

How Hearings Work – A Guide for Registrants

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INTRODUCTION

The General Optical Council (GOC) is the regulator for the optical professions in the UK. Our purpose is to protect the public by promoting high standards of education, performance and conduct amongst opticians. The GOC currently registers around 25,000 optometrists, dispensing opticians, student optometrists, student dispensing opticians and optical businesses.

These notes are intended as a plain language guide to assist represented and unrepresented registrants appearing before the GOC's Fitness to Practise Committee at Procedural Hearings, Interim Order Hearings and Substantive Hearings.

This is not intended to be a definitive guide to the conduct of hearings; the full details are set out in legislation, in particular:

- The Opticians Act 1989 (as amended by the Opticians Act 1989 Amendment Order 2005 and related legislation)

http://www.optical.org/en/about_us/legislation/opticians_act.cfm

- The General Optical Council (Fitness to Practise) Rules 2013

http://www.optical.org/en/Investigating_complaints/new-ftp-rules.cfm

You might also find it useful to read the GOC's guidance documents: what happens if a complaint is made about me? and guidance for witnesses in fitness to practise hearings, which give further information and provides useful definitions:

http://www.optical.org/goc/filemanager/root/site_assets/ftp_documents/investigations/what_happens_if_a_complaint_is_made_about_me.pdf

http://www.optical.org/goc/filemanager/root/site_assets/ftp_documents/guidance_for_witnesses_in_ftp_hearings.docx

BEFORE THE HEARING

Date and Place

1. In most cases, the hearing will take place at a venue in London (you will be notified of the venue address in good time) and it will commence at 9:30am. Full details will be given in the letter notifying you of the hearing and you should ensure you read this carefully (notification letter). Please keep in contact with the Assistant Hearings Manager (07818 119382) in the first instance or the Hearings Manager (07825 913107) on the day of the hearing.
2. Please inform the GOC as soon as possible if you have any special requirements for the hearing, for example, if you would find it difficult to attend the hearing because of a disability.

Allegations and Evidence

3. You will receive a Notice of Inquiry setting out particulars of the allegation that will be considered at the hearing. This will help you decide what evidence you need for the hearing.
4. Evidence must be exchanged in advance of the hearing. The GOC will send you copies of the witness statements, patient records, correspondence, interview transcripts and any other material which they intend to use at the hearing. You must also send the GOC copies of your evidence in advance of the hearing.
5. You must bring all your evidence to the hearing and arrange for your witnesses to attend the hearing.
6. You may find it helpful to bring written references from your current and former employers as well as professional colleagues. References and testimonials are of particular value if they come from individuals who are aware of the facts and circumstances of the case. It might also be useful to bring your Continuing Education and Training (CET) record and your Curriculum Vitae (CV).

Other Cases

7. The GOC's website, Fitness to Practise section, includes details of past and future hearings:

http://www.optical.org/en/Investigating_complaints/Hearings/index.cfm.

THE HEARING

Getting There

8. It is extremely important that you attend the hearing in plenty of time; you should aim to arrive **at least 30 minutes before** the time given in your notification letter. If you are delayed through transport or other problems, you must telephone the Assistant Hearings Manager (07818 119382) in the first instance or the Hearings Manager (07825 913107) at the earliest opportunity to provide an estimated time of arrival.
9. If you do not attend the hearing on time it is possible that the hearing will begin without you.
10. On arrival, please ask for the Hearings Manager who will come and greet you. The Hearings Manager will show you to your waiting room and answer any queries about the hearing procedure. The waiting room is private and you will be able to meet and speak to your representative, if you have one, in confidence. You will also be asked to return to this room when the Committee deliberates in private as the hearing progresses.

