

## Illegal practice Q&A

### 1. What is the purpose of the illegal practice protocol?

The illegal practice protocol, approved by GOC Council on 29 June 2022, describes when the GOC will open an illegal practice case following an allegation of illegal practice (which is conduct that amounts to a criminal offence under part IV of the Opticians Act 1989 ('the Act')).

### 2. What is the GOC's remit regarding illegal practice?

Our approach to illegal practice is measured by Professional Standards Authority (PSA) standard 12 which requires us to manage allegations of illegal practice that involve risk of harm to the public and/or damage to public confidence in the profession in a proportionate, risk-based manner.

We can take proportionate action against illegal practice when necessary to protect the public under our overarching objective - acting on allegations of illegal practice doesn't form part of our core regulatory functions.

### 3. Why can't the GOC act against businesses based outside of the UK?

The Act applies only in the UK. It is difficult to use UK law to prosecute an overseas company even where the purchaser is in the UK. There would be practical problems in presenting a hearing without the power to compel the defendant to attend a UK court. It would also be extremely hard to enforce any conviction or order.

In addition, criminal offences relating to supply do not arise at distribution stage - they arise at the point of sale. The Act does not provide the GOC with any legislative basis on which to act against distribution centres.

### 4. When will the GOC bring a prosecution?

When there is evidence of conduct that amounts to a criminal offence under part IV of the Act, the conduct is continuing after receipt of a cease-and-desist letter and/or there is risk of serious harm, and the evidential and public interest tests set out in the illegal practice protocol are met.

### 5. What powers does the GOC have to bring a prosecution?

The GOC can bring a private prosecution which is a prosecution that can be started by any private individual or entity that does not have a statutory power to prosecute. Criminal offences were created by the Act, but the Act does not give the GOC statutory powers of prosecution.

### 6. Why aren't all breaches of the Opticians Act illegal practice?

Illegal practice is conduct that amounts to a criminal offence under part IV of the Act (see para 3.7 of the illegal practice protocol for summary of offences created by the Act). Action can be taken by the GOC against registrants for other breaches of the Act through the fitness to practise process if it meets the criteria.