

The Role and Duties of Panel Members and Hearings Protocols

The Chairman

The Chairman is the main point of contact for all parties during the course of a hearing and it is thus the Chairman's responsibility to maintain a close grip on how the proceedings are being conducted.

Open session of the hearing. During the open session of a hearing, it is the Chairman's responsibility to ensure that:

- The proceedings are conducted within the Fitness to Practise Committee Rules 2005, Parts 6-10.
- The Committee members are asked to introduce themselves and the capacity in which they sit; introduce the Legal Adviser, Transcriber and Hearings Manager to those sitting in the hearings room.
- The time is used effectively in that the Chairman should intervene if the Presenting Officer / the registrant's representative / the registrant (if not represented) strays from the issue or repeats arguments previously made and understood by the Committee. The Chairman should discuss issues relating to time keeping, availability of witnesses, etc, with the parties and Committee Members at appropriate points during the hearing.
- Those appearing before the Committee, including witnesses, are treated with courtesy and consideration.
- Those appearing before the Committee engage with the process as effectively as possible by ensuring that any questions posed to them are capable of being understood; that cultural differences and gender issues are taken into consideration; that all reasonable efforts are made to accommodate those who may be fasting, or have a disability etc.
- He/she is prepared to intervene if a witness appears distressed while giving evidence and if appropriate, order an adjournment to give the witness time to compose him/herself before continuing.
- The Legal Adviser is asked to provide advice on any points of law which may arise and at any point before the Committee goes into camera, and to announce whether the Committee sought advice on any points of law from the Legal Adviser during the in-camera session.
- Where a specialist adviser is present, that adviser acts within the limits of the role.

- Where a member has a declared disability of any kind, the member's disability should be taken into account at all stages throughout the hearing. Chairmen will be briefed by the Hearings Manager prior to the hearing regarding documentation that has been made available to any members with a declared disability.
- Where a disability is known and made public, the Chairman should ensure that it is made known to all parties at the hearing that they should make appropriate efforts to accommodate the disability.
- Where a member has a disability which they do not wish to be declared publicly, the Chairman should accommodate this if possible throughout the hearing. However, if no disability is made known to the Chairman, it follows that no accommodations can be made.
- Comfort breaks are taken as appropriate.

In-camera sessions. When the Committee is in-camera at any stage during the decision making process, it is the Chairman's responsibility to ensure that:

- The time is used effectively.
- The Committee members understand the issues under consideration and remain focussed on them.
- Firstly, there is a general discussion of the issues so that each Committee Member can express initial thoughts on what they consider to be important or not important.
- All Committee Members contribute to the discussion and decision making.
- If necessary, the Chairman should ask any panellist who appears to be dominating the discussion to allow others to speak and to bring in others who appear not to be contributing to the discussion through reticence.
- The Legal Adviser contributes any relevant legal advice where necessary but does not dominate any discussion or attempt to engineer the wording of any determination.
- Others express their views before the Chairman contributes his/hers (this avoids any perception that the Chairman is influencing the views of others).

Committee Members. Committee members should always be aware that:

- They are not bound by their initial thoughts on the case as other members may have identified issues which the member had not previously considered or thought sufficiently important but which, on reflection and having heard the views of others, places a different complexion on the case.

- They should not feel under pressure to change their views because they are in a minority.
- The purpose of the in camera discussion is to explore fully the aspects of the case:
 - (i) The relevant evidence both oral and documentary;
 - (ii) The weight to be given to that evidence;
 - (iii) The submissions made by both parties;
 - (iv) If possible, to reach a consensus;
 - (v) Where it is impossible to reach a consensus, to vote.
- Any decision taken by the Committee must be in the public interest which includes:
 - (i) The protection of patients;
 - (ii) Maintenance of public confidence in the profession;
 - (iii) Declaring and upholding proper standards of conduct/behaviour.

