

## SCHEDULE

### THE GENERAL OPTICAL COUNCIL (FITNESS TO PRACTISE) RULES 2005

The General Optical Council, in exercise of their powers under sections 13E(1), 23C, 23D(7), 23E(8) and 31A of the Opticians Act 1989(1) and of all other powers enabling them in that behalf, after consultation with such organisations representing the interests of registrants as the Council consider appropriate(2), hereby make the following Rules:

## PART 1

### CITATION, COMMENCEMENT AND INTERPRETATION

#### Citation and Commencement

1. These Rules may be cited as the General Optical Council (Fitness to Practise) Rules 2005 and shall come into force on 30th June 2005.

#### Interpretation

2.—(1) In these Rules—

“allegation” means an allegation of the kind set out in section 13D (allegations)(3);

“clinical adviser” means a clinical adviser appointed under section 23E(1)(a) (other advisers);

“conditional order” means an order made under section 13F (powers of the Fitness to Practise Committee)(4) that a registrant’s registration or entry relating to a specialty is to be conditional upon compliance with specified requirements;

“the Council” means the General Optical Council;

“Fitness to Practise Committee” means the Committee referred to in section 5C(1) (Fitness to Practise Committee)(5);

“hearing questionnaire” means a questionnaire in such form as is approved by the Council, seeking information from the parties with the purpose of facilitating the preparation and conduct of a substantive hearing;

“interim order” means an order under section 13L (interim orders)(6);

“interim order hearing” means any hearing at which the Fitness to Practise Committee may determine any issue relating to the making of an interim order or at which an interim order is made;

“the Investigation Committee” means the Committee referred to in section 4(1) (Investigation Committee)(7);

“legal adviser” means a legal adviser appointed under section 23D(1) (legal advisers);

“the Presenting Officer” means the representative of the Council instructed by the registrar to act on behalf of the Council in proceedings before the Fitness to Practise Committee, and may include solicitor or counsel;

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(1) 1989 c. 44. Sections 13E, 23C, 23D and 23E were inserted by S.I.2005/848.

(2) See section 23C(10) of the Opticians Act 1989.

(3) Section 13D was inserted by S.I. 2005/848.

(4) Section 13F was inserted by S.I. 2005/848.

(5) Section 5C was inserted by S.I. 2005/848.

(6) Section 13L was inserted by S.I. 2005/848.

(7) Section 4 was substituted by S.I. 2005/848.

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“procedural hearing” means any hearing at which the Fitness to Practise Committee may determine matters of procedure only;

“registrant”, in relation to a hearing—

- (a) includes any representative of the registrant attending the hearing in accordance with the provisions of rule 20(2); and
- (b) means, for the purposes of the service of any notification or other notice under these Rules or the provision of information, a person whom the registrar has been informed is instructed to represent the registrant;

“registrar” means the registrar of the Council referred to in section 1(3) (constitution and functions of the Council);

“specialist adviser” means a specialist adviser appointed under section 23E(1)(b);

“specialty” means a specialty or level of proficiency particulars of which may, by virtue of rule 10 (specialties) of the General Optical Council (Registration) Rules 2005(8), be entered in a register in respect of a registrant;

“substantive hearing” means any hearing at which the Fitness to Practise Committee may—

- (a) determine any issue relating to an allegation against a registrant; or
- (b) may make an order under the provisions of sections 13F to 13I (power to order immediate suspension etc. after a finding of impairment of fitness to practise)(9); and

“suspension order” means any order made under section 13F directing that a registrant’s registration be suspended for a specified period or indefinitely or that a registrant’s entry relating to a specialty be removed for a specified period.

(2) In these Rules any reference to a numbered section is a reference to the section of the Opticians Act 1989 which bears that number.

## PART 2 INVESTIGATION

### **Delegation of Investigation**

3. Where an allegation has been made against a registrant, an officer of the Council, other than the registrar, may, until such time as the Investigation Committee considers the allegation under rule 6, exercise the function of investigating allegations which is conferred on the Investigation Committee by section 13D(5) (investigation of allegation of impairment of fitness to practise)(10).

