

GENERAL OPTICAL COUNCIL

**Minutes of the 139th Meeting of the Companies Committee
held on 14 October 2008**

Present: Mr B J Carroll (in the Chair)
Professor R Anderson, Mr M W Bateman, Mr K Cavaye,
Mr B Collison, Mr M Hansford.

In attendance: Mrs J D Taylor, Acting Registrar
Mr P J Ireland, Director of Corporate Resources
Mr J Levett, Director of Standards
Ms K Fielding, Head of Communications
Mr S Grier, Communications Officer
Mrs J Burrow, PA to Director of Corporate Resources

Apologies for absence

2818. Apologies for absence were received from Mr J Gordon, Mr I Hamer Mr D Perkins and Mr. A Sadiq.

Chairman's Opening Remarks

2819 The Chairman welcomed everyone to the 139th meeting of the committee. He congratulated Rosie Varley on behalf of the Committee on her appointment as Chair of the Social Care Council. He offered the Committee's thanks and good wishes to Phil Ireland who is leaving the GOC at the end of the month to become Trust Board Secretary of an NHS Trust. He also welcomed Kate Fielding who, on Phil's departure, will take over Officer responsibility for Companies Committee. Lastly, he welcomed Simon Grier who has recently joined the Communications Department as Communications Officer.

Declaration of Interests

2820. The requirement for Members and Advisers to declare any personal interest under paragraph 6(a) of the Council's Code of Conduct was duly noted.

Confidentiality

2821. The requirement for Members and Advisers to adhere to the rules of confidentiality under Standing Orders 5.23 to 5.26 was duly noted.

Minutes of the 137th Meeting

2822. The minutes of the 138th Meeting of the Committee held on 24 April 2008 were agreed as a true and accurate record of the meeting and duly signed by the Chairman.

Matters Arising

2823. It was noted that the minutes were not being issued to the Committee until circulation of the agenda for the following meeting, by which time Members of the Committee could not necessarily recall the details and agreed action points. It was agreed that minutes would be issued more promptly and it was suggested that they should be issued two weeks after the meeting.

2824. It was also agreed that the Committee agenda and papers be issued at least 10 days before the meeting in order to allow Members adequate time to consider all the information given.

2825. Minute 2815: It was noted that the response from the GOC on the CHRE Proposals for Investigation and Referrals to Regulatory Bodies was to be re-issued as it contained an error. The Director of Corporate Resources was asked to check that this had been done.

White Paper - Trust Assurance and Safety

2826. The Committee received updates on the items listed in **Paper CO(14)08**:

The Director of Standards informed the Committee of the following:

(a) *Progress on Health and Social Care Act 2008 and Section 60 Orders*

The Health and Social Care Act 2008 received Royal assent in July. The main aspect of interest to the GOC was that of the introduction of the Civil Standard of proof to be used in Fitness to Practise hearings. This will be enacted from 3 November 2008 and so for all cases brought before the GOC Fitness to Practice Committee on or after this date the civil standard will be applied.

The Committee had been given a document at **Annex 1** which had been used in the GOC FTP Panel Members training which it was thought would be helpful as it summed up some of the differences in the codes and how the civil standard will be applied.

It was noted that **Annex 2**, marked as “to follow” on the agenda and which concerned the progress towards the introduction of the Office of the Health Professions Adjudicator (OHPA) had not been tabled as there were no new developments to report.

There had been a recent Section 60 Order but the only impact this will have on the GOC is some changes to the Safeguarding Vulnerable Groups legislation which sets out the mechanism for the exchange of information between the GOC and the Independent Safeguarding Authority. This legislation will not come into force until October 2009 when the first tranche of individuals working with children and vulnerable adults will have to register with the Independent Safeguarding Authority.

With regard to future section 60 orders, the next Order will contain governance issues relating to the regulators. The details are not yet known and it is not due to be consulted on until the end of next year. The only implications for the GOC are that it may include implications for the function of the statutory committees. The GOC has asked that it includes provisions to deal with the substitution of contact lenses. The Government has agreed this was an oversight in earlier legislation that needs to be rectified but it still may not be included if there are issues from other regulators that are deemed more important. Council will continue to press for this but it may be put back and if this opportunity is missed it may not be able to be changed until 2010.

(b) *GOC Constitution Order and GOC Response*

The Constitution Order is out for consultation and closes on 7 November. The Committee received as **Annex 3** a first draft response from the GOC. There is one issue that is not covered in the consultation response. This relates to the grounds by which a Member can be removed from office. The consultation allows for responsible officers of a business registrant to be removed from office if its fitness to

carry on business is impaired. There should not be an automatic removal and it should be at the Privy Council's discretion. If the responsible person is part of a very large business then they may have had nothing to do with the problem and may in fact be helping to sort it out.

