

Our reference: **FOI2018-40**

Dear Ms. Haddou,

I write regarding your email received 27 January 2019, Freedom of Information request - Allegations of sexual misconduct

You requested the following information:

Please state the number of allegations you have received of

- a) sexual misconduct*
- b) sexual harassment*
- c) sexual assault*
- d) rape*

Allegedly committed by staff regulated by your organisation in each of the last five calendar years: 2014, 2015, 2016, 2017 and 2018.

2. For each of these allegations received, please state:

- a) Whether the alleged victim was a member of the public, a patient or a health professional*
- b) Whether you launched an investigation*
- c) The outcome of the case*

3. Please provide any official definitions used by your organisation classify allegations of a sexual nature (such as the four listed in question 1) and any official guidance/flowcharts for dealing with such cases.

Sexual Misconduct

Year	Number of Cases
2014	5
2015	3
2016	1

2017	4
2018	5
Total	18

<u>Year</u>	<u>Victim Category</u>	<u>Investigation (Y/N)</u>	<u>Outcome</u>		
			<u>Investigation Stage</u>	<u>Case Examiner</u>	<u>FTPC</u>
2014	Member of public	Y	Direct referral to FTPC		Erasure
2014	Member of public	Y		Referred FTPC	Erasure
2014	Patient	Y		Referred FTPC	Erasure
2014	Colleagues	Y		Referred FTPC	No impairment
2014	Patients	Y		Referred FTPC	Erasure
2015	Patient	Y		Referred FTPC	Warning
2015	Members of the public	Y		Referred FTPC	Ongoing
2015	Colleague	Y		No further action with advice	
2016	Member of public	Y		Referred FTPC	Ongoing
2017	Patient	Y		No further action	
2017	Patient	Y	Ongoing		
2017	Patient	Y		Warning	
2017	Patient	Y	Ongoing		
2018	Member of public	Y	Ongoing		
2018	Member of public	Y	Ongoing		
2018	Colleague	Y	Ongoing		
2018	Colleague	Y	Ongoing		
2018	Patient	Y	Ongoing		

Sexual harassment

<u>Year</u>	<u>Number of Cases</u>
2014	0
2015	3
2016	0
2017	2
2018	0
Total	5

<u>Year</u>	<u>Victim Category</u>	<u>Investigation (Y/N)</u>	<u>Outcome</u>	
			<u>Case Examiner</u>	<u>FTPC</u>
2015	Patient	Y	No further action	
2015	Colleagues	Y	Warning	
2015	Patient	Y	No further action	
2017	Patient	Y	Referred FTPC	Ongoing
2017	Colleague	Y	Referred FTPC	No impairment

Sexual harassment and sexual assault

<u>Year</u>	<u>Number of Cases</u>
2014	1
2015	3
2016	2
2017	4
2018	3
Total	13

<u>Year</u>	<u>Victim Category</u>	<u>Investigation (Y/N)</u>	<u>Outcome</u>		
			<u>Investigation Stage</u>	<u>Case Examiner</u>	<u>FTPC</u>
2014	Colleagues	Y		No further action	
2015	Patient and Colleague	Y		Warning	
2015	Colleague	Y		No further action	
2015	Patient	Y		Referred FTPC	Suspension
2016	Patient	Y		Referred FTPC	Erasure
2016	Patient	Y		No further advice	
2017	Patient	N	Case closed – no contact from informant		
2017	Patient	N	Case closed – no contact from informant		
2017	Colleague	Y		Referred FTPC	Ongoing
2017	Patient	Y		No further action	
2018	Patient	N	Case closed – no contact from informant		
2018	Colleague	Y	Ongoing		
2018	Colleagues	Y	Ongoing		

Definitions

Rape

Sexual Offences Act 2003

S1 Rape

(1) A person (A) commits an offence if—

(a) he intentionally penetrates the vagina, anus or mouth of another person (B) with his penis,

(b) B does not consent to the penetration, and

(c) A does not reasonably believe that B consents.

(2) Whether a belief is reasonable is to be determined having regard to all the circumstances, including any steps A has taken to ascertain whether B consents.

(3) Sections 75 and 76 apply to an offence under this section.

(4) A person guilty of an offence under this section is liable, on conviction on indictment, to imprisonment for life.

Sexual Assault

Sexual Offences Act 2003

S2 Assault by penetration

(1) A person (A) commits an offence if—

(a) he intentionally penetrates the vagina or anus of another person (B) with a part of his body or anything else,

(b) the penetration is sexual,

(c) B does not consent to the penetration, and

(d) A does not reasonably believe that B consents.

