



Speaking Up: guidance for GOC registrants

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Contents

About this guidance and how it applies to you.....	2
Part 1: Guidance for individuals.....	4
A. Why should I speak up?	4
B. When to consider speaking up	5
C. How to speak up	6
C1. Dealing with the issue at source.....	6
C2. Escalating your concerns.....	7
D. Speaking up to the GOC	7
E. Protected disclosures.....	8
F. After speaking up.....	9
G. Sources of further advice	10
Part 2: Guidance for businesses.....	11
Your policies and processes	11
Maintaining and promoting awareness.....	11
If someone speaks up about their concerns to you	12

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About this guidance and how it applies to you

1. We have produced this guidance to help our registrants in situations where they need to consider the professional requirement to speak up when patient or public safety may be at risk. This is something we know can be difficult for individuals, and businesses are not always clear about what their responsibilities are to make the process simple and to act on concerns raised.
2. This guidance should be read alongside the *Standards of Practice for Optometrists and Dispensing Opticians*, the *Standards for Optical Businesses* and the *Standards for Optical Students*, which registrants must apply to their practice.
3. There are two parts to this guidance: part 1 which focuses on guidance for individual registrants (optometrists, dispensing opticians and optical students) and part 2 which focuses on guidance for businesses. Whether you are reading the guidance from an individual or business perspective, it is important to read both parts.
4. The National Guardian's Office defines 'speaking up' as being about anything that gets in the way of providing good care. For the avoidance of doubt, the term 'speaking up' is used in this guidance and it covers all concerns about patient/public safety, including what may be termed 'whistleblowing' and/or 'raising concerns'.
5. The duty of speaking up expected of individuals can be found at standard 11 of the *Standards of Practice for Optometrists and Dispensing Opticians* (standard 10 of the *Standards for Optical Students*). This states the following:
 - 11.3** Promptly raise concerns about your patients, colleagues, employer or other organisation if patient or public safety might be at risk and encourage others to do the same. Concerns should be raised with your employing, contracting, professional or regulatory organisation as appropriate. This is sometimes referred to as 'whistle-blowing' and certain aspects of this are protected by law.
 - 11.4** If you have concerns about your own fitness to practise whether 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.
 - 11.5** If patients are at risk because of inadequate premises, equipment, resources, employment policies or systems, put the matter right if that is possible and/or raise a concern.
 - 11.6** Ensure that any contracts or agreements that you enter into do not restrict you from raising concerns about patient safety including restricting what you are able to say when raising the concern.
 - 11.7** Ensure that when reporting concerns, you take account of your obligations to maintain confidentiality as outlined in standard 14.

6. The duty in relation to speaking up for businesses can be found at standard 1 in the *Standards for Optical Businesses*. It states the following:

1.1.2 Has a process for staff to report any safeguarding concerns and encourages them to do so;

1.1.3 Promptly addresses concerns about colleagues, businesses or other organisations if patient or public safety might be at risk. These concerns may be identified by you or your staff;

1.1.4 Escalates or reports concerns affecting patient or public safety, where they cannot be addressed by your business, to an appropriate authority and encourages others to do the same;

1.1.5 Makes staff aware that where they have raised concerns which have not been resolved within the business, they may escalate or report these to a higher authority such as a professional regulator (whistleblow) and certain aspects of this are protected by law;

1.1.6 Ensures that when introducing technological interventions, including artificial intelligence (AI) and machine learning, they do not compromise patient care, and that professional standards continue to be met;

1.1.7 Considers whether criminal record checks are necessary for its staff members depending on their particular roles and/or exposure to patients, particularly children and vulnerable adults. The process for undertaking such checks varies across the four nations of the UK;

1.1.8 Is prepared to restrict trading in areas of concern if continuing to do so would adversely affect patient care;

1.1.9 Takes appropriate steps to protect patients, the public and your employees if there is evidence to show that a staff member may not be fit to practise or work. This also applies to students who may not be fit to train;

1.1.10 Ensures that any operational or commercial targets do not have an adverse effect on patient care.

7. The duty to speak up is linked to the duty of candour which is incumbent on all healthcare professionals and sets out the need to be open and honest when things go wrong. As such, there are a number of similarities between this guidance and our candour guidance. The guidance in this document, however, also applies where there are systemic issues that may cause harm or potential risks of harm that the duty of candour does not extend to.

8. You should use your judgement to apply the guidance that follows to your own practice and the variety of settings in which you might work or operate your business.