(Not to be confused with a finding on facts which is simply determination of whether the Committee has found the facts to be proved; this finding is not a "decision" that can be informed by patient protection, maintenance of public confidence or upholding proper standards)

- Decisions of the Committee are taken by a simple majority. A Chairman may not exercise a casting vote and no member of the Committee may abstain from voting and where the votes are equal, the Committee must decide in favour of the registrant.
- The determination of the Committee reflects the decisions taken by the Committee as a whole and gives clear reasons for their decisions at each stage.
- The Committee members may seek advice from the Legal Adviser on structuring the determination but the decisions and the reasons for those decisions must be arrived at by the Committee members only.
- The Chairman reads out the determination in open forum.
- Where a member has a declared disability of any kind, the member should inform the Hearings Manager and Chairman of that disability. The Chairman will inform both parties that appropriate efforts will have to be made to accommodate that disability during the course of the hearing.
- Any disability that the member does not wish to be made public may impact upon the member's ability to follow proceedings and must be declared to the Chairman.

The Hearing

General

Fitness to Attend. A Committee member who considers that they are not able to attend a sitting should inform the Hearings Manager at the earliest opportunity in order that a replacement may be nominated.

Travel and accommodation. When attending hearings and other FTP panel business standard class travel should always be undertaken, whether by train or flight. Travel and accommodation will be arranged by the Council on request by the panel member.

Arrival and Timings. As a general rule, all hearings are scheduled to commence at 9.30 a.m. unless specified otherwise and you should aim to arrive at the venue at least 30 minutes before so that any points of housekeeping can be carried out. This will include the election of a chairman, introductions, any pre-reading of hearing documents etc. If you are delayed through transport problems, you should call the Assistant Hearings Manager at the earliest opportunity and provide an estimated time of arrival.

Conduct of members. Members are encouraged to remain at the venue during any breaks to ensure there are no unnecessary delays and during those breaks you should ensure no alcohol is consumed.

Interruptions during proceedings. During the course of a hearing where a panel member is experiencing difficulty hearing the person who is addressing the Committee, it is acceptable for the member to immediately ask the speaker to raise his/her voice and repeat what was said.

Witness questioning. During the course of the hearing, members may wish to raise questions of the person giving evidence but must refrain from doing so as the questions occur and instead compile a list of questions they may wish to raise at the appropriate juncture.

Fees and expenses. Claims for fees and expenses should be forwarded to the Hearings Manager as soon as possible following attendance at a hearing or other FTP panel business. The claim form and envelope will be supplied to each member on the day of attendance.

Self Assessment. Each Member will complete a self assessment form following a hearing and return it to the Hearings Manager via email as soon as possible following a hearing.

Chairman's report. Within 7 days of completion of a hearing, the Chairman will complete and send a report to the Hearings Manager via email if any issues are to be raised. The report seeks comment from the Committee on their views of how the hearing was run, how key members performed and any suggestions how hearings may be improved. The Chairman is encouraged to coordinate a

response having first conversed and exchanged views with his/her fellow Committee members.

On arrival at the hearings venue. The Chairman and Members should check with the Hearings Manager:

- Whether the registrant is present and represented;
- Whether there will be any witnesses to be called by either party;
- The names of the legal representatives;
- Whether any special arrangements have been made (e.g. for vulnerable witnesses, video links etc);
- Whether there are likely to be members of the press in attendance;
- Whether there will be any applications;
- Whether there are any documents in addition to those which you have received in advance.
- Elect a chairman.

Commencement of the Hearing. Once each member of the Committee is satisfied that they are ready to commence, the Chairman will instruct the Hearings Manager to call the parties to the hearing room. Occasionally, the parties will seek a delay to the start of proceedings due to legal issues that may have only recently arisen and which need to be resolved before the hearing commences. The Committee may allow them a short delay but if it appears that further delays are required, the hearing must formally commence before the parties can apply for an adjournment or a short break in which to resolve any issues.

Introductions. The Chairman will refer to the Aide Memoire (provided by the Hearings Manager) and introduce the Committee members, the Legal Adviser, the transcriber and the Hearings Manager.

Applications. The Chairman will invite the parties to make an application (applications could include adjournments, changes to the allegation etc). Following a response from the other party, any questions the Committee may have and legal advice from the Legal Adviser, the Chairman will deliver the Committee's decision.

Absence of the Registrant. If a registrant is not present or represented, the Chairman will invite the Presenting Officer to provide evidence to the Committee that all reasonable efforts have been made by the Council to notify the registrant of the hearing (under section 23A of the Opticians Act 1989) and to make submissions as to whether it is in the public interest to proceed with the hearing in the registrant's absence (under Rule 21 of the Fitness to Practise Rules 2005).

