

What happens if a complaint is made about me?

Information for registrants

About this guidance

This guidance provides information for registrants who are subject to a fitness to practise investigation. You may have received this guidance because we have received a complaint about you. Please read it carefully.

About the GOC

The General Optical Council (GOC) is one of 12 organisations in the UK known as health and social care regulators. These organisations oversee the health and social care professions by regulating individual professionals.

As a registrant you will be aware that the GOC is the regulator for the optical professions in the UK. The Council currently registers over 29,000 optometrists, dispensing opticians, student opticians and optical businesses.

The GOC's powers, responsibilities and the way we work are governed by the Opticians Act 1989 (as amended) (the Act).

If a registrant is found to be not fit to practise, train as an optician or run a GOC-registered business we can prevent them from working in the UK, or we can restrict the work they are allowed to do.

What do we do?

Our main objective, as set out in the Act, is to protect, promote and maintain the health and safety of members of the public. We may also receive information from the police.

We protect the public by:

- » setting standards for optical education, training, performance and behaviour;
- » approving the qualifications that lead to registration;
- » publishing a register of opticians, students and optical businesses in the UK;
- » investigating and acting on concerns that a registrant is not fit to:
 - practise;
 - train as an optician; or
 - run a GOC-registered business.

Who can complain?

Anyone can make a complaint about a registrant. This includes members of the public, employers and other registrants. We may also receive information from the police.

We are able to proceed with an investigation against a registrant if concerns about their fitness to practise, fitness to train or fitness to carry on business come to our attention even if a complaint has not been made, for example if we identify a media article relating to a registrant.

What types of complaints/allegations can we deal with?

We deal with a variety of complaints/allegations that may mean that a registrant's fitness to practise, train as an optician or carry on a GOC registered business may be impaired (negatively affected). Examples are:

- » poor professional performance, such as failure to notice signs of eye disease;
- » physical or mental health problems affecting a registrant's work;
- » inappropriate behaviour, such as violence or sexual assault;
- » being under the influence of alcohol or drugs at work;
- » fraud or dishonesty; or
- » a criminal conviction or caution.

What happens when we receive a complaint/allegation about a registrant's fitness to practise?

If a registrant is described as 'fit to practise' it means they have reached the standard of health, character, knowledge, skill and behaviour necessary for them to undertake their job safely and effectively.

If we receive a complaint/allegation or concerns come to our attention about a registrant we will take steps to investigate. These steps include:

- » obtaining further information, including from the person making the complaint/allegation (the complainant);
- » writing to the registrant to notify them that we are investigating a complaint/allegation;
- » asking the registrant for details of their current employer – we will notify the employer that the registrant is currently under investigation (we are required to do this by the Act);
- » notifying the Department of Health that a registrant is currently under investigation (we are required to do this by the Act);
- » obtaining evidence from people other than the complainant – which can include seeking copies of patients' clinical records or statements from key witnesses or, if the issue relates to a criminal conviction or caution, evidence gathered by the police or Court transcripts.

The Act gives us power to demand information or evidence from people or organisations. This power overrides the Data Protection Act and helps us when we request information or evidence about complaints/allegations.

The Act gives us the power to disclose information about a registrant's fitness to practise to anyone if we consider that it is in the public interest. Sometimes we receive requests from employers or the NHS for information about an ongoing investigation into a registrant's fitness to practise.

When we receive that type of request, we will ask the person making it to set out in writing the reasons why it would be in the public interest for us to disclose that information to them. We consider each request for disclosure on a case by case basis.

We will send all the information we have gathered about the matter to the registrant and give them 28 days in which to make written comments. Any written comments that a registrant makes (their representations) will be sent to the complainant who can comment on them. Any comments made by the complainant will then be sent back to the registrant.

We will then provide all the evidence about the complaint/allegation, together with all representations and any further comments we receive from the complainant, to the Case Examiners.