9. If you have any questions about this guidance or how to apply it, you should consider seeking further advice which, depending on the nature of your question, may involve contacting appropriate professional colleagues, your employer, your professional indemnity insurance provider, your professional or representative body, or obtaining independent legal advice. Student optometrists and student dispensing opticians can additionally seek advice from their tutor, supervisor or training provider.

Part 1: Guidance for individuals

10. The primary duty of all regulated healthcare professionals (including optometrists, dispensing opticians and optical students) is to protect patients and the public. This is put into practice in a variety of ways every day and healthcare professionals are in a privileged position to be able to play a part in safeguarding the health and wellbeing of patients and the public.
11. Sometimes, part of this duty may be to speak up about concerns that patient or public safety are, or may be, at risk. This can be a daunting prospect, particularly if the concerns relate to an employer's policies or processes, but there are ways in which it can be done constructively to minimise stress for all involved. This part of the guidance will look at when an individual should speak up; how they might do so and to whom; what qualifies as a 'protected disclosure' and how the disclosure might be managed; as well as signposting to sources of further advice.

A. Why should I speak up?

12. Patients rely on their healthcare professionals to keep them safe when they access healthcare. In most circumstances, making sure of this will simply involve the practitioner taking care when assessing and treating a patient.
13. There are multiple factors that can affect safe delivery of care, however, which may fall outside the individual practitioner's control. These could be environmental (e.g. health and safety issues with the premises or equipment) or other systemic issues (such as an organisational policy that has an adverse impact when implemented, or not being implemented correctly) or issues relating to another professional and their ability to provide safe care. Patients will often be unaware of these issues and therefore will not be able to raise them, but the healthcare professional is in a much better position to do so.
14. Speaking up, and placing importance on speaking up, encourages everyone in the optical sector to look out for issues that may affect patients. It can help to instil confidence in 'doing the right thing' and promote reflective practice in the workforce.
15. There are also good business reasons to listen and take seriously those who speak up – it allows poor practice to be identified early and remedied before it has an impact. Independent inquiries, including the recent Paterson inquiry, have concluded that significant instances of harm in healthcare provision could have been avoided if concerns raised had been taken seriously, or if workers had felt more confident in their ability to speak up¹.
16. [The Mid Staffordshire NHS Foundation Trust Public Inquiry](#) (also known as the Francis inquiry) response to the failings in patient care at the Mid Staffordshire NHS Foundation Trust between 2005 and 2009, first set out the duty of candour for healthcare professionals: the requirement to

¹ James G. (2019). *Report of the Independent Inquiry into the issues raised by Paterson*, p133-144. Retrieved from https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/863211/issues-raised-by-paterson-independent-inquiry-report-web-accessible.pdf (last accessed 13 November 2020)

be open and honest when things go wrong². This was further reinforced by a further [report](#) in 2015 from the chair of the inquiry, Sir Robert Francis QC, which set out recommendations for creating an environment in which NHS workers were free to speak up. This guidance is drafted in the spirit of those recommendations.

B. When to consider speaking up

17. It can be helpful to follow a specific thought process to help you be more confident in your decision to speak up and an initial step would be to consider whether the matter you are concerned about is something that you should consider speaking up about.
18. The first question to ask yourself is whether you believe that patient/public safety is at risk as a result of what you are concerned about.
19. A patient/public safety issue may be quite easy to identify if you have personally witnessed an incident where a patient came to harm, or if the issue is very visible (such as problems with the premises from which care is being provided). In other situations, it may be that you believe there is a risk to patient/public safety that has not yet come to pass. Remember that patient/public safety risks can come from a variety of different sources and in many forms, and that risks are not limited to physical harm.
20. Concerns about risk to patient/public safety are not necessarily going to be about another healthcare professional or optical business – they may be about another organisation such as an educational institution, a policy or process, a student, healthcare commissioner, member of support staff or someone involved in patient care outside of your workplace.
21. If you are concerned that patients/the public are at risk of death or serious harm, you must speak up without delay.
22. The next question to ask yourself is whether what you are concerned about is within your control to resolve. If it is something you could put right within the scope of your role as an optical professional, do so, and this may avoid the need to speak up about your concerns. You should still share the issue with colleagues, however, so that lessons can be learned and reoccurrence prevented. This is consistent with our candour [guidance](#).
23. If you believe patient/public safety is at risk and you cannot fix the problem yourself, you must speak up about it, even if you are nervous or fear an adverse impact as a result of doing so. Your professional duty to protect patients and the public must come first. This is reflected in legislation which provides you with legal protection when you make ‘protected disclosures’. More information about protected disclosures can be found in section E of this guidance.
24. You do not need to wait for proof before speaking up about your concerns – simply an honest and reasonable belief in what you are speaking up about. If the information you have is based on

² <https://www.gov.uk/government/publications/report-of-the-mid-staffordshire-nhs-foundation-trust-public-inquiry> (last accessed 13 November 2020)

second-hand information, or if someone else has told you about patient safety issues, encourage that person to consider speaking up about them as well as speaking up yourself. This is because it is easier to act appropriately and have concerns taken seriously if they are backed up by evidence.

