

# FtP FOCUS

A focus on Fitness to Practise from the General Optical Council

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## Hello and welcome to our fourth issue of FtP FOCUS, this time walking you through the journey to a Fitness to Practise Committee Hearing.

By now, you should have a much clearer understanding of the approach the GOC takes to concerns about the fitness to practise of our registrants. You'll know that the vast majority of our registrants provide consistently high-quality eye care, and that only a very small minority, less than one per cent, have any concerns raised against them each year.

If a concern is considered serious enough to raise an allegation under our legislation, an investigation will be opened. You may recall from the last issue that two independent Case Examiners, one lay and one registrant, will consider the information that has been obtained

during the investigation, and determine if the matter should be referred to a Fitness to Practise Committee (FtPC).

This issue takes you through what happens next.

What if we, or the patient or complainant, don't agree that a case should have been closed by the Case Examiners? What happens if the registrant doesn't agree that it should have been referred? What happens if the GOC receives information at a later date, that hasn't been considered by Case Examiners? Does the registrant always have to go through a full FtPC hearing, if they agree to all of the facts and agree that their fitness to practise is impaired?

As always, I really hope you enjoy the read and if you have any questions or thoughts for future editions, please do not hesitate to drop me a line at [focus@optical.org](mailto:focus@optical.org).

All the best

*Dionne*

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# Preparing a Case for a Fitness to Practise Committee Hearing

Once a case has been referred to the Fitness to Practise Committee by the Case Examiners or the Investigation Committee, the Investigation Officer who managed the case during the investigation stage will notify the relevant case parties of their decision, and we will then begin to prepare the case for a hearing.

Our Head of Casework Operations will decide whether the case will be managed in-house or sent to one of our external lawyers to manage. This is dependent on the nature of the allegations raised (complexity, for example) and if there is further investigative work to be carried out ahead of the hearing.

## Cases Managed In-House

The case will be reviewed by one of our lawyers. Our lawyer will consider the registrant's representations, comments from the complainant, the decision of the Case Examiners and identify if there is any further evidence to be obtained.

If the lawyer confirms the case is hearing-ready, we will serve our *proposed hearing bundle*\* on the registrant and their legal representative, together with the allegations, the Fitness to Practise Rules 2013, any unused material and the *Hearing Questionnaire*\*\*.

If there is further post-investigation work or hearing preparation to be done, this will be carried out by the Investigation Officer.

When the case has been served, the Investigation Officer will then notify any complainants, witnesses, and experts with an update, and request dates to avoid from the registrant, witnesses and experts.

## Cases managed by External Lawyers

If the case is being managed by one of our external lawyers, they will carry out all of the further investigative and procedural steps as above and provide updates to our Investigation Officer and Hearings team.

In all cases, once the hearing date is confirmed, our Hearings team will send a Notice of Hearing to the registrant. The registrant will then have a statutory period of at least four months to prepare their defence.

We also hold case management meetings to ensure our hearings run effectively. The aim of the meeting is to encourage both parties to fully prepare their cases prior to hearing, minimise delays and minimise stress on both the registrant and witnesses, by setting up an effective channel of communication throughout the pre-hearing period.

Once we receive the registrant's case, the lawyer will review it and if there is no further material which requires disclosure, the final proposed hearing bundle will be served 10 days before the hearing date, and the final agreed version will be provided to the committee members in advance of the hearing.

When our Case Examiners decide to refer a case to the FtPC, there is an opportunity for the registrant to make an application for the decision to be reviewed although this is dependent on certain criteria being fulfilled.

*\*The proposed hearing bundle is what the GOC will rely on to prove the allegations.*

*\*\*The Hearing Questionnaire assists our Hearings team in deciding when the hearing should take place, how long it will need to last and what steps must be taken before the hearing can be heard. The Hearing Questionnaire also invites the registrant to provide a response to the allegations.*

# Agreed Panel Disposal

After a case has been referred to the FtPC, we will assess whether the case is eligible to be considered for an Agreed Panel Disposal (APD). APD is a method of concluding an uncontested matter without the need for a full FtPC hearing.