Case Examiners

When our investigation is complete the information we have gathered along with any response that the registrant provides will be considered by Case Examiners. One Case Examiner will be a lay person (a person who is not optically trained) and one will be a qualified optometrist or dispensing optician who is on the GOC register. The Case Examiners will consider the case and will determine what action to take. Case Examiners can:

- » take no further action;
- » offer the registrant advice about their future conduct;
- » ask for further investigation to be carried out;
- » give a warning to the registrant;
- » refer the complaint to the independent Fitness to Practise Committee, which will usually hold a public hearing to decide what action to take.
- » direct that the Fitness to Practise Committee be asked to urgently consider whether the registrant should be made subject to an interim order.

If Case Examiners agree that the registrant should undertake a performance or health assessment they must refer their recommendation to the Investigation Committee. If Case Examiners cannot agree on what action to take, they must refer the case to the Investigation Committee.

The Investigation Committee

The Investigation Committee is made up of GOC registrants and lay members. Its procedures are set out in the Act.

Investigation Committee meetings are held in private, and neither registrants nor complainants are permitted to attend. The Committee will consider recommendations from Case Examiners that the registrant undertakes a performance or health assessment, referring cases to Case Examiners (after the assessment has taken place if applicable) for a final decision on what action should be taken. The Committee will also consider cases where the Case Examiners cannot agree what action should be taken and where registrants fail to co-operate with, or submit to, a health or performance assessment.

In these cases, the Committee can:

- » take no further action;
- » offer the registrant advice about their future conduct;
- » ask for further investigation to be carried out (such as undertaking an assessment of a registrant's health or performance);
- » give the registrant a warning;
- » refer the complaint to the Fitness to Practise Committee, which will usually hold a public hearing to decide what action to take.

More detail about each of these outcomes is set out in the Investigation Committee's guidance, which is available from our website at www.optical.org/en/Investigating_complaints/fitness-to-practise-guidance/index.cfm.

Once Case Examiners or the Investigation Committee has considered a complaint/allegation against a registrant, we will write to the registrant (or the registrant's representative) and complainant to inform them of the Committee's decision and, if there is any further action, what that will be.

Automatic referral of custodial sentences

If a registrant has received a criminal conviction which resulted in a custodial sentence (whether it is immediate or suspended), the Registrar can refer the case directly to the Fitness to Practise Committee. This is known as 'automatic referral' and is set out in section 4(5) of the Fitness to Practise Rules 2013.

Complaints/ allegations which fall into this category will not be considered by the Case Examiners or Investigation Committee.

Further information about the investigation process

Our website also provides information about the investigation process, including a flowchart to explain the various stages.

We have published guidance explaining:

- » the Case Examiners' and Investigation Committee's decision making processes;
- » the circumstances in which the Case Examiners or the Investigation Committee may give warnings;
- » the performance assessment process.

These guidance documents are also available from our website. Please see

www.optical.org/en/Investigating_complaints/fitness-to-practise-guidance/index.cfm.

Interim orders

If a Case Examiner, or the GOC Registrar, are of the opinion that the Fitness to Practise Committee should consider making an interim order they can direct that the matter should be referred.

An interim order can either suspend a registrant from the register or place conditions on their registration. Interim orders take effect immediately. They are reviewed every six months and usually remain in place until the investigation has been completed and the substantive Fitness to Practise Committee hearing has finished.

An interim order is only imposed on a registrant if the Fitness to Practise Committee is satisfied that it is necessary for the protection of members of the public, is otherwise in the public interest or is in the interests of a registrant. If a complaint/allegation is referred to the Fitness to Practise Committee to consider whether to impose an interim order, a hearing will be arranged.

At that hearing the Fitness to Practise Committee will decide whether or not to impose an interim order. The guidance that the Fitness to Practise Committee uses when considering applications for interim orders (or other matters) is available from our website. Please see **www.optical.org/en/Investigating_complaints/fitness-to-practise-guidance/index.cfm**.

If an application for an interim order against a registrant is to be made, our Hearings Manager will send notification of the date and explain the registrant's right to attend the hearing and/or to be represented at the hearing.

Hearings of applications for interim orders are held in private. If the application for an interim order is approved details will then be publicised.

Interim orders will only be approved in a small number of cases. That means a registrant is usually able to continue working during the period of any investigation.

What happens at the Fitness to Practise Committee hearing(s)?

The Fitness to Practise Committee may decide to hold a procedural hearing if either of the parties request it. Otherwise the parties will be expected to follow the standard directions as laid down in the Fitness to Practise Rules.