It was noted that Council in November 2007 had agreed that its constitution should be for the six professional members of Council to consist of four optometrists and two dispensing opticians. The Department had refused to specify this in the Order. In the GOC response, received by the Committee as **Annex 4**, this has been asked for again. Members of the Committee asked whether the Appointments Commission (AC) had been briefed on the Council's wish for these numbers. The Acting Registrar confirmed that their briefing was that there should be a good spread of professional members and the background for this request had been explained. This had been taken on board by AC but they would appoint according to the Order. She also told the Committee that strenuous steps had been taken to ensure that dispensing opticians had been fully engaged in the appointments process. Of the 183 applications for membership received by AC for serving on Council, a total of 35 applications had been received from registrant members. The split was 15 DO's and 20 OO's and consequently the recruitment campaign was considered successful. The Appointments Commission will consider each application in conjunction with the competencies and appoint individuals who best meet these criteria. The Acting Registrar reiterated that this is an independent process as this was one of the requirements from the White Paper. It is expected that there will be at least one person appointed to the new Council from each of the four countries of the UK.

The term of office was expected to be the same across all regulators. The GOC had requested that the term of office of 8 years in 20 should be reduced to 8 in 12 years as optics is a relatively small profession and the pool of suitable potential Members will be ever decreasing. By restricting the term in this way it effectively meant that no member would be likely to serve more than one consecutive term of office during their working life. The White Paper wanted to harmonise conditions across all regulators. It is not known what the other regulators' responses to this question had been.

Council had agreed to a constitution of 12 Members of Council as a step towards 13 when the legislation allowed, and it was asked whether this was still the case. The Director of Standards and the Acting Registrar pointed out that there would be no legislation to allow this until 2010 and then it would be a matter for the new Council to decide. It was noted that although the number could be higher, the Department would not accept any number over 24 but had wanted smaller rather than larger Councils. The Constitution Order would be made by the Department and the GOC could only make proposals. The original reason for the Council agreeing to 13 Members was so that there would be a clear majority. If the new Council found that it was working well with 12 then they could decide not to change it. The new Council can overturn the old Council's decisions if it sees fit.

(c) *GOC Committee Constitution Rules*

The draft Rules are presently subject to public consultation and the Committee received a copy as **Annex 5**. The Companies Committee is included in the rules despite this not being the original intention. The Companies Committee was to be included in the Section 60 Order to make it a standing committee but there was a delay in the Government timetable. This meant that the Companies Committee had

to be included in the Constitution Rules in order to meet the timetable for the Rules to be made in November so as to be in place before the new Council assumed office. The new Rules will remove the requirement for there to be any Council Members on the Committees but will state there will be at least one lay member, one optometrist, one dispensing optician and one ophthalmologist on each committee. It was suggested that a medical practitioner should not be specified in the Committee's constitution and that any ophthalmologist Member should be treated as a lay Member.

(d) *Companies Committee Rules*

As set out above, the new Council will be responsible for making the Companies Committee Rules at a later date. This will be done after consultation and approval by the DH.

The Director of Corporate Resources updated the Committee on the following:

(e) *Appointment of GOC Chair/Members*

Advertisements were placed in September and the closing date was 3 October. There had been 11 applications for the position of Chair and 191 for the non-Chair posts. Of the non-Chair applications, 156 had been received for lay membership and 35 for registrant membership. Of the registrant total, 15 applications were from dispensing opticians and 20 were from optometrists. Interviews for the Chair will take place shortly and will be concluded by 19 November. Council next meets on 20 November and there will be a public announcement at Council of the name of the successful applicant appointed to be Chair of Council from 1 April 2009. The interviews for the non-chair Members of Council will take place next January and the new Chair will sit on the interview panels. All appointments will be made subject to the legislation having been passed and this point was highlighted in the application packs. Should the legislation not go through in time, the present Council would continue to serve. In these circumstances, the new Chair would take up his/her place with the present Council still in place. It was noted that there was a large lay interest in the application numbers and it was suggested that since all the other regulators were advertising at the same time, perhaps the same people may have applied to several bodies.

The Head of Communications gave an update on:

(f) *Stakeholder Strategy especially in the light of the Niall Dickson Report*

Council's stakeholder strategy had been approved at Council in November 2007. The Health and Social Care Act 2008 introduced a statutory requirement for Council to engage with stakeholder groups. The Communications Department were developing a consultation framework for the stakeholder groups. Funds for this had been included in the budget for 2009-10 to begin in April 2009. The cost was expected to be £30-40k plus projects and reviews totalling approximately £60-80k. It was confirmed that there would be no Government funding for this work. Council was subject to a statutory duty to undertake this work from July and would need to report progress in its Annual Report issued in August/September each year.

The Director of Standards gave the following updates in the absence of Mr Hamer:

(g) *GOC Workstreams*

The Tackling Concerns Workstream has now been wound up and the Project Board would take on any outstanding work. There were originally four Workstreams plus the Project Board but now that most of the work had been completed, just the Revalidation Workstream and the Project Board remained. The Revalidation Workstream continued to report to Standards Committee.

(h) *National Workstreams*

The two National Working Groups on Tackling Concerns Locally and Nationally are due to publish their reports very shortly as is the Non-Medical Revalidation Working Group. The Tackling Concerns Locally draft report had been seen and it said that work needs to be done to ensure patients know who to complain to as this information was not widely known. Regulators, PCTs and employers were expected to consider this. Information held by regulators and what is published on the register needed to be tiered so that it could be made available to PCTs etc. If there was a concern about someone then the information would be made available to others.