In order for a case to be considered for an APD:

- The allegation must have been considered by Case Examiners or the Investigation Committee and referred to an FtPC;
- or
- The allegation concerns a criminal conviction which results in a custodial sentence and there has been a direct referral to the FtPC by the GOC Registrar.

For APD to be considered, the registrant must admit all of the facts of the allegation, they must admit misconduct (and/or other categories set out in section 13D of the Opticians Act) and that their fitness to practise is *currently* impaired. Discussions about an appropriate agreed sanction will then take place. This is not a negotiation or a 'plea-bargaining' process. If the sanction that the GOC considers appropriate is not accepted by the registrant, then APD will not be an option and the matter will proceed in the usual way to a full hearing.

Once the registrant and the GOC have agreed facts, grounds of impairment, current impairment, and sanction, they will then be presented to the FtPC in the form of a written report. The FtPC will then consider the agreed facts, the grounds of impairment and sanction following the procedural requirements of [Rule 46 FTPC Rules 2013](#).

After considering the written report and any comments provided by the complainant, the FtPC may decide to:

- agree with the findings of the report;
- disagree with the findings of the report; or
- request further information to reach their decision.

The APD hearing will take place before the FtPC and the registrant is invited to attend and be represented. Witnesses are not required to attend, and the GOC and registrant/representative will be available to answer any questions the FtPC may have. The FtPC will then draft the determination detailing the full reasons for their findings.

# APD Case Studies

For this issue, we have selected two cases that, following the Case Examiner's decision to refer allegations to the FtPC, were identified as being eligible for an APD hearing.

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

## Case Study #1

### Declaration from Registrant

I am a dispensing optician and would like to declare that I have been dismissed from my employment following an internal investigation, for stealing a sum of money over a number of different occasions, by refunding false sales into my personal account.

**In the registrant's representations, the registrant admitted all of the allegations.**

#### Standards of Practice for Optometrists and Dispensing Opticians

- 11.4 If you have concerns about your own fitness to practise, whether that is due to issues with health, character, behaviour, judgement, or any other matter that may damage the reputation of your profession, stop practising immediately and seek advice.
- 16 Be honest and trustworthy.
- 16.1 Act with honesty and integrity to maintain public trust and confidence in your profession.

- 16.5 Be honest in your financial and commercial dealings and give patients clear information about the costs of your professional services and products before they commit to buying.
- 17 Do not damage the reputation of your profession through your conduct.
- 17.1 Ensure your conduct, whether or not connected to your professional practice, does not damage public confidence in you or your profession.

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

The Case Examiners carefully considered all of the evidence in this case and agreed that there was a realistic prospect of establishing that the registrant's fitness to practise was impaired, to a degree that could justify action being taken against their registration.

## APD hearing: What was considered?

### Stage one: Factual findings

It was noted that whilst conducting monthly checks on credit card refund transactions, the employer identified several refunds which were processed to the same account at the store. Due to the suspicious nature of these refunds, the employer decided to investigate this matter further and found that the transactions had been completed by the registrant.

### Stage two: Misconduct and impairment

It was agreed that the registrant's conduct and the allegations raised amounted to a serious departure from the standards of practice expected of a competent dispensing optician. The registrant also accepted that their fitness to practise was currently impaired.

### Stage 3: Sanction

The parties agreed that the actions of the registrant were dishonest, were repeated over several months and that they risked damaging the reputation of the profession. However, it was noted that the registrant had no previous fitness to practise history, had demonstrated significant insight and reflection, had offered to return all the money and that there were no concerns regarding the registrant's clinical competence.

### Outcome:

The GOC and the registrant agreed that an appropriate and proportionate sanction would be an eight-month suspension with no review and no immediate order. The FtPC approved this as an agreed outcome.

## Case Study #2

### Referral from the NHS

We would like to raise concerns that one of our employees was required to undergo a programme of supervised improvement, following a review of clinical records which had been amended and/or completed to a poor standard.

