 95% of all prescription contact lens care products in the UK.

## Association of Optometrists

The AOP are a representative membership organisation for optometrists, currently supporting over 82% of practising optometrists in the UK.

## British Contact Lens Association

BCLA is a membership organisation that seeks to provide members with access to training and relevant information as well as the opportunity to communicate with others involved with contact lenses, whatever their role.

## The College of Optometrists

The College is the professional body for optometrists. It qualifies the profession and delivers the guidance, development and training to ensure optometrists provide the best possible care.

## Federation of Ophthalmic and Dispensing Opticians

FODO is a representative membership organisation for eye care providers working in primary and community care settings in the UK and Republic of Ireland.

## Optical Consumers Complaints Service

The OCCS is an independent and free mediation service for consumers (patients) of optical care and the professionals providing that care. The service is funded by the General Optical Council who regulate optometrists and dispensing opticians.

**We hope you have enjoyed this issue of FtP FOCUS. We are exploring topics for further issues in 2022, so if you have any suggestions, questions about the process, or feedback, please feel free to get in touch with us at: [focus@optical.org](mailto:focus@optical.org)**

**Read our previous FtP FOCUS bulletins on the triage stage, investigation stage, Case Examiner stage, and road to a hearing.**

### Contact us at:

[focus@optical.org](mailto:focus@optical.org)

[www.optical.org](http://www.optical.org)

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