

Response ID ANON-BAGK-3J4D-A

Submitted to **General Optical Council - Case Management Meetings**

Submitted on **2019-10-25 10:20:16**

Introduction

1 Please provide your comments in relation to the draft case management meeting plan

Please provide your comments:

FODO fully supports the GOC's efforts to improve the Fitness to Practise (FtP) process and in our view, subject to our feedback below, this will help address the Professional Standards Authority's (PSA) criticisms of the GOC in this area.

The proposals appear to be an honest attempt to address some of the issues and this is welcomed. However the current draft risks failing to achieve the objectives the GOC has in mind and which the PSA has highlighted as areas for improvement. For example, we would have expected to see the GOC's own internal protocols and timetables, leading up to disclosure, included as part of the protocol as this is where many of the issues the PSA has raised, have arisen.

With that part of the pathway missing, the current draft risks unfairly imposing overly rigorous processes on registrants, especially in respect of defence positions and post disclosure timetables, without the GOC putting its own house in order first. This cannot be right or fair. Such internal procedures undoubtedly exist and, in the interests of transparency, we propose they be consulted on as part of a fully integrated process/pathway which would provide clarity and agreed dates for all.

We would commend to the GOC the approach taken by the General Dental Council (GDC) and Medical Practitioners Tribunal Service (MPTS). Under their case management processes, both parties at point of referral are asked to complete a hearings questionnaire to identify likely numbers of witnesses, whether expert evidence will be needed, likely hearing duration, dates to avoid etc. The officials then provisionally list the case with proposed disclosure dates for both regulator and defence. Once agreed this gives both parties sufficient time to prepare whilst also ensuring that case management issues are addressed before the hearing – e.g. for joint expert meetings to take place after defence disclosure - and the subsequent hearings process runs smoothly and to time.

FODO would strongly urge the GOC to adopt these tried and tested models. Implementing a case management pathway from referral would enable both parties to be held to account and the case to progress with the minimum of delay. This would also fit more closely with the government's aim of aligning fitness to practise processes across regulators drawing on best practice.

Overview Timetable

It is essential that sufficient time is allowed at the outset to enable the process to proceed more smoothly at later stages where holdups can be most costly. This, this, in our view, will be key if the FtP process is to result in a timely and fair outcome for all.

Registrants also need to be able to absorb shock, reflect on and have insight into what the complaint and allegations are about – these can change between investigation and allegations stage – and to prepare their defence (including how long it might take) without feeling rushed or unduly pressurised. Our defence experience tells us how difficult this can be when people are still providing full-time care to their patients and perhaps running a practice or working in several locations.

We therefore strongly feel that the first two time-limits (max 28 days from disclosure to submit time estimate; max 56 days from disclosure to first teleconference) are too short. In our view it would be better to allow up to:

- 42 days from disclosure to submit time estimate
- 70 days from disclosure to first teleconference

and then for the GOC and sector to review these limits in the light of experience. If that were the case, and building on a more solid foundation, keeping later deadlines in the process tight would be sensible and have our support.

4 Month Deadline

If timeframes take account of the actual listed hearing date (cf again the good examples of the GDC or MPTS), defence disclosure does not really need to be submitted four months after GOC disclosure if the hearing is to be at a later date. Approaching the issue this way round and building from dates into an agreed timetable from the outset would avoid delays and issue later on.

Whatever the agreed defence disclose date, it should of course only apply to evidence the registrant plans to rely on at Stage 1 – i.e. in respect of the factual allegations. Given the nature of insight and remediation summative Stage 2 or 3 evidence would normally be produced much closer to those hearing stages which flow from the Stage 1 determination.

It would clearly be wrong, and against the principles of justice, for registrants to be asked to provide evidence relating to Stages 2 or 3 before it was clear what allegations, if any, were to be pursued. We are sure this is an oversight which the GOC will wish to correct.

Status and Tone

We have commented elsewhere, and in other forums, on the counterproductive and unnecessarily aggressive tone of current hearings communications with registrants. This could easily act as a disincentive to individuals from speaking up, self-referring or engaging with the GOC and are not conducive to reflection and insight.

This set of tools is better drafted but we suggest it would be helpful to remind everyone in the final protocol that these are guidance/tools only, are voluntary and do not in most cases have the force of law, and are a work in progress which will be further reviewed in the light of experience as we collectively seek to improve the GOC's FtP process in the public interest..

One area where clarity tips into harshness and where, we would suggest, the balance of fairness is lost, is under Procedure (p.2) where the GOC states "In accordance with the listing protocol, Hearings will attach low priority to the availability of preferred Counsel." This gives the impression that the protocol is given and immutable rather than of the GOC's own invention and flexible when need be.