25. Other issues, particularly those related to employers' policies and processes, or those you witness outside your normal working environment, will not be as easy to resolve and you should escalate these appropriately. What amounts to an appropriate escalation will depend on the nature of the concern and we will discuss the options that may be available to you in the next section.

C. How to speak up

26. If what you are concerned about falls outside your ability to resolve, then you will need to speak up about it to the appropriate authority to take action. There are a number of potential authorities to which you could speak up, depending on the circumstances, and these are set out below.

C1. Dealing with the issue at source³

27. Often, issues can be resolved most easily at source (i.e. where the issue is coming from). In the majority of issues arising in optical practice, your employer may be the starting point for speaking up about any concerns about patient/public safety that fall within their remit to act upon, although if you have concerns about the behaviour or conduct of another person, consider whether it may be appropriate for you to approach them directly about the issue first.
28. If your concern is very serious, for example, there is a risk of very serious harm or death to patients/the public, you may need to escalate your concerns immediately to ensure that they are properly addressed before any harm takes place, or to prevent reoccurrence as quickly as possible if the harm has already taken place. More information about escalating concerns is set out in section C2 of this guidance.
29. Your employer should have processes and policies in place for you to follow when speaking up and if they do, you should follow these wherever possible. These policies may be titled 'whistleblowing' or 'raising concerns' instead of 'speaking up'. If you think the processes your employer has in place are unfair or an unnecessary barrier to speaking up, seek independent advice from one of the sources listed in section G.
30. In the absence of such processes or if they are not clear, it is often a good idea to speak up locally so that things can be resolved as efficiently as possible, so if you are able to, your line manager may be the best person to speak up to.

³ If you are a sole trader, in a partnership, or working in any other context other than as an employee, references to 'employer' in this guidance equally applies to healthcare and education providers, hospitals and NHS commissioners.

31. If it is not appropriate for you to speak to your line manager for whatever reason (for example, if the safety issue you're concerned about involves them or their behaviour) or if your concerns remain unresolved and patient/public safety is still at risk then another more senior manager, such as an area manager or practice owner, may be an appropriate person with whom you could speak.
32. If you are unable to speak up to either your line manager or another senior manager, or you do so but your concerns remain unresolved and patient/public safety is still at risk, then you should speak up to the most senior persons in your organisation. This may be the chief executive, senior management team, local NHS trust or designated Freedom to Speak Up Guardian/champion.
33. Speaking up using the channels set out above relies on you identifying yourself and your concerns to those responsible. You can speak up anonymously, but it may then be difficult to claim any legal protection under the Public Interest Disclosures Act (see section E).

C2. Escalating your concerns

34. If your concerns remain unresolved after following the steps set out above, or if your concerns relate to a risk of very serious harm or death, then you should speak up elsewhere.
35. Speaking up elsewhere does not mean 'going public' with your concerns, which will rarely, if ever, be appropriate for the situations you encounter in practice. Instead, you should speak up to an appropriate organisation that is in a position to put matters right.
36. In the UK, such organisations are called 'prescribed persons/organisations' and the Government [provides a list of them](#), along with a brief description of what matters can be reported to them.
37. Professional regulators are considered to be 'prescribed persons/organisations' and as such, it may be appropriate for you to speak up about your concerns to the GOC. This is particularly the case where the risk to patient/public safety is posed or aggravated by the conduct of a registrant (individual or business) where you should raise things with us. More information on how to do this is in section D of this document.
38. Another option that may be open to you is speaking up to the police, if you suspect criminal conduct. If this applies to your concerns, seek independent legal advice.

D. Speaking up to the GOC

39. You can speak up to the GOC about any concerns that you have. We will either investigate, or if we do not have the power to investigate ourselves, we will direct you to the appropriate authority that can do so.
40. We follow similar processes when looking into speaking up concerns raised as we do when investigating fitness to practise complaints made against our registrants. Whilst the processes may vary slightly depending on the circumstances of the individual case, you can expect that it will broadly look like the process set out in our [How to make a complaint](#) leaflet available on our website.