### **Notification**

4.—(1) The registrar shall, before any allegation against a registrant is considered by the Investigation Committee, serve on the registrant—

- (a) a notification of each allegation; and
- (b) copies of the documents which the registrar intends to place before the Investigation Committee.

(2) The notification under paragraph (1)(a) shall—

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(8) The Rules are scheduled to [S.I. 2005/ 1478](#)

(9) Sections 13F to 13I were inserted by [S.I. 2005/848](#).

(10) Section 13D was inserted by [S.I. 2005/848](#).

- (a) invite the registrant to respond to the allegation with written representations, together with copies of any other documents which the registrant wishes the Investigation Committee to consider; and
  - (b) inform him that representations received from him will be disclosed, where appropriate, to the person making the allegation (if any).
- (3) A copy of any written comments received from the person making the allegation, following such disclosure to him as is referred to in paragraph (2)(b), shall be sent to the registrant by the registrar.

#### **Representations and documents from the registrant**

5. Where the registrant wishes the Investigation Committee to consider any representations or documents, he or it shall provide these within 28 days of the date upon which the notification under rule 4(2) was served on him or it.

#### **Consideration and investigation by the Investigation Committee**

6. The Investigation Committee shall, following the completion of the procedures set out in rules 4 and 5—
- (a) consider each allegation together with the registrant’s representations under rule 4 and any documents provided by the registrar, the registrant or the person making the allegation (if any); and
  - (b) decide whether any further investigation, including any examination under rule 7, is required.

## **PART 3**

### **ASSESSMENTS OF INDIVIDUAL REGISTRANTS**

#### **Appointment of assessors and direction for assessment by the Investigation Committee**

- 7.—(1) Where the Investigation Committee are considering an allegation against an individual registrant, the Committee may—
- (a) appoint one or more persons to assess and report to them on—
    - (i) the registrant’s health, or
    - (ii) the standard or quality of the work done or being done by the registrant; and
  - (b) direct the registrant to meet with the person or persons appointed and to submit to any examination required for the purposes of their assessment and report.
- (2) Where the Committee give a direction under paragraph (1)(b), they shall specify the matters on which the registrant is to be assessed.

#### **Appointment of assessors and direction for assessment by the Fitness to Practise Committee**

- 8.—(1) Where an allegation against an individual registrant has been referred to the Fitness to Practise Committee under section 13D(6)(b) (reference by registrar following direction from Investigation Committee)(**11**), the Committee may—
- (a) appoint one or more persons to assess and report to them on—

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(11) Section 13D was inserted by S.I. [2005/848](#).

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- (i) the registrant's health, or
  - (ii) the standard or quality of the work done or being done by the registrant; and
- (b) direct the registrant to meet with the person or persons appointed and to submit to any examination required for the purposes of their assessment and report.
- (2) When the Committee give a direction under paragraph (1)(b), they shall specify the matters on which the registrant is to be assessed.

#### **Assessment notification**

9. Where the Investigation Committee or the Fitness to Practise Committee have appointed an assessor under rule 7 or 8, the registrar shall—
- (a) serve on the registrant a notification of the appointment;
  - (b) fix the date of the meeting with the assessor; and
  - (c) serve on the registrant, and on the assessor, a notification of—
    - (i) the date of the meeting, and
    - (ii) the direction the Committee have given under rule 7(1)(b) or 8(1)(b).

#### **Date of meeting**

10. The meeting referred to in rule 9 shall take place no earlier than 28 days after the date upon which the notification required by paragraph (c) of that rule was served on the registrant.

#### **Assessment report**

11. Each assessor appointed under rule 7 or 8 shall, once he has completed his assessment, send a report of the assessment to—
- (a) the registrar; and
  - (b) the registrant.

#### **Failure to submit to or co-operate with an assessment**

12. Where a registrant has failed to submit to, or to co-operate with, any examination required or directed to be carried out under rule 7 or 8, the Fitness to Practise Committee shall draw such inferences as seem appropriate to them in relation to him.

