
Guidance for the Investigation Committee on oral hearings

Introduction

1. This guidance is for use by the Investigation Committee ('Committee') when an allegation has been referred to it for an oral hearing to decide on the question of whether to issue a doctor with a warning. This guidance will also be of assistance to doctors called to a hearing of the Committee.
2. This guidance should be read in conjunction with the factsheet on Warnings. Where a doctor's fitness to practise is not impaired but there has been a significant departure from the principles set out in the GMC's guidance Good medical practice, a warning may be issued. This decision is taken by the case examiners at the end of the investigation stage of our procedures. Where the case examiners consider that it may be appropriate to conclude a case with a warning and the doctor disputes the facts or is not willing to accept a warning and exercises his/her right to an oral hearing, the Committee is convened to consider the case.
3. Under rule 11(6)(a)-(c) of the Fitness to Practise Rules (as amended), the Committee makes one of the following decisions:
 - a. That the matter should be closed without further action;
 - b. That a warning should be issued; or
 - c. Where new information presented to the hearing indicates that it would be appropriate to do so, the Committee will refer the allegation for determination by a medical practitioners tribunal of the Medical Practitioners Tribunal Service.

4. The Registrar is required to inform the doctor of the Committee's decision and the reasons for it.

Investigation Committee procedure

5. The Committee is part of the GMC's investigation function. Its procedures are set out in the Fitness to Practise Rules. Ahead of the hearing, the GMC will write to the doctor to give notice of the hearing and to confirm the arrangements. This will include the date, time and location of the hearing as well as the details of the allegation and the facts upon which it is based.

6. Committee hearings are held in public except where matters relating to the doctor's health or the health of other individuals involved with the case may lead the Committee to conclude that it should be held in private. The details of the hearing will also be made publicly available in advance on the GMC's website and through a press release.

7. When the Committee is convened for an oral hearing, it is constituted with three members, a chair, a medical tribunal member and a non-medical member, drawn from a pool of tribunal member. They are appointed through open competition against agreed competencies.

8. A legal assessor will also be appointed to advise the Committee on points of law including the procedure and powers of the Committee.

9. The GMC will normally be represented at the hearing by a Barrister. The doctor is invited to attend and is usually present and legally represented. The Committee may decide to continue with the hearing even in the absence of the doctor or their legal representative.

Presenting evidence at the Committee hearing

10. At the hearing, the GMC will present the case for a warning to be issued against the doctor. The doctor or their legal representative will then have the opportunity to respond.

11. Rule 11(7) sets out the rules relating to evidence at the hearing before the Committee reaches its decision.

12. Under rule 11(7)(a), the GMC presenting officer must outline the allegation against the doctor and the facts upon which it is based and may present supporting documentary evidence. The GMC presenting officer may only present oral evidence if the Committee considers it necessary to hear from witnesses in order to enable it to reach its decision in the case.

13. Under rule 11(7)(b), if the doctor wishes to do so, he/she may respond to the allegation and present any relevant documentary evidence. The doctor also may

only present oral evidence if the Committee considers it necessary to hear from witnesses in order to enable it to reach its decision in the case.

14. Rule 11(7)(d) allows the Committee to adjourn the hearing, before it reaches its decision for further investigations to be made.

15. The Committee should refer an allegation to a medical practitioners tribunal where it receives new evidence that had not been available to the Case Examiners and which the Committee considers is suggestive of a realistic prospect of a finding of impairment.

16. If the Committee considers that there is a realistic prospect of establishing that the doctor's fitness to practise is impaired, it should not consider any evidence in mitigation. Evidence in mitigation is a matter for a medical practitioners tribunal to consider at the sanction stage.

Making the decision

17. Prior to making a final decision, the Committee may adjourn for further investigation to be carried out. This may include an assessment of the doctor's professional performance or health.

18. In making a final decision, the Committee may also consider any previous fitness to practise history either with the GMC or another regulatory body.

19. Following the hearing, the Committee may:

- Confirm that the warning should be issued
- Conclude the case with no action
- Refer the case to a medical practitioners tribunal hearing (where new evidence arising during the hearing indicates that it would be appropriate to do so).

20. The GMC will write to the doctor enclosing a formal notice of decision to inform him/her of the outcome. If the Committee has issued a warning, this notification will include the details of the warning.

Postponements and adjournments of hearings

21. Rule 29(1)(a) provides that before the opening of a hearing, a member of the Committee may postpone the hearing. Rule 29(2) provides that, after a hearing has begun, the Committee may, at any stage of the proceedings, adjourn the hearing. The decision to postpone or to adjourn the proceedings may result from the Committee considering it appropriate to do so or because one of the parties to the proceedings has requested a postponement or an adjournment. The Committee will decide the time and the date that the hearing should start or resume.

22. Possible reasons for postponement or adjournment could include practical case administration matters. For example, there might arise an unforeseen change in the availability of a Committee member, one of the parties or a witness.

23. Rule 29(3) provides that no hearing shall be postponed or adjourned unless the parties have been given a reasonable opportunity to make representations on the matter.

24. In considering any representations received, the Committee will take into account the circumstances of the case, including the effect of any delay on the fairness of the proceedings and whether postponement or adjournment will be proportionate and in the interests of justice.

25. The factors taken into consideration may include the following, non-exhaustive, examples:

- The benefit of granting of a postponement against the resulting delay in outcome
- The risk of proceeding without the doctor and of any resulting prejudice to their case and the public interest in a timely resolution.
- If the Committee considers that the hearing of oral evidence is necessary to enable it to make its decision, the availability of, and impact of a postponement or adjournment on witnesses (both lay and expert) must be considered. This in turn might impact on the efficiency of the proceedings.

Substitution of members of the Committee

26. The need to substitute a tribunal member may arise following resumption of a hearing. This might be because a Committee member is no longer available (for example, due to ill health) or is no longer eligible to hear the case (for example, because of a conflict of interest which has arisen).

27. In practice, the need for substitution of tribunal member during the proceedings will occur rarely. This is because the remit