Depending on the nature of the hearing go to either procedural, substantive or interim order hearings (below):

Procedural Hearings

General Opening. The Chairman will invite the Presenting Officer to give a general outline of the facts of the case and establish what directions, if any, have been previously agreed between the two parties. If, at this point, all directions have previously been agreed, the Chairman will read out the directions and confirm that both parties are content and the proceedings can be halted at this stage.

Directions to be agreed. If directions have not been previously agreed by the parties, the Chairman will seek from the parties the following:

- Estimated length of the next hearing (whether substantive or further procedural hearing);
- Date(s) of the next hearing (invite the Assistant Hearings Manager to address the Committee regarding vacant dates in the hearings calendar);
- Other issues which are listed in the hearings questionnaire.

Directions. Once the parties are agreed on the directions, the Chairman will ask the Hearings Manager to type up the Notice of Directions and will sign three copies (one for each party and one for retention by the Hearings Manager). If the parties cannot agree then having heard submissions the Committee must decide on the appropriate directions to be made.

Follow on to a Substantive Hearing. Where both parties are in agreement, a substantive hearing may follow on immediately from a procedural hearing (the Committee will usually have been informed of this prior to the hearing).

Substantive Hearings

Allegation and Admissions. The Chairman will ask the Assistant Hearings Manager to read out the allegation then the Chairman will ask the registrant or representative whether any particulars of the allegation are admitted.

Statements and Evidence. The burden is always on the Council to prove the factual allegations against the registrant. The Chairman will invite:

- The Council's Presenting Officer to make an opening statement and call evidence supporting the particulars of the allegation;
- The registrant or representative to make an opening statement and call evidence regarding the particulars;
- The Presenting Officer to call evidence in rebuttal.

Witnesses. Where witnesses are being called in evidence during the stages shown above, the Chairman will invite questions from:

- The party calling the witness;
- The other party/parties at the hearing;
- The party calling the witness;

- The Committee;
- The Legal Adviser.

Interpreters. Where an interpreter is used, the following procedures should be followed:

- Invite the interpreter to enter the hearing room at the same time as the witness;
- The interpreter to swear upon a religious text or affirm that the interpreting shall be carried out in the language of the witness followed by the witness (who swears upon a religious text or affirm that the evidence will be the truth etc).
- The Chair should make it clear to the interpreter and witness that all questions and answers must be communicated through the interpreter, no matter how proficient the witness believes his/her English to be.
- When the parties are content that the interpreter is no longer required, the Chair should thank the interpreter and discharge him/her from the witness stand.

Stage 1

Criminal conviction cases – Findings regarding particulars

When the Committee comes to decide whether the factual particulars in the allegation have been proved, which is a matter that has to be determined on the basis of the civil standard of proof, the admission made by the registrant that the conviction is admitted (the Committee would have seen a certificate of conviction from the Court in support of that admission) makes the matter fairly straightforward. Provided the Committee is collectively satisfied that on the balance of probabilities the conviction has been proved - based on the certificate and the acceptance by the registrant - the Committee could indicate that that is their decision and that would then enable the Presenting Officer to proceed to address the Committee on the question of impairment of fitness to practise and then for the registrant to answer and to present any evidence he/she wishes.

Non-criminal conviction cases - Findings regarding particulars. In cases where the registrant admits all of the allegations, the Committee should move immediately to the deficient professional performance / misconduct /adverse physical or mental health stage (below).

In all other cases evidence will be called; the Committee should be aware that the burden is on the Council to prove the facts alleged to the civil standard (the balance of probabilities; separate guidance will be issued). Following the completion of presentation of evidence by the parties, the Chairman will invite:

- The Presenting Officer then the registrant or representative to address the Committee as to whether the factual allegations have been proved; followed by:

- The Legal Adviser to advise the Committee;
- The Assistant Hearings Manager to clear the room while the Committee deliberates in private.

Facts not proven. At this stage, if the Committee find all the allegations not proven, the Chairman will announce their decision and the proceedings will cease immediately.

Facts proven. If some or all of the allegations are found to be proved the Committee should move to the next steps. (If the Committee consider it appropriate, taking into account the views of the parties, the stages relating to DPP/Misconduct and impairment can be taken together).