The registrant did not submit any representations to the Case Examiners.

#### Standards of Practice for Optometrists and Dispensing Opticians

- 8 Maintain adequate patient records.
- 8.1 Maintain clear, legible and contemporaneous accessible for all those involved in the patient's care.
- 11 Protect and safeguard patients, colleagues and others from harm.
- 16 Be honest and trustworthy.
- 16.1 Act with honesty and integrity to maintain public trust and confidence in your profession.

- 17 Do not damage the reputation of your profession through your conduct.
- 17.1 Ensure your conduct, whether or not connected to your professional practice, does not damage public confidence in you or your profession.

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

The Case Examiners carefully considered all the evidence and agreed there was a realistic prospect of establishing that the registrant's fitness to practise was impaired to a degree that justified action being taken against their registration. Therefore, they agreed the matter should be considered by the FtPC.

On receipt of the Hearings Questionnaire, the registrant admitted all the facts as presented and the matter was therefore identified as eligible for APD consideration.

## APD hearing: What was considered?

### Stage one: Factual findings

The records were reviewed by an external expert who confirmed they had been amended to include false information, and therefore compromised the integrity of the records. The expert concluded in their report that the registrant's actions fell far below the standard that one would expect of a reasonably competent optometrist. The registrant also admitted the facts alleged against them, including the allegation of dishonesty.

### Stage two: Misconduct and impairment

The GOC and the registrant both agreed that the allegations raised amounted to a serious departure from the standards of practice expected of a competent optometrist and that the registrant's dishonest behaviour amounted to misconduct.

The parties also agreed that the registrant's misconduct was sufficiently serious to necessitate a finding that the registrant's fitness to practise was currently impaired.

### Stage 3: Sanction

The parties agreed that the registrant's actions were not only serious and dishonest, but their actions also risked damaging the reputation of the profession. It was also noted that the registrant did not initially engage with the GOC's investigation and did not provide representations at that stage. However, it was identified that the registrant had no fitness to practise history, had admitted their actions and no patient harm had been caused. It was also confirmed that the registrant had retired from practice and therefore the risk of repetition was extremely low.

### Outcome:

The parties agreed that the appropriate and proportionate sanction would be a 12-month suspension with no review and no immediate order. The FtPC approved this as an agreed outcome.

# Interview

## Vineeta Desai – Hearings Operational Manager:



Vineeta Desai

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

I have worked at the GOC for four years.

### 2. What does your role involve?

As the Operations Manager in Hearings, my role involves leading, managing and supporting a team of Hearings and Scheduling Officers, dealing with all aspects of the Fitness to Practise proceedings, ensuring all relevant procedures are followed in line with legislation and good practice.

In addition to this, I design, develop, implement, and monitor processes and standard operating procedures to support the work of the department, and the timely progression of cases through the hearings process. This includes tools such as the 'hearings on the papers' process and the case management meeting process.

### 3. What do you enjoy most about working within Hearings?

I recognise that a hearing is a stressful process and there is satisfaction in making the process as comfortable as it can be in the circumstances.

### 4. Tell us more about the Case Management Meetings and your involvement in the process.

The case management meeting process was introduced to facilitate the effective running of GOC hearings, by minimising the stress on registrants and witnesses at a hearing setting up an effective channel of communication during the pre-hearing period, and seeking early agreement about several key issues.

I led on the design and implementation of this project, which ran as a pilot for just over a year. The pilot has recently concluded, and feedback was obtained from various stakeholders involved in the process, including GOC external lawyers, professional association bodies, panel members and legal advisers. The consensus was that this tool is a positive proposal to assist with the timely management of cases.

Over the past year we have seen a number of benefits as a result of the case management meeting process, such as identifying a witness who was unfit to attend and resolving this prior to the hearing, expert reports being agreed and a subsequent reduction in the number of days the case was listed for, decisions on whether hearings will be heard in-person or virtually have been confirmed without a procedural hearing, and extra hearing days added to ensure the timely conclusion of the hearing. The [final version](#) of the process has recently been launched.