## **PART 4**

### **REFERRAL TO THE FITNESS TO PRACTISE COMMITTEE**

#### **Referral to Fitness to Practise Committee**

13. The Investigation Committee shall, taking into account any report of an assessment carried out under Part 3, decide whether or not an allegation ought to be referred to the Fitness to Practise Committee.

## **Warnings**

14.—(1) Where the Investigation Committee decides that an allegation against a registrant ought not to be considered by the Fitness to Practise Committee, they shall consider whether or not to give a warning to the registrant regarding his or its future conduct or performance.

(2) If it appears to the Committee that they may wish to give a warning, they shall direct the registrar to notify the registrant in writing that he is entitled to make written representations within the period of 28 days beginning with the date of the notice.

(3) The Investigation Committee shall take into account any representations made by the registrant in accordance with paragraph (2).

## **Review of decision not to refer**

15.—(1) Subject to paragraph (2), a decision not to refer an allegation to the Fitness to Practise Committee may be reviewed by the Investigation Committee.

(2) Subject to paragraph (3), the Committee shall not review such a decision unless they consider that there is new evidence or information which makes such a review—

- (a) necessary for the protection of the public;
- (b) necessary for the prevention of injustice to the registrant; or
- (c) otherwise necessary in the public interest.

(3) The Investigation Committee may review such a decision where they receive information that the Council has erred in its administrative handling of the case and they are satisfied that it is necessary in the public interest to do so.

(4) Where the Investigation Committee decides to review a decision, the registrar shall—

- (a) inform the registrant and the maker of the allegation (if any) of the decision to review;
- (b) inform the registrant and the maker of the allegation (if any) of any new evidence or information and, where appropriate, provide them with copies of any new evidence received; and
- (c) seek representations from the registrant and the maker of the allegation (if any) regarding the review of the decision.

(5) Where the Investigation Committee has reviewed a decision, it may—

- (a) determine that the original decision should stand;
- (b) decide that the allegation ought be referred to the Fitness to Practise Committee.

(6) Where the Investigation Committee has reviewed a decision not to refer, the registrar shall notify—

- (a) the registrant;
- (b) the maker of the allegation (if any); and
- (c) any other person he considers has an interest in receiving a notification,

in writing, as soon as reasonably practicable, of the Investigation Committee's decision, together with the reasons for that decision.

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### **Termination of referral**

16.—(1) Where an allegation against a registrant has been referred to the Fitness to Practise Committee under section 13D(6)(b) (reference by registrar following direction from Investigation Committee)(12), the Investigation Committee may review the referral.

(2) If the Investigation Committee no longer consider that the allegation ought to be considered by the Fitness to Practise Committee, the Investigation Committee shall give a direction to that effect and the Fitness to Practise Committee shall not consider that allegation

(3) Where the Investigation Committee give a direction under paragraph (2) the registrar shall notify—

- (a) the registrant;
- (b) the maker of the allegation (if any); and
- (c) any other person he considers has an interest in receiving a notification,

in writing, as soon as reasonably practicable, of the Investigation Committee’s decision, together with the reasons for that decision.

## **PART 5**

### **INTERIM ORDERS**

#### **Notification of application for interim order**

17. Where a matter has been referred to the Fitness to Practise Committee to consider the making of an interim order, the registrar shall serve on the registrant a notification that an application is to be made for an interim order, together with—

- (a) the date of the interim order hearing;
- (b) a statement of the facts constituting the basis of the application;
- (c) the names of any witnesses upon whose evidence the Presenting Officer intends to rely and copies of any statements or reports made by the witnesses;
- (d) copies of any documentary evidence upon which the Presenting Officer intends to rely; and
- (e) the information set out at rule 26(2)(a) to (c).

#### **Date of interim order hearing**

18. Unless the Fitness to Practise Committee are of the view that the public interest requires an earlier hearing, the interim order hearing shall take place no earlier than 7 days after the date upon which the notification was served on the registrant in accordance with rule 17.