Sale and Supply of Optical Appliances

2827. (a) *Low Vision* - the Director of Corporate Resources explained that at the last meeting of Companies Committee in April, Mr Collison had passed to the previous Registrar a pair of low vision spectacles purchased on the internet. These were of a far higher strength than was legally allowed and he wished this to be investigated by Council. The previous Registrar had given assurances that this incident would be followed-up but this had not happened. Apologies were given and this was now being investigated directly by the legal team and legal action would follow if deemed appropriate.

(b) *Contact Lenses* – It was noted that the GOC had successfully prosecuted Vision Direct. The Committee queried that Vision Direct had been prosecuted before but legal costs had not been paid to the GOC following the previous case. It was pointed out that the GOC had in fact had its case proven and this would act as a deterrent to others. A decision to prosecute was a matter for the GOC's legal team who, together with the GOC's solicitors decided whether a case should be pursued. It was noted that the successful prosecution this time had been won against a UK registered company as opposed to a non-domiciled individual previously. The point was made that prosecutions would serve as a far more effective deterrent if the defendant was seen to suffer the full impact of a successful case.

Revalidation

2828. The Director of Standards advised the Committee that **Annex 3** was the draft report from the National Working Group. It sets out the principles that regulatory bodies were expected to include in their rules. The GOC had been asked to respond by January 2009 with proposals on how it intended to implement revalidation.

2829. Standards Committee had decided to undertake a brief consultation exercise prior to proposals going to Council in November and prior to recommendations going back to the National Working Group in January 2009. Various questions had been raised with the optical bodies and from the responses received it appeared they shared Council's sentiments for revalidation. It was noted that there had been two

seminars before publication of the key proposals. Revalidation was not expected to come into effect until 2012-15.

2830. The Revalidation Workstream looked at proposals and what should be presented to Council. The scheme would roll out in the 2012-15 cycle with completion of risk based, scope of practice data from registrants. These would be self assessments in the first instance and would be linked to the CET scheme. This would involve GOC accreditation of schemes in Scotland and Wales. The detail was yet to be worked out.

2831. It would need to be funded by registrants as it was unlikely that there would be any Government funding. A lot of money had gone into the medical revalidation as it is linked to the NHS appraisal process and therefore had NHS funding. As there is no NHS appraisal for opticians there would be no NHS funding. It was suggested that the optical bodies should be chasing Government for funding. The GOC needed to identify, after discussions with the optical bodies, a sensible scheme with reasonable costs. As it will not start until 2012 there is time to consider what the GOC and optical bodies can do about funding. The question was raised as to how the other regulatory bodies intended to handle funding. Only the medical profession would receive funding at the moment. It was possible that, if other regulators registrants are NHS employees, they too may also receive funding. The fact that the majority of sight tests were NHS was raised. It was noted that opticians are a low risk profession so it was essential for the scheme to be proportionate to risk.

2832. The Pilot timetable would be put off to allow for more funding to be available. The timetable could be flexible as the start is a long way off. The National Working Group would make the decision on the timetable.

Codes of Conduct for Individual and Business Registrants

2833, The Director of Standards presented this item in the absence of Mr Hamer. The Code of Conduct Working Group had reviewed the current codes and also those of other regulators, including the HPC and NMC, in order to see if they included anything that was not in the GOC codes. The draft consultation document on the proposed changes to the codes will go to November Council for approval and then will go out for consultation with the responses to be returned by early 2009. The final amendments will go to July 2009 Council for final approval. It was noted that Mr Bateman, as a member of the Working Group, had requested that there be a greater distinction between the Code for Individuals and that for Business Registrants in the consultation document and also that the footnotes be in a smaller font in order to more easily distinguish them. The next meeting of the Committee would receive the feedback from the November Council meeting.

Budgets

2834. The Committee received a presentation from the Director of Corporate Resources on the following:

- (a) Forecast income and expenditure out-turn 2008/9;
- (b) Business Plan 2009/10;
- (c) Implications for individual and business registrant fees 2009/10.

Although it was reported that considerable efforts had been made to reduce current year expenditure, the Committee expressed great concern at the level of expenditure in the proposed budget for 2009. It was emphasised that in the current economic climate all businesses were being compelled to make difficult decisions in order to reduce costs: it was vital that the GOC should accept the need for similar action. It was suggested that in order to achieve this, the GOC should consider deferring work on new projects.

It was agreed to circulate to members of the Committee the Council's draft Business Plan for 2009-10 and the fees proposal for 2009-10 once these papers had been circulated to Council members and were in the public domain.

Current GOC Working Groups

2835. Members noted the present GOC working groups. A correction was made to the Contact Lens Working Group to note that it also included Mr P Carroll and that Mr M Bateman was on the Code Review Working Group.

Date of Next Meeting

2836. The next meeting of the Committee will be held on **Tuesday 3 March 2009** at **2.00 p.m.**