Registrant Choice of Counsel

More importantly, in our view, the principle articulated would introduce an inherently unfair bias in favour of bureaucracy over the rights of the individual.

A registrant might understandably place a great priority in terms of fairness in having the counsel present their case who they consider will understand their circumstances best and be best placed to do so. Moreover given counsel may already have been involved in the defence (e.g in pre-disclosure discussions, at an interim hearing, etc) their availability should have the same status as that, say, of expert or other witnesses and be factored into the timetable from the outset. This would easily be feasible if the GOC adopted the pathway/process we have recommended above based on best practice.

We would also like it to be made clear in the protocol that the GOC will make every effort to accommodate registrants' choice of counsel where this is reasonable. In our view the onus should be on the GOC to prove unreasonableness.

Drafting

On more minor points:

- the Introduction opens with a statement "The purpose of this guidance is....." whereas a dedicated section headed Purpose follows five paragraphs later
- it then goes on to outline the benefits the guidance will bring GOC as an organisation
- it is only in the latter section that we get the helpful bulleted explanations of purpose which, as well as benefiting the smooth running of the GOC, is also intended to help registrants, witnesses and (we assume) complainants who might find long delays etc stressful and worrying .

IN any further draft we would suggest moving the Purpose statements up to replace the first two paragraphs of the Introduction and merging the two sections.

2 Please provide your comments in relation to the draft hearing questionnaire

Please provide your comments:

Subject to our points above, introducing a hearing questionnaire - at the right point in the process which would be at point of referral in our view - is both sensible and helpful and this draft in our view has been well drafted to be simple and easy to understand and use.

3 Please provide your comments on the draft telephone record

Please provide your comments:

This again is helpful and sensible provided it is appreciated and made clear in the protocol that, at this stage in the process, when the registrant may still be in shock and in reflection stages, that he/she may well not be in a position to be able to answer the questions set out in the record log and that no adverse inferences will be drawn from this at later stages in the process. In fact, it would be very unusual for a registrant to be in a position to communicate admissions about facts, misconduct and impairment at such an early stage.

It follows that we are of the view that these administrative records should not be made available to the FtP panel and certainly not in advance of the hearing in case inappropriate inferences are drawn and the registrant's case prejudiced. The record should only be made available later in our view to the extent that either the GOC or the registrant wishes to raise an issue from the record which is relevant to the evidence or issues before the panel at that time.

We are particularly concerned here about unrepresented registrants who may inadvertently and incorrectly prejudice their defence through such a process in their eagerness to be as helpful as possible to the GOC and just to get the whole nightmare process (GOC tone again?) over. We would urge the GOC to consider setting up at least a buddying service for such registrants to ensure the process is as fair as possible for them.

4 Please provide your comments on the draft listing protocol

Please provide your comments:

Same point about preference of counsel as in our response to Question 1 above.

Another typo in first bullet on p.1 "less than than seven days".

5 Do you have any further comments on the proposed plan that are not captured in your responses to the questions above?

Please provide your comments:

Only on the issue of costs (Case Management Meetings Plan, final paragraph). We are not at all convinced that imposing costs is necessarily the best way of

achieving smoother processing of cases; and certainly not until a clear protocol is in place governing both GOC and registrant/defence aspects of the case management process, such as we recommend above.

Whilst we of course recognise the point but this is a double-edged sword. To date we have not sought to seek costs from the GOC for the myriads delays registrants and defence bodies have incurred as a result of clearly evidenced GOC shortcomings. This has not only been because we support the GOC as a regulator that has committed to improving its own processes in the past, but also because our members directly fund the GOC and so we would be seeking costs from the very people who would have to meet them.

We would therefore welcome a wider discussion with the GOC about this at senior level to achieve the best possible process and fair outcomes all round.

6 Please provide your contact details so that we can follow up any relevant aspect of your response. (We will not publish nor share with any third parties any personal information that you provide).

Name:

David Hewlett

Email:

david.hewlett@fodo.com

7 Are you replying on behalf of an organisation?

Yes

Company details

8 Name of the organisation

Please provide your response:

Federation of (Ophthalmic and Dispensing Opticians) - FODO

9 What is your position?

Please provide your response:

Director

10 What is the nature of your organisation's work?

Please provide your response:

Professional and representative association for eye care providers in the UK. We also provide professional defence insurance and support for our members and their registrant staff. Our members account for 85 per cent of the UK primary eye care sector.