#### **Conduct of interim order hearings**

19.—(1) Rules 8 to 12, 20 to 24, 35 to 43, 45 to 49 and 54(2) to 58, shall apply to an application for an interim order, and to interim order hearings, except that references in those Rules to an allegation shall be read as references to the matter to be determined by the Fitness to Practise Committee.

(2) An interim order hearing shall, for the purposes of this rule, be treated as a substantive hearing.

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(12) Section 13D was inserted by S.I. 2005/848.

## PART 6

### HEARINGS OF THE FITNESS TO PRACTISE COMMITTEE

#### Representation

**20.**—(1) The parties to proceedings to be heard before the Fitness to Practise Committee shall be entitled to be heard at any hearing of those proceedings by the Committee.

(2) The parties shall be entitled to be represented at any such hearing by—

- (a) a person with a general qualification (within the meaning of section 71 of the Courts and Legal Services Act 1990);
- (b) an advocate in Scotland, or a solicitor entitled to appear in the Court of Session and the High Court of Justiciary;
- (c) a member of the Bar of Northern Ireland or Solicitor of the Supreme Court of Northern Ireland; or
- (d) in the case of the registrant, any of the following—
  - (i) a representative of any professional organisation of which the registrant is a member,
  - (ii) where the registrant is a business registrant, a responsible officer of the body corporate, or
  - (iii) if the registrant so requests and the Fitness to Practise Committee agree, any other suitable person.

(3) Subject to paragraph (4), where an individual registrant is not represented, he may be accompanied and advised by any person, provided that such person shall not be entitled to address the Committee without their permission.

(4) A person who gives evidence at a hearing shall not, without the permission of the Fitness to Practise Committee, be entitled to represent or accompany the registrant at the hearing.

#### Proceeding in the absence of the registrant

**21.** Where the registrant is neither present nor represented at a hearing, the Fitness to Practise Committee may nevertheless proceed if—

- (a) they are satisfied that all reasonable efforts have been made to notify the registrant of the hearing; and
- (b) having regard to any reasons for absence which have been provided by the registrant, they are satisfied that it is in the public interest to proceed.

#### Joinder

**22.**—(1) If the conditions specified in paragraph (2) are satisfied, the Presenting Officer may apply to the Fitness to Practise Committee at a procedural hearing for a direction that one substantive hearing may be held in relation to two or more registrants.

(2) The conditions are that—

- (a) all reasonable efforts have been made to notify each registrant of the procedural hearing at which the application under paragraph (1) is to be determined; and
- (b) each registrant is offered an opportunity to be heard on the application at the procedural hearing.

(3) The Fitness to Practise Committee may, where just to do so, direct that one hearing be held in relation to two or more registrants and, where such a direction is made—

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- (a) these Rules shall have effect in relation to the hearing with the necessary adaptations; and
- (b) each registrant shall be able to exercise any of the rights granted to him or it under these Rules whether or not any other registrant wishes to exercise that right.

### **Hearings in public**

**23.**—(1) Subject to paragraphs (2) to (5) below, hearings before the Fitness to Practise Committee shall be held in public.

(2) The Fitness to Practise Committee may determine that the public shall be excluded from the proceedings, or any part of the proceedings, where the Committee consider that such exclusion would be appropriate, having regard to—

- (a) the interests of the maker of an allegation (if one has been made);
- (b) the interests of any patient or witness concerned;
- (c) the interests of the registrant; and
- (d) all the circumstances, including the public interest.

(3) Subject to paragraph (4), the Fitness to Practise Committee shall sit in private where they are considering the physical or mental health of the registrant.

(4) Where the Fitness to Practise Committee are considering matters referred to in paragraph (3), they may meet in public where they consider that it would be appropriate to do so, having regard to the matters set out in paragraph (2)(a) to (d).

(5) The Fitness to Practise Committee may at any time deliberate in the absence of the parties, their representatives and the public.

### **Exclusion from hearings**

**24.** The Fitness to Practise Committee may exclude from the whole or any part of a hearing, any person (including a party or his or its representative) whose conduct, in the Committee's opinion, has disrupted or is likely to disrupt the proceedings.

