**Consultation document - Illegal Practice Strategy Review**

1. **Overview**
	1. The General Optical Council (GOC) is the regulator for the optical professions in the UK. We currently register around 30,000 optometrists, dispensing opticians, student opticians and optical businesses.
	2. We have four core functions:
* setting standards for optical education and training, performance and conduct;
* approving qualifications leading to registration;
* maintaining a register of individuals who are qualified and fit to practise, train or carry on business as optometrists and dispensing opticians; and
* investigating and acting where registrants’ fitness to practise, train or carry on business is impaired.
	1. The GOC’s overarching objective is the protection of the public. Although not a specific statutory duty, we may act on reports about alleged illegal optical practice when necessary to protect the public.
	2. Illegal optical practice (illegal practice) is conduct that amounts to a criminal offence under Part IV of the Opticians Act 1989 (the Act).
	3. Our illegal practice strategy and protocol were last reviewed in 2015. Our current approach is reactive to complaints being received. We believe we can better use our resource to develop a strategy that links more closely with our overarching public protection function and also enhance sector and public awareness of our remit.
	4. We have carried out a review of our illegal practice strategy and protocol because we want to be more proactive in our approach to illegal practice and also provide clarity on when we will take action and what action will be taken. We believe that more collaborative working to prevent illegal practice from occurring provides the best outcome for the public and our sector.
	5. The revised illegal practice protocol is available on our [consultation hub](https://consultation.optical.org/ftp-hearings/illegal-practice-strategy-review/). The main changes are:
* the addition of acceptance criteria;
* setting out our approach to illegal online sales;
* requiring early lawyer input into investigations;
* the introduction of a process for test purchases; and
* greater clarity about when we will consider a prosecution.
	1. An impact assessment is also included on our [consultation hub](https://consultation.optical.org/ftp-hearings/illegal-practice-strategy-review/) in the related section at the end of the page.
1. **Why we are consulting**
	1. We believe that the revised illegal practice protocol will enable us to:
* be clearer about our remit;
* be clearer about when the GOC can bring prosecutions, and when alternatives to prosecution will be the preferred route, and why; and
* collaborate more widely to help prevent illegal practice from occurring.
	1. We would like to hear your views on the updated illegal practice protocol before we implement the revised approach early next year.
	2. The public consultation will last for a period of 12 weeks.
1. **Proposed updates to the protocol**

**Acceptance criteria**

* 1. We have drafted criteria to help us to assess complaints (called ‘acceptance criteria’) so that only complaints about an alleged offence under the Act are accepted, and matters outside of the scope of the acceptance criteria are referred elsewhere at an early stage.
	2. We believe the acceptance criteria will provide clarity on when we will act and what action we can take.

**Approach to online sales**

* 1. We can be more proactive in our approach to online sales by building relationships with the online platforms who may have the power to stop sales.
	2. We are forging relationships with major online platforms and propose to refer reports of alleged illegal sales to a designated point of contact for swift removal from the platform at assessment stage. These relationships will mean a higher proportion of complaints can be closed at assessment stage, and investigations will only be opened in high risk and/or persistent offending cases.
	3. We will continue to develop these relationships to work towards preventing illegal sales from occurring.

**Early lawyer input**

* 1. Cases will be referred to a lawyer in cases where the case officer considers an investigation is necessary. This will ensure legal input and direction at the beginning of the investigation and that any evidence gained during an investigation is admissible evidence as part of a prosecution.

**Test purchases**

* 1. Test purchases are the main procedural addition to the investigation stage. We may conduct a test purchase to obtain evidence of an illegal sale in cases where we suspect illegal sales are continuing after a cease-and-desist letter has been sent, *and* the evidential and public interest tests are met.
	2. The evidential and public interest tests are set out in the protocol and are the same as the 2015 protocol.
	3. This means that a test purchase would be conducted when we consider the threshold for prosecution is met and would be used as evidence on which to bring a prosecution.

**Greater clarity about when we will consider a prosecution**

* 1. Lastly, we have set out specific factors – of which at least one must be present to consider a prosecution – these are:
* sales to restricted categories under the Act;
* persistent offending and likely reputational damage to the GOC and/or the optical sector;
* title offences where misuse persists; and
* intent and/or harm.
	1. But each case will always need to be assessed on its own merits, and the evidential and public interest tests must be met to consider bringing a prosecution.

**Questions**

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

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

If you answered ‘disagree’ or ‘strongly disagree’, please explain your reasons.

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

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

If you answered ‘disagree’ or ‘strongly disagree’, please explain your reasons.

1. **To what extent do you agree that the updated protocol will provide clarity on when we will act and what action will be taken?**

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

If you answered ‘disagree’ or ‘strongly disagree’, please explain your reasons.

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

a) Yes b) No c) Not sure

If you answered ‘yes’, please give details.

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

a) Yes b) No c) Not sure

If you answered ‘yes’, please give details.

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

a) Yes b) No c) Not sure

If you answered ‘yes’, please give details.

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

a) Yes b) No c) Not sure

If you answered ‘yes’, please give details.

NB This document is an aide for you to see all the substantive consultation questions at once. We would be grateful if you could input your responses into our [consultation hub](https://consultation.optical.org/ftp-hearings/illegal-practice-strategy-review/) so that we can collect information about you or your organisation and whether the response can be shared.