41. If you need to speak up to the GOC, or you think you may need to but are unsure, you should contact the GOC's designated Speaking Up team on [REDACTED email address and telephone number]. They cannot provide you with legal advice, but are able to listen, advise you on the GOC's remit and talk you through how your concerns would be acted upon if you raised them. Your initial discussion with them would be confidential and there would be no obligation to speak up at that point.
42. You may be able to speak up to us anonymously, but in most cases, remaining anonymous will limit our ability to take action in response to your concerns. Anonymity may also affect your ability to be legally protected from discrimination as a result of raising your concerns (see section E of this guidance). Our Speaking Up team can talk to you about why we might not be able to take action if you remain anonymous.

E. Protected disclosures

43. There is some legal protection under the Public Interest Disclosures Act (PIDA) 1998 (for those in England, Wales and Scotland) and the Public Interest Disclosure (Northern Ireland) Order 1998 for certain persons speaking up about certain matters.
44. In order to qualify for protection, the speaking up must be a 'protected disclosure'. Section 43B of the Employment Rights Act 1996 states that a protected disclosure is *"any disclosure of information which, in the reasonable belief of the worker making the disclosure, tends to show one or more of the following:*
 - a. *That a criminal offence has been, is being, or is likely to be committed;*
 - b. *That a person has failed, is failing, or is likely to fail to comply with any legal obligation to which he is subject;*
 - c. *That a miscarriage of justice has occurred, is occurring or is likely to occur;*
 - d. *That the health and safety of any individual has been, is being, or is likely to be endangered;*
 - e. *That the environment has been, is being, or is likely to be damaged; or*
 - f. *That information tending to show any matter falling within any one of the preceding paragraphs has been, is being or is likely to be deliberately concealed."*
45. There are some minor differences under the Public Interest Disclosure Order (Northern Ireland) 1998 which require the person speaking up to reasonably believe that the allegations they make are 'substantially true' and to believe that they are speaking up to the appropriate 'prescribed person' (see previous section for more information on prescribed persons).
46. The protected disclosure must also be made by a 'worker'. In this context, 'worker' includes (but is not limited to):
 - a. Employees and contractors, including agency workers⁴;

⁴ Covered under the Employment Rights Act 1996.

- b. Someone who works as a person providing general ophthalmic services in accordance with arrangements made
 - i. by a Health Authority under section 29, 35, 38 or 41 of the National Health Service Act 1977, or
 - ii. by a Health Board under section 19, 25, 26 or 27 of the National Health Service (Scotland) Act 1978;
 - c. is or was provided with work experience provided pursuant to a training course or programme or with training for employment (or with both) otherwise than—
 - i. under a contract of employment, or
 - ii. by an educational establishment on a course run by that establishment.
47. The majority of our registrants will fall under one of the above categories of 'worker', and most patient/public safety risks encountered in the course of optical practice will fall within the definition of a 'protected disclosure'. If you are not sure, seek independent advice on your status and eligibility for protection.
48. Protection under PIDA applies even if you are wrong or mistaken about your concerns, provided you have raised them honestly.
49. If you break the law in order to speak up⁵ you will not be eligible for protection under PIDA. Similarly, if you have played a part in causing the harm or if you raise concerns knowing or believing them to be untrue, PIDA will not protect you from potential prosecution or dismissal.

F. After speaking up

50. If you have spoken up to your employer, check the organisational policy on what should happen next. They may be in a position to let you know directly when they've put matters right; in other circumstances (for example, if there are confidential matters involved relating to another individual) they may not be able to keep you updated. If your employer does not attempt to put matters right, or they attempt to but patient/public safety is still at risk, you should speak up to a prescribed person/organisation as set out above in section C2.
51. In many circumstances, concerns raised can be resolved at a local level and positives can be gained from reflecting on what happened and how to avoid a similar incident happening again. This is an important part of the duty of candour and is set out in detail in our candour [guidance](#).
52. Your employer must not discriminate against you for speaking up honestly and following proper process to do so. If you are concerned that this is happening to you, seek independent legal advice or advice from your professional body or representative organisation.

⁵ Although it should be noted that your contract of employment or similar cannot legally prevent you from making a protected disclosure, even if its terms appear to do so (see Employment Rights Act 1996 also). If you find yourself in this situation, seek independent advice from an employment lawyer.

G. Sources of further advice

53. The 'Speak Up' helpline is a free, confidential and independent service for those working within an NHS or social care context in England: <https://speakup.direct>
54. Protect (formerly Public Concern At Work) – the independent charity dedicated to providing advice on speaking up and whistleblowing: www.protect-advice.org.uk
55. The National Guardian's Office works to make sure speaking up becomes part of business as usual within the NHS, and makes recommendations for good policy and practice in this area: www.nationalguardian.org.uk
56. Your professional association or representative body may also have specific advice on how to practically speak up about concerns. If you have any doubts or concerns about your decision, you may wish to contact them for support.