## **PART 7**

### **PROCEDURE AND ORDER OF PROCEEDINGS**

#### **Procedural and substantive hearings**

**25.**—(1) Where an allegation has been referred to the Fitness to Practise Committee—

- (a) there shall be one or more procedural hearings; and
- (b) there shall be a substantive hearing.

(2) Paragraph (1) shall not apply in any case where the Investigation Committee have given a direction under rule 16(2).

#### **Notification**

**26.**—(1) Where an allegation has been referred to the Fitness to Practise Committee, the registrar shall, as soon as is reasonably practicable, serve on the registrant—

- (a) a notification setting out the allegation, the particulars of the allegation and the information set out in paragraph (2);
- (b) a copy of the hearing questionnaire completed by the Presenting Officer;



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- (c) a hearing questionnaire for the registrant to complete;
  - (d) copies of any statements made by witnesses upon whose evidence the Presenting Officer intends to rely; and
  - (e) copies of any documentary evidence upon which the Presenting Officer intends to rely.
- (2) The notification in paragraph (1)(a) shall inform the registrant:
- (a) of his right to attend the hearing and to be represented at the hearing in accordance with rule 20;
  - (b) of the power of the Fitness to Practise Committee to proceed in his absence under rule 21;
  - (c) of his right to adduce evidence in accordance with rule 46 and to call and cross-examine witnesses; and
  - (d) of the Committees powers of disposal under section 13F to 13I.

#### **Completion of hearing questionnaire by the registrant**

**27.** No later than 28 days after the service on the registrant of the hearing questionnaire referred to in rule 26(1)(b), the registrant shall—

- (a) complete the hearing questionnaire served on him or it under rule 26(1)(c); and
- (b) serve it upon the Presenting Officer and the registrar.

#### **Procedural hearing**

**28.** The registrar shall serve on the parties a notification in writing of the date of any procedural hearing.

**29.** A procedural hearing shall not be held earlier than 7 days after the date upon which the hearing questionnaire completed by the registrant was due to be served on the Presenting Officer and the registrar in accordance with the provisions of rule 27.

**30.** At a procedural hearing, the Fitness to Practise Committee—

- (a) may consider the completed hearing questionnaires;
- (b) may invite representations from the parties (if present);
- (c) may establish a timetable for the disclosure of evidence by each party; and
- (d) shall make directions for the further conduct of the matter.

#### **Date of substantive hearing**

**31.** Except where the parties agree that the substantive hearing may follow on immediately from a procedural hearing—

- (a) the registrar shall serve on the parties a notification in writing of the date of the substantive hearing; and
- (b) the substantive hearing shall not be held earlier than 28 days after the date upon which the notification of the date of hearing was served on the registrant.

#### **Advance provision of information**

**32.—(1)** This rule applies to—

- (a) copies of any statements or reports made by witnesses; and
- (b) copies of any documentary evidence,

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upon which the registrant or the Presenting Officer intend to rely and which each agrees may be disclosed to the other and to the Fitness to Practise Committee in advance of the substantive hearing.

(2) Subject to any timetable for disclosure of evidence established under rule 30, each party shall, no later than 14 days before the date fixed for the substantive hearing, provide to the other the copies of documents to which this rule applies.

### **Committee copies of documents**

**33.** No later than 7 days before the date fixed for the substantive hearing, the registrar shall provide to the Fitness to Practise Committee copies of all documents provided under rule 32.

### **Amendment of particulars of allegation**

**34.**—(1) The Presenting Officer may apply to the Fitness to Practise Committee for the particulars of the allegation contained in the notification served under rule 26(1)(a) to be amended.

(2) The Fitness to Practise Committee may grant such an application where they are satisfied that it is just to do so.

(3) If the Fitness to Practise Committee decide to amend the particulars of the allegation at a procedural hearing and the registrant is not present at the hearing at which the matter is considered, they shall direct the registrar to serve on the registrant notification of the amended particulars of allegation.

### **Adjournment**

**35.**—(1) At any stage a party may apply to the Fitness to Practise Committee for the adjournment of a hearing.

(2) Such an application shall be heard either at the hearing at which the application is made or, if the application is made otherwise than at a hearing, on the next date upon which the Fitness to Practise Committee sit.