(2) Whether a belief is reasonable is to be determined having regard to all the circumstances, including any steps A has taken to ascertain whether B consents.

(3) Sections 75 and 76 apply to an offence under this section.

(4) A person guilty of an offence under this section is liable, on conviction on indictment, to imprisonment for life.

S3 Sexual assault

(1) A person (A) commits an offence if—

(a) he intentionally touches another person (B),

- (b)the touching is sexual,*
- (c)B does not consent to the touching, and*
- (d)A does not reasonably believe that B consents.*

(2)Whether a belief is reasonable is to be determined having regard to all the circumstances, including any steps A has taken to ascertain whether B consents.

(3)Sections 75 and 76 apply to an offence under this section.

(4)A person guilty of an offence under this section is liable—

(a)on summary conviction, to imprisonment for a term not exceeding 6 months or a fine not exceeding the statutory maximum or both;

(b)on conviction on indictment, to imprisonment for a term not exceeding 10 years.

Sexual Harassment

Equality Act 2010 – S26 Harassment

(1)A person (A) harasses another (B) if—

(a)A engages in unwanted conduct related to a relevant protected characteristic, and

(b)the conduct has the purpose or effect of—

(i)violating B's dignity, or

(ii)creating an intimidating, hostile, degrading, humiliating or offensive environment for B.

(2)A also harasses B if—

(a)A engages in unwanted conduct of a sexual nature, and

(b)the conduct has the purpose or effect referred to in subsection (1)(b).

(3)A also harasses B if—

(a)A or another person engages in unwanted conduct of a sexual nature or that is related to gender reassignment or sex,

(b)the conduct has the purpose or effect referred to in subsection (1)(b), and

(c)because of B's rejection of or submission to the conduct, A treats B less favourably than A would treat B if B had not rejected or submitted to the conduct.

(4)In deciding whether conduct has the effect referred to in subsection (1)(b), each of the following must be taken into account—

(a)the perception of B;

(b)the other circumstances of the case;

(c)whether it is reasonable for the conduct to have that effect.

(5)The relevant protected characteristics are—

- *age;*
- *disability;*
- *gender reassignment;*
- *race;*
- *religion or belief;*
- *sex;*
- *sexual orientation.*

Protection from Harassment Act 1997 - S1 Prohibition of harassment.

(1)A person must not pursue a course of conduct—

(a)which amounts to harassment of another, and

(b)which he knows or ought to know amounts to harassment of the other.

[F1*(1A)A person must not pursue a course of conduct —*

(a)which involves harassment of two or more persons, and

(b)which he knows or ought to know involves harassment of those persons, and

(c)by which he intends to persuade any person (whether or not one of those mentioned above)—

(i)not to do something that he is entitled or required to do, or

(ii)to do something that he is not under any obligation to do.]

*(2)For the purposes of this section **[F2**or section 2A(2)(c)], the person whose course of conduct is in question ought to know that it amounts to **[F3** or involves] harassment of another if a reasonable person in possession of the same information would think the course of conduct amounted to harassment of the other.*

*(3)Subsection (1) **[F4**or (1A)] does not apply to a course of conduct if the person who pursued it shows—*

- (a)that it was pursued for the purpose of preventing or detecting crime,*
- (b)that it was pursued under any enactment or rule of law or to comply with any condition or requirement imposed by any person under any enactment, or*
- (c)that in the particular circumstances the pursuit of the course of conduct was reasonable.*

S2 Offence of harassment.

*(1)A person who pursues a course of conduct in breach of **[F1**section 1(1) or (1A)] is guilty of an offence.*

(2)A person guilty of an offence under this section is liable on summary conviction to imprisonment for a term not exceeding six months, or a fine not exceeding level 5 on the standard scale, or both.

Sexual Misconduct

All other cases of sexually motivated/inappropriate behaviour.

Your right to complain

We take our responsibilities under the Freedom of Information Act seriously. However, if you feel your request has not been properly handled or you are dissatisfied with our response you have the right to complain. We will investigate the matter and endeavour to provide a response within 20 working days. You should write to:

Freedom of Information Reviews
General Optical Council
10 Old Bailey
London, EC4M 7NG

If you are still dissatisfied following our internal review, you have the right, under section 50 of the Act, to complain directly to the Information Commissioner. Before considering your complaint the Commissioner would expect you to have exhausted our complaints procedure. The Information Commissioner can be contacted at:

FOI Compliance Team (Complaints)
Wycliffe House
Water Lane
Wilmslow
Cheshire, SK9 5AF

Yours sincerely,

Robert Mannall
Information Governance Manager