The Committee announces its decision as to whether any of the facts alleged by the Council have been found proved.

Background to the allegations. In all cases, a summary of events leading to the allegations will be included in the determination following **the admissions stage.**

Stage 2

Deficient professional performance / Misconduct / Adverse physical or mental health. The Chairman should invite:

- The Presenting Officer then the registrant or representative to adduce any evidence that they wish to present in respect of this issue (if necessary witnesses can be called and should be questioned in the same order as above).
- The Presenting Officer then the registrant or representative to address the Committee on whether any facts which have been admitted or proven amount to deficient professional performance and/or misconduct and/or adverse physical or mental health.
- Invite the Clinical Adviser (in health cases) to advise the Committee on the significance of any evidence before it pertaining to the registrant's physical and/or mental health;
- The Legal Adviser to advise the Committee;
- The Assistant Hearings Manager to clear the room while the Committee deliberates in private.
- The Committee announces its decision as to whether the facts found proved amount to deficient professional performance/ misconduct/ adverse physical or mental health.

Stage 3

Impairment of Fitness to Practise. Following the announcement of findings regarding deficient professional performance and/or misconduct etc, the Chairman will invite:

- The Presenting Officer then the registrant or representative to address the Committee on matters regarding current impairment;
- Invite the Clinical Adviser (in health cases) to advise the Committee on the significance of any evidence before it pertaining to the registrant's physical and/or mental health.
- The Legal Adviser to advise the Committee;
- The Assistant Hearings Manager to clear the room while the Committee deliberates in private.

Fitness to Practise not Impaired. Where the Committee has found the registrant's current fitness to practise not impaired, they may **issue a warning** and the proceedings will cease immediately. (The Committee should not issue a warning without first inviting the parties to make submissions on that issue).

Fitness to Practise Impaired. Where a find of impairment has been made, the Committee will go on to consider what sanctions are appropriate.

Stage 4

Sanction. Following the announcement of impairment, the Chairman will invite:

- The Presenting Officer then the registrant or representative to address the Committee on matters regarding sanctions;
- The Legal Adviser to advise the Committee;
- The Assistant Hearings Manager to clear the room while the Committee deliberates in private.

Immediate Orders. Where the Committee has imposed:

- A conditional registration order;
- A suspension order; or
- An erasure order.

The Chairman will invite:

- The Presenting Officer then the registrant or representative to make submissions whether an immediate order should be imposed.
- The Legal Adviser to advise the Committee;

- The Assistant Hearings Manager to clear the room while the Committee deliberates in private.

Conditional Registration or Suspension Order imposed. Where the Committee determines to impose a conditional registration or suspension order, it must also determine whether to order that a review hearing should be held before the expiry of the sanction. If there is to be a review hearing the Committee should announce a date for that hearing at the conclusion of the determination on sanction.

Cost Orders. The Fitness to Practise Rules 56 & 57 allow for cost orders to be made against either party.

Interim Order Hearings

The Application. Invite the Presenting Officer to present the Council's application.

Witnesses. If witnesses are called, questions should be invited from:

- The party calling the witness;
- The other party/parties at the hearing;
- The party calling the witness;
- The Committee;
- The Legal Adviser.

Final address. Invite the Presenting Officer to make a final address to the Committee.

Clinical Advice (health cases). Invite the Clinical Adviser to advise the Committee on the significance of any evidence before it pertaining to the registrant's physical and/or mental health.

Legal Advice. Invite the Legal Adviser to advise the Committee regarding the need to make an interim order (the parties should be given an opportunity to comment on that advice).

Determination and Announcement. When the Committee has agreed a decision, invite the Assistant Hearings Manager to type the determination and once everyone has been called back into the room, the Chairman will read out the determination. Both parties are provided with a signed copy of the determination.

Hearings staff contact

FTP Panel/Committee Policy and Hearings organisation – David Henley (Hearings Manager) - telephone 01206 769540 - email: dhenley@optical.org or Terence Yates (Assistant Hearings Manager) – telephone 020 7307 3461 - email: tyates@optical.org

General Optical Council

London accommodation – (Admin Officer) – telephone 020 7307 3475 - email:
mshah@optical.org