**36.**—(1) Upon the hearing of an application under rule 35, or of their own motion, the Fitness to Practise Committee may adjourn a hearing.

(2) When announcing their decision, the Committee shall, if granting the application fix a new date for the hearing.

**37.** Where the Fitness to Practise Committee decide to adjourn a hearing under rule 36, the registrar shall serve on the parties a notification of the adjournment and the new date for the hearing.

### **Admissibility of evidence**

**38.**—(1) Subject to paragraphs (2) and (3), the Fitness to Practise Committee may admit any evidence they consider fair and relevant to the case before them, whether or not such evidence would be admissible in a court of law.

(2) Where evidence would not be admissible in criminal proceedings in England and Wales, the Committee shall not admit such evidence unless, on the advice of the legal adviser, they are satisfied that their duty of making due inquiry into the case before them makes its admission desirable.

(3) Evidence which has not been disclosed in accordance with rule 32 or any timetable established by the Fitness to Practise Committee under rule 30 shall be admitted only with the permission of the Fitness to Practise Committee given at the substantive hearing.

### **Vulnerable witnesses**

**39.**—(1) In proceedings before the Fitness to Practise Committee, the following may, if the quality of their evidence is likely to be adversely affected as a result, be treated as a vulnerable witness—

- (a) any witness under the age of 17 at the time of the hearing;
- (b) any witness with a mental disorder within the meaning of the Mental Health Act 1983<sup>(13)</sup>;
- (c) any witness who is significantly impaired in relation to intelligence and social functioning;
- (d) any witness with physical disabilities who requires assistance to give evidence;
- (e) any witness, where the allegation against the registrant is of a sexual nature and the witness was the alleged victim; and
- (f) any witness who complains of intimidation.

(2) Subject to the advice of the legal adviser, and upon hearing representations from the parties, the Committee may adopt such measures as it considers desirable to enable it to receive evidence from a vulnerable witness.

(3) Measures adopted by the Committee may include, but shall not be limited to—

- (a) use of video links;
- (b) use of pre-recorded evidence as the evidence-in-chief of a witness, provided always that such witness is available at the hearing for cross-examination and questioning by the Committee;
- (c) use of interpreters (including signers and translators) or intermediaries;
- (d) use of screens or such other measures as the Committee consider necessary in the circumstances in order to prevent—
  - (i) the identity of the witness being revealed to the press or the general public; or
  - (ii) access to the witness by the registrant; and
- (e) the hearing of evidence by the Committee in private.

(4) Where—

- (a) the allegation against a registrant is based on facts which are sexual in nature;
- (b) a witness is an alleged victim; and
- (c) the registrant is acting in person,

the registrant shall not without the written consent of the witness be allowed to cross-examine the witness in person.

(5) In the circumstances set out in paragraph (4), in the absence of written consent, the registrant shall no less than 7 days before the hearing appoint a legally qualified person to cross-examine the witness on his behalf, and in default, the Council shall appoint such person on behalf of the registrant.

### **Evidence on oath**

**40.** Witnesses shall be required to take an oath, or to affirm, before giving oral evidence at a hearing.

### **Legal advisers**

**41.** The Fitness to Practise Committee shall be advised by a legal adviser who shall—

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(13) 1983 c. 20.

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- (a) be present at all hearings;
- (b) advise the Committee on any matters of law, evidence or procedure which are referred to him by the Committee;
- (c) advise the Committee on an issue of law where it appears to him that, without his intervention, there is the possibility of a mistake of law being made;
- (d) intervene to advise the Committee or the Panel of any irregularity in the conduct of the proceedings which comes to his knowledge;
- (e) ensure that—
  - (i) advice given to the Committee under paragraph (b) is tendered in the presence of the parties attending the hearing, or
  - (ii) if the advice is tendered after the Committee have begun to deliberate as to their findings, every such party is informed as to the advice given; and
- (f) if the Committee so require, advise on the drafting of the Committee's decisions.