If either party applies for a procedural hearing, the Committee will use it to decide on the timetable for various important activities that need to take place before the substantive hearing. They will usually include:

- » providing written copies of any evidence which is going to be presented to the Committee at the substantive hearing;
- » deciding on who are going to be called as witnesses;
- » setting the date for the substantive hearing;
- » deciding how long it is likely to last.

If an allegation is referred to the Fitness to Practise Committee by the Investigation Committee, our Hearings Manager contacts the registrant to arrange a date for the procedural hearing.

Registrants are entitled to be represented at any hearing by a lawyer or some other representative. Some registrants choose to represent themselves.

Registrants do not have to attend either the procedural or the substantive hearing of the Fitness to Practise Committee. However, it is generally in their best interests to do so. Hearings are likely to take place even if neither the registrant nor anyone representing them is present.

If a registrant wishes a procedural or substantive hearing to be postponed from the date set at a previous hearing (this is known as an adjournment) they will need to explain in writing why they think this is necessary. The Fitness to Practise Committee will consider the application for an adjournment and will not necessarily grant it if the only reason is because it would be more convenient for them (or for their lawyer or other representative) to hold the substantive hearing on a different date.

Where are hearings held?

Most hearings are held at, or close to, our office at 10 Old Bailey, London, EC4M 7NG. Information about how to get to our office is on our website. The office is located close to St Paul's Cathedral and City Thameslink railway station. The nearest Underground stations are St Paul's and Blackfriars.

Details of all upcoming hearings, and their venues, can be found on our website:

www.optical.org/en/Investigating_complaints/Hearings/future_hearings/index.cfm.

Who will be at the hearing?

Fitness to Practise Committee members

There are usually five Committee members on the panel at the hearing, including two opticians and three lay people. Their role is to hear the evidence and make decisions. The Chair of the panel is always a lay person.

A legal adviser

This is an independent senior lawyer whose role is to provide independent legal advice to the Committee and assist the Chair in making sure that the hearing is conducted fairly. The legal adviser does not play any role in the Committee's decision-making.

The GOC's lawyer

The GOC's lawyer is responsible for presenting the evidence which has been gathered about the complaint/allegation.

The registrant(s)

A complaint may involve allegations against one or more registrants. Some registrants choose to attend their hearing, while others do not.

If a registrant attends the hearing they may choose to say nothing at all or they may decide to give evidence to the Committee. It is important to discuss this decision with a lawyer/representative.

Sometimes registrants do not use lawyers to represent them at the hearing. In that event they will have the opportunity to present evidence to the Committee and to ask the witnesses questions.

Hearing room layout

The room in which the hearing is held is usually laid out as follows:



The registrant's lawyer

Where a lawyer is instructed, that person will present the registrant's case to the Committee. They will also ask the witnesses questions on behalf of the registrant.

The transcriber

We arrange for a transcriber to take notes of the hearing so that a full record is kept of what was said. If anything of a confidential nature is discussed at the hearing (for example health conditions) this information will not be included in the public transcript.

The Hearings Manager

The Hearings Manager attends every hearing to provide administrative support to the Committee. S/he is also the person who is responsible for arranging hearing dates. The Hearings Manager is not involved in the Committee's decision-making.

Witnesses

The GOC's lawyer or the registrant may ask a witness to give evidence at a hearing.

Observers

Most hearings are held in public, which means that there may be members of the press or public present.

What happens at the substantive Fitness to Practise Committee hearing?

The guidance that the Fitness to Practise Committee uses is available from our website at www.optical.org/en/about_us/policies_procedures_and_protocols/index.cfm. It explains that at the substantive hearing, once we and the registrant have presented evidence about the facts that are alleged to have occurred, the Fitness to Practise Committee makes a number of decisions:

- » whether the alleged facts have been proven;
- » if the facts are proven, whether the registrant's actions amount to misconduct or deficient professional performance or any of the other grounds under the Act on the basis of which the registrant's fitness to practise may be impaired (including adverse physical or mental health or the existence of a criminal conviction or caution);
- » whether the registrant's 'fitness' is currently impaired;
- » what sanction (if any) should be imposed on the registrant.