General Matters

11. Hearings usually take place in public, except health issues which are considered in private (in camera). There might be members of the public and the press observing public hearings.
12. When the hearing begins the Hearings Manager will ask you to come from your waiting room to the hearing room and will show you to your seat.
13. The Chairman will introduce the Committee members, the Legal Adviser, the transcriber (note taker) and the Hearings Manager to those present in the hearing room. (If the hearing concerns your health there will also be a Clinical Adviser to advise the Committee). Also present in the room will be the GOC's Presenting Officer and your representative if you have one. From time to time there may be other observers.
14. The Chairman will outline what will happen at the hearing. At any point during the proceedings you can ask your representative or the Chairman to explain anything that you do not understand. You can also ask for a break if required.
15. If you are represented at the hearing the Presenting Officer and Committee will address you through your representative. If you are giving evidence to the panel they may ask you questions.

Procedural Hearings

16. The purpose of a procedural hearing is for the Committee to make decisions on matters of procedure only. A procedural hearing will only take place if you or the Council request one.
17. The Chairman will invite the Presenting Officer to outline the case and any agreed directions on the steps to be taken before the substantive (full) hearing, where the allegation will be considered.
18. The Committee will confirm the directions (if any) agreed between the GOC and yourself, or will make new directions, including the dates by when the GOC and you must serve evidence.
19. The Hearings Manager will prepare a Notice of Directions setting out the directions that have been ordered. You will be given a copy of the Notice of Directions. You must adhere to these or give good reasons why that is not possible.

Interim Order Hearings

20. The purpose of an interim order hearing is for the Committee to decide whether to make an order affecting your registration before the substantive hearing. Interim order hearings are always held in private.

Section 13L of the Opticians Act 1989 and paragraphs 17-20 of Part 5 of the Fitness to Practise Rules 2013 set out the provisions on interim orders.

21. The Chairman will invite the GOC to present its application for an interim order. The Presenting Officer will address the Committee on why it is necessary to make an interim order. You will then be invited to address the Committee on whether an interim order should be made.
22. The Legal Adviser will advise the Committee on the legal issues to be considered and the options that are available.
23. The Hearings Manager will ask all parties to leave the room while the Committee deliberates in private.
24. When the Committee has reached its decision, all parties will be called back to the hearing room and the Chairman will read out the Committee's decision on an interim order.
25. The Hearings Manager will prepare the Interim Order Determination setting out the interim order that has been made. You will be given a copy of the Interim Order Determination.

Substantive hearings

26. The purpose of the substantive hearing is for the Committee to consider and make a decision on the allegation that your fitness to practise is impaired.

Applications

27. The Chairman will ask the Presenting Officer, and you, if you wish to make an application before the Committee starts considering the allegations. Preliminary applications can include requests for the hearing to be adjourned, the allegation to be amended or for all or part of the hearing to be held in private.
28. If an application is made, the other party will be invited to respond and the Committee may have questions. The Committee will seek advice from the Legal Adviser and may ask the parties to withdraw while it considers the application. The parties will be called back into the hearing room before the Committee announces its decision.

Allegations and Admissions

29. The Chairman will open the case by asking the Hearings Manager to read out the particulars of allegation.
30. The Chairman will then ask whether you admit any of the particulars. If any allegations are admitted, the Committee will go on to consider those allegations that have not been admitted.
31. It will be for the GOC to prove the facts that have been alleged, on the balance of probabilities.

The Facts Stage

32. First, the Presenting Officer will make an opening statement summarising the case. The Committee will then hear the GOC's evidence, including any witnesses.
33. Next, you will be invited to make an opening statement and call your evidence, including any witnesses.
34. The GOC may be allowed to call further evidence (rebuttal evidence) to answer any new matters raised by your evidence.
35. Where a witness is called, the Chairman will invite questions from:
 - The party who called the witness (this is called examination-in-chief);
 - The other party (this is called cross-examination);

- The party who called the witness, for any questions arising out of cross-examination (this is called re-examination); and
- The Committee.

The parties will then be able to ask any further questions arising from the Committee's questions.