#### **Clinical advisers**

**42.** Where a registrant's physical or mental health is to be considered by the Fitness to Practise Committee, the Committee shall be advised by a clinical adviser who shall—

- (a) be present at the hearing at which the registrant's physical or mental health is to be considered;
- (b) advise the Committee on the significance of any evidence before them pertaining to the registrant's physical or mental health;
- (c) ensure that—
  - (i) advice given to the Committee under paragraph (b) is tendered in the presence of the parties attending the hearing, or
  - (ii) if the advice is tendered after the Committee have begun to deliberate as to their findings, every such party is informed as to the advice given.

#### **Specialist advisers**

**43.** Where a specialist adviser has been appointed in relation to a matter to be considered at a substantive hearing, the adviser shall—

- (a) be present at the hearing;
- (b) advise the Fitness to Practise Committee on matters relating to the specialty for which he has been appointed;
- (c) ensure that—
  - (i) that advice given to the Committee under paragraph (b) is tendered in the presence of the parties attending the hearing,
  - (ii) if the advice is tendered after the Committee have begun to deliberate as to their findings, that every such party is informed as to the advice given.

#### **Admissions**

**44.** If the registrant is present at the hearing, the Fitness to Practise Committee shall ascertain whether the registrant wishes to make any admissions.

### **Presentation of the Presenting Officer's case**

**45.**—(1) The Presenting Officer shall address the Fitness to Practise Committee in relation to each allegation and may call witnesses and adduce documentary and other evidence in support.

(2) Any witness who gives oral evidence under paragraph (1) may be cross-examined by the registrant and re-examined by the Presenting Officer.

### **Presentation of the registrant's case**

**46.**—(1) Following the presentation of evidence by the Presenting Officer, the registrant may address the Fitness to Practise Committee in relation to each allegation and may call witnesses and adduce documentary and other evidence in support.

(2) Any witness who gives oral evidence under paragraph (1) may be cross-examined by the Presenting Officer and re-examined by the registrant.

### **Evidence in rebuttal**

**47.**—(1) The Presenting Officer may, with the permission of the Fitness to Practice Committee, call witnesses and adduce documentary and other evidence in rebuttal of any matter raised by the registrant.

(2) Any witness who gives oral evidence under paragraph (1) may be cross-examined by the registrant and re-examined by the Presenting Officer.

### **Questions**

**48.** In addition to any question put to any witness pursuant to rules 45 to 47, questions may also be put by—

- (a) a member of the Fitness to Practise Committee; and
- (b) with the permission of the Chairman of the Committee—
  - (i) the legal adviser,
  - (ii) a clinical adviser, where appointed, on matters relating to the physical or mental health of the registrant, and
  - (iii) a specialist adviser, where appointed, on matters relating to the specialty for which he has been appointed.

### **Submissions**

**49.**—(1) Following the presentation of evidence, including any evidence in rebuttal, the Presenting Officer shall be entitled to address the Fitness to Practise Committee.

(2) Following any address made by the Presenting Officer, the registrant shall be entitled to address the Fitness to Practise Committee.

### **Findings**

**50.** The Fitness to Practise Committee shall then determine their findings as to fact and as to whether or not the allegation is proven.

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## PART 8

### ORDERS OF THE FITNESS TO PRACTISE COMMITTEE

#### **Declarations where allegation not proven**

**51.** Where, in the case of an individual registrant, it has been alleged that his fitness to practise was impaired but the Fitness to Practise Committee decide that he is fit to practise—

- (a) the Committee shall, if requested by the registrant, make a declaration to that effect, giving their reasons; or
- (b) the Committee may, if no such request is made but the registrant nonetheless consents, make such a declaration.

**52.** Where, in the case of a business registrant, it has been alleged that the registrant was not fit to carry on the business of an optometrist or a dispensing optician or both but the Fitness to Practise Committee decide that the registrant is fit to carry on that business—

- (a) the Committee shall, if requested by the registrant, make a declaration to that effect, giving their reasons;
- (b) the Committee may, if no such request is made but the registrant nonetheless consents, make such a declaration.