The Fitness to Practise Committee's decision-making

The Fitness to Practise Committee will ask everyone except the legal adviser to leave the hearing room when they are ready to begin the process of making a decision. The Committee's decision-making process is divided into several stages, so they may ask everyone to leave the room a number of times before the end of the hearing.

What action can the Fitness to Practise Committee take at the end of the hearing?

If the Fitness to Practise Committee hearing the case decides that the registrant's fitness to practise is impaired, it can do any of the following:

- » remove the registrant from the register – this is sometimes referred to as 'erasure' or 'striking off'. The registrant's name will be taken off the register which means that they will not be able to legally work as an optician, train as an optician or run a GOC-registered business in the UK. If they want their name put back on the register in the future, there is a separate process (known as restoration) they will have to go through which includes considering the reason for the removal from the register;
- » suspend the registrant from the register – the registrant's name is taken off the register;
- » conditional registration – the registrant will be allowed to stay on the register and continue working as long as they comply with certain conditions, such as doing extra training or being supervised at work;
- » financial penalty – the registrant will have to pay a fine up to a maximum of £50,000. A financial penalty can be imposed as well as removal, suspension or conditions.

If the Fitness to Practise Committee decides that the registrant's fitness to practise is not impaired, the Committee may still give a warning about their future behaviour or performance.

The Professional Standards Authority (PSA)

The Authority is an organisation that promotes best practice and consistency across the UK healthcare regulatory bodies. The Authority reviews decisions of all the healthcare regulators' Fitness to Practise and Professional Conduct Committees. If the Authority thinks that a particular decision was too lenient it may ask the High Court to review the decision.

Appealing against the Fitness to Practise Committee's decision

Decisions made by the Fitness to Practise Committee only take effect after the registrant has been allowed a chance to appeal to the High Court. They have 28 days from the date of the decision to lodge an appeal at the High Court.

In cases where the Committee has decided to remove a registrant from the register or it has decided that a registrant should be suspended from the register, it may go on to consider whether it is necessary to order that the registrant is suspended from the register immediately. This may be necessary where the Committee considers that a registrant should be stopped from practising before the 28 day appeal period (as referred to above) expires.

Following the conclusion of the hearing, the Committee's decision and a transcript of any public element of the hearing is posted on our website.

Review of conditions imposed by the Fitness to Practise Committee

If the Fitness to Practise Committee decides at the end of the hearing to place conditions on a registrant's registration, compliance with those conditions will be reviewed at a later date at a review hearing. The Committee will usually set a time period for which the conditions should be in force and a review hearing will be held some 4-6 weeks before the conditions order expires to determine whether the registrant's fitness to practise is, or is not, still impaired.

Staying on our register

A registrant will not be allowed to change their GOC registration status until either the Investigation Committee or the Fitness to Practise Committee has finished considering the matter. This means that a registrant is not able to voluntarily remove themselves from the register until a committee has made a final decision about the complaint/allegation. It also means that student registrants are unable to join the fully qualified register until the investigation has finished.

Other guidance that may be helpful

In this guidance we have referred to other information which is available on our website.

We also have some guidance for witnesses giving evidence at Fitness to Practise Committee hearings. Parts of this may be helpful and you can find it on our website at www.optical.org/en/Investigating_complaints/witnesses.cfm.

What you can expect from us

If a complaint/allegation is made about you, you can expect us to treat you fairly and to provide information about our investigation process.

We try to make sure that our processes are as open and as clear as possible and we hope that the information in this guidance will help you through the investigation process.

Contact us

If you need any more information or detail about how we investigate complaints/allegations please see the information available on our website at www.optical.org. If it does not answer your questions about the investigation process, please contact the Legal and Fitness to Practise department on **020 7580 3989** (option 2).

If you are notified that we are investigating a complaint/allegation about you then you may wish to contact your professional body or an independent lawyer about the process at an early stage. You may also wish to approach Citizens Advice for assistance.

Please note that we cannot give advice about what to include in any written representations you are making about a complaint/allegation that has been made against you, or about how you should represent yourself.

If you need any further information about the Fitness to Practise Committee hearing process please contact our Hearings Manager on **020 7307 3453**.