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Part 2: Guidance for businesses⁶

57. Under the *Standards for Optical Businesses*, businesses have a duty to foster a culture of candour in which staff can be open and honest with patients when things go wrong (standard 2.1). An essential part of this involves making the business an environment where poor practice and/or safety issues can be identified, reported and dealt with appropriately, and staff are as confident as possible in speaking up. Having a proper process for acting upon concerns raised by those speaking up, taking them seriously and making staff aware of how to speak up (and escalate) if they need to is also explicitly set out in the *Standards for Optical Businesses* (standards 1.1.3 – 1.1.6).

Your policies and processes

58. Many businesses will have broad corporate policies that can be put into effect within individual practices, but for others it may be useful to look at the five-step model of a good Speaking Up process⁷ when developing or reviewing the business policies and consider how that model could be implemented within your business. This model highlights that, as well as having an appropriate and clear process for speaking up and acting on concerns, it is important to break down barriers to speaking up, normalise and be receptive to feedback, and to reflect on concerns raised in order to prevent reoccurrence (where possible).

59. Providing multiple channels or opportunities for staff to provide feedback or speak up can help to normalise improvement, build trust, make it less intimidating for staff to speak up and therefore improve your ability to put safety issues right at an early stage.

Maintaining and promoting awareness

60. Everyone who works for you in any capacity should be provided with information on how to speak up, regardless of whether they are permanent, contracted staff or not. This could be provided at induction, made available on intranets or, in the case of locum staff, included as part of a briefing or welcome pack before their first shift with you. It may be useful to remind staff periodically of how to speak up, particularly if they have been working for you a long time without needing to do so.

61. You should also consider how to equip management staff with the appropriate skills and support to be able to receive and act on concerns raised sensitively and appropriately. This may be by way of training, making them aware of their local Freedom to Speak Up (FTSU) guardian or by appointing a FTSU guardian for your business. FTSU guardians are trained and supported by the

⁶ This guidance is intended to apply to all optical businesses, not just those who are eligible for registration with us.

⁷ Set out by Sir Robert Francis QC in his 'Freedom to Speak Up' report, in response to the Mid Staffordshire NHS Trust inquiry.

National Guardian's Office and more information about what they do and how to appoint them is on the [National Guardian's website](#).

If someone speaks up about their concerns to you

62. If a worker (see definition under part 1, section C) speaks up to you, you have a responsibility to take their concerns seriously. This does not mean that all concerns will have a basis in fact or require extensive investigation, but you should make sure that you do not dismiss any concerns out of hand. You should also make sure you are able to identify patient/public safety issues as such, even if you are made aware of them informally or outside of a 'speaking up' process.
63. If, after consideration, the worker's concerns have a basis in fact and you are able to put matters right, you must do so. If they fall outside of your ability to put right, then you must escalate them to someone who can with immediate effect as per your responsibilities under the *Standards for Optical Businesses*, noting that the most appropriate person/organisation to put matters right may be external to your organisation (see 'prescribed persons' at part 1, section B2).
64. If there are patient safety concerns that cannot be put right by you, or by another person/organisation, sufficiently quickly to avoid risk of patient/public harm, then you should be prepared to manage the risk by ceasing trading in the affected area (if appropriate) as per your responsibilities under the *Standards for Optical Businesses*. An example of when it may be appropriate to do this is if a branch premises are in disrepair and need to be closed for repairs to be undertaken safely.
65. The same principles apply to you as to your staff when speaking up, and if a referral to the GOC is warranted as a result of concerns raised, then you should not hesitate to make such a referral. You can contact the GOC's dedicated team on [address TBC].
66. If it is appropriate to do so, consider keeping the worker updated as to your intended actions following speaking up, though in some circumstances (such as if the actions relate to confidential employment matters) you may not be able to. Managing workers' expectations in relation to updates is useful to maintain trust and confidence in your organisational processes.
67. On occasion, a worker's concerns may relate to a grievance or other dispute rather than concerns about patient/public safety. In such circumstances, it is appropriate to explain this to the worker and consider the concerns under the appropriate organisational policy (for example, a grievance policy).
68. The majority of workers speaking up will do so honestly, appropriately and in good faith. On the rare occasions where you suspect this may not be the case, seek advice from your HR department or legal advisors.