#### **Submissions etc. as to orders**

**53.** Where the determination of the Fitness to Practise Committee under rule 50 is that an allegation is proven, the Committee may receive further evidence and hear any further submissions from the Presenting Officer and the registrant as to the appropriate order, if any, to be made.

#### **Orders of the Fitness to Practise Committee**

**54.**—(1) The Fitness to Practise Committee shall then deliberate and decide whether to make any direction or order under sections 13F to 13I (which set out the powers of the Fitness to Practise Committee)(14).

(2) The Fitness to Practise Committee shall announce their decisions as to any directions or orders to be made.

#### **Written decision**

**55.** The Fitness to Practise Committee shall give the parties a written record of their decisions under these Rules, together with reasons for any decision made.

#### **Costs and expenses**

**56.** The Fitness to Practise Committee may, as they think fit, summarily assess the costs of any party to the proceedings and order any party to pay all or part of the costs or expenses of any other party.

**57.** Where the Fitness to Practise Committee are considering an order under rule 56 and are considering making an award against an individual registrant, they shall take into account his ability to pay.

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(14) Sections 13F to 13I were inserted by S.I. [2005/848](#).

### **Period of payment**

**58.** Where the Fitness to Practise Committee have made an order under rule 56, they may specify the period within which the costs or expenses are to be paid.

## **PART 9 REVIEWS**

### **Referral of a review**

**59.** Where the Fitness to Practise Committee have previously made an interim order, conditional order or suspension order in respect of a registrant, the registrar—

- (a) shall refer the case to the Committee for the purposes of sections 13F(10) or 13L(3)(a) or (9); or
- (b) may refer the case to the Committee where new evidence is received by the Council which, in the registrar's opinion, suggests that an order imposed on the registrant's registration ought to be reviewed.

### **Notice of review**

**60.** The registrar shall serve on the registrant notification of the date of the proposed review of an interim order, a conditional order or a suspension order together with—

- (a) a copy of any statement, report or other document which:
  - (i) the registrant has not previously been sent; and
  - (ii) is relevant to the review; and
- (b) the information set out at rule 26(2)(a) to (c).

### **Date of review**

**61.** Unless the Fitness to Practise Committee are of the view that the public interest requires an earlier hearing or with the agreement of the registrant, a hearing to review an interim order, a conditional order or a suspension order shall not be held earlier than 28 days after the date upon which the notification was served on the registrant by virtue of rule 60.

### **Conduct of review hearing.**

**62.—(1)** The review of an interim order, a conditional order or a suspension order shall be conducted in accordance with the provisions of rules 8 to 12, 20 to 24, 32 and 33, 35 to 43, 45 to 49 and 54(2) to 58, except that references to allegations shall be read—

- (a) as references to the basis of the matter to be determined by the Fitness to Practise Committee; and
  - (b) as including references to the registrant's compliance with the order in question since its imposition.
- (2) The review hearing shall, for the purposes of this rule, be treated as a substantive hearing.

*Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.*

## PART 10

### MISCELLANEOUS

#### **Voting**

**63.**—(1) Decisions of the Investigation Committee and Fitness to Practise Committee shall be taken by a simple majority.

(2) No Chairman of a Committee may exercise a casting vote.

(3) No member of a Committee may abstain from voting.

(4) Where the votes are equal the Committee shall decide the issue under consideration in favour of the registrant.

#### **Record of Hearing**

**64.** A verbatim record, in either written or electronic form, shall be taken of every hearing before the Fitness to Practise Committee.

#### **Service of documents**

**65.**—(1) Any notice of hearing required to be served upon the registrant under these Rules shall be served in accordance with section 23A (service of notification)(15).

(2) If the registrant is represented by a solicitor, any such notice shall be served at the solicitor's practising address.

(3) Any other notice or document to be served on a person under these Rules may be sent by ordinary post.

(4) The service of any notice or document under these Rules may be proved by—

(a) a confirmation of posting issued by or on behalf of the Post Office, or other postal operator or delivery service; or

(b) a signed statement from any person serving the notice or document by hand.

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(15) Section 23A was inserted by S.I. 2005/848.