36. The Legal Adviser will advise the Committee on the legal issues to be considered and the options that are available.
37. The Hearings Manager will ask all parties to leave the room while the Committee deliberates in private.
38. When the Committee has reached its decision on the facts, all parties will be called back to the hearing room and the Chairman will read out the Committee's findings.
39. If the Committee finds that none of the allegations have been proved the proceedings will stop immediately.
40. If some or all the allegations are found to be proved, the Committee will move to the next stage and consider whether your fitness to practise, undertake training or carry on business is impaired.

The Impairment Stage

41. The Committee will consider whether there are any grounds that your fitness to practise, undertake training or carry on business is impaired. The main grounds are misconduct, deficient professional performance, criminal conviction / caution or adverse health.

Section 13D of the Opticians Act 1989 sets out the statutory grounds on which a Committee can find impairment.

42. The Chairman will invite the GOC, and then you, to call any evidence on the grounds for impairment. If witnesses are called, they will be questioned in the same order as at the Facts Stage. The GOC, and then you, will be able to address the Committee on whether any of the grounds have been proved.
43. As with the Facts Stage, the Legal Adviser will advise the Committee on the legal issues.
44. The Hearings Manager will ask all parties to leave the room while the Committee deliberates in private.

45. When the Committee has reached its decision on the grounds for impairment, all parties will be called back to the hearing room and the Chairman will read out the Committee's findings.
46. If the Committee has found that there are grounds for impairment, the Chairman will invite the GOC, and then you, to call any evidence and address the Committee on whether your fitness to practise, undertake training or carry on business is currently impaired.
47. As before, the Legal Adviser will advise the Committee and all parties will leave the room while the Committee deliberates. The parties will be called back before the Chairman reads out the Committee's findings on whether your fitness to practise is currently impaired.
48. If the Committee does not find current impairment, it can take no action or it can issue a warning. If a warning is issued, it will be recorded against your registration for a fixed period. The proceedings will stop at that point.
49. If the Committee does find current impairment, the Committee will move to the next stage and consider whether to impose a sanction.

The Sanction Stage

50. The Chairman will invite the GOC, and then you, to call any evidence and address the Committee on what, if any, sanction should be imposed.
51. As before, the Legal Adviser will advise the Committee and all parties will leave the room while the Committee deliberates. The parties will be called back before the Chairman reads out the Committee's decision on what, if any, sanction should be imposed. Clear reasons are always given.
52. The main sanctions available to the Fitness to Practise Committee are set out below:

Sections 13F to 13I of the Opticians Act 1989 set out the orders that the Committee can make.

- Erasure (removal) of your name from the Register - unless the hearing concerns your adverse health;
- Suspension of your name from the Register (i.e. your registration will not have effect);
- Conditions on your registration (i.e. you must comply with specific conditions in order to remain on the Register) for up to three years;

- Removal, temporary removal or conditions on your entry in a Specialist Register; and
- Financial penalty (fine) up to £50,000 - unless the hearing concerns your adverse health. The Committee also has jurisdiction to deal with costs.

All sanctions listed above are appealable through the Courts.

53. **Immediate Orders:** Where the Committee has ordered Erasure, Suspension or Conditions, the Chairman will invite the GOC, and then you, to address it on whether there should be an Immediate Order, i.e. whether the order should take effect immediately.
54. As before, the Legal Adviser will advise the Committee, and all parties will leave the room while the Committee deliberates. The parties will be called back before the Chairman reads out the Committee's decision on whether there should be an Immediate Order.

AFTER THE HEARING

55. There is a right to appeal against some decisions and you should take independent legal advice if you wish to consider lodging an appeal.

Section 23G of the Opticians Act 1989 and sets out the decisions that are appealable.

56. The Committee's Determination, except for decisions on health issues, will be posted on the GOC's website. A complete transcript of the hearing will also be prepared but will not be posted on the website.
57. The Committee must review some decisions, for example interim order decisions. You will be sent details of the review hearings.

If you have any further questions, please contact Mr David Henley, the Hearings Manager: telephone 07825 913107 or email dhenley@optical.org

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