### 5. What advice do you have for registrants who have an upcoming hearing?

I fully understand that the prospect of appearing before a Fitness to Practise Committee can be daunting and extremely stressful. I would strongly recommend that you take advice from your professional association body or a lawyer. If these sources of assistance are not readily available to you, there are lots of alternate sources of assistance so please do ask for help.

My second piece of advice would be to attend your hearing so you can put forward your side of the case. If you do not wish to attend, you still have the right to be represented in your absence, or you could put your case in writing so it can be considered fully in your absence. Regardless of how you wish to proceed, do engage in the process, and seek advice and guidance.

# FtPC Case Studies

Following on from issue three of FtP Focus on our Case Examiners, we have selected three cases which were referred to the FtPC. In this issue, we will be exploring the preparation of these cases on the road to a 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 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 eye. I became very worried and thought my vision had seriously deteriorated. The optician was so concerned that I had not been referred sooner, 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 #2 in the third FtP Focus bulletin on the Case Examiner stage.*

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

The Case Examiners considered the registrant's admissions in respect of the alleged clinical failings, including a repeated failure to refer Patient C, and with the added element of alleged dishonesty, they decided the case should be referred to the Fitness to Practise Committee.

### **Response from legal representative**

Upon receipt of the Case Examiner's decision, the registrant's representative requested that the allegation of deficient professional performance should be removed. This was heard at a procedural hearing\* before the FtPC. The FtPC granted the application, and the allegation was removed.

### **Our lawyer's review: What was considered?**

**Witness:** Patient C would need to attend the hearing to provide a detailed account of their appointments leading up to their diagnosis and the progress of their recovery.

**Expert Witness:** A supplementary report was required from the GOC's expert, in relation to the allegation that the registrant did not perform specific examinations to check for signs of keratoconus in Patient C.

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## **Outcome: Hearing listed for three days**

The outcome of the FtPC hearing will be explored in the next issue of FtP Focus.

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*\*At any stage of the preparation period, either party can request a procedural hearing before the FtPC which would be listed to take place at the earliest opportunity and before the substantive hearing.*

## 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.

**Note:** 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 the allegation as a whole ought to be referred to the Fitness to Practise Committee.

### Our lawyer's review: What was considered?

**Procedural hearing:** The registrant was subject to a previous referral which had already been listed to be heard by the FtPC. Given that the two referrals were closely linked, the GOC considered that it would be suitable for both matters to be heard at one hearing and made an application to join both cases against the registrant. This was heard at a procedural hearing before the FtPC. The FtPC granted the application.

**Witnesses:** An employee at the education provider would be required to attend the hearing to comment on the events which took place in relation to the registrant, but there would no longer be any need to call an expert witness for this case.

## Outcome: Hearing listing reduced to two days

The outcome of the FtPC hearing will be explored in the next issue of FtP Focus.

*\*This Case Study continues from Case Study #3 in the third FtP Focus bulletin on the Case Examiner stage.*

## 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 Fitness to Practise Committee.



### Our lawyer's review: What was considered?

**Witness:** Patient E would be needed at the hearing to set out their immediate medical history and what led them to seek an appointment, along with a detailed account of their appointment, what the registrant said and did, confirmation of the advice they were given and a short summary of the progress of their recovery.

**Expert Witness:** The expert who considered the case at the investigation stage should be called to comment on the signs which were present at the appointment, the seriousness of the alleged failings, and why the registrant ought to have recognised the signs as BRAO, or alternatively as an abnormality requiring further investigation.

## Outcome: Hearing listed for four days

The outcome of the FtPC hearing will be explored in the next issue of FtP Focus.

\*This Case Study continues from Case Study #4 in the third FtP Focus bulletin on the Case Examiners stage.

# 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. Our next issue will focus on the Fitness to Practise Committee hearing.**

**If you have any 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 and Case Examiner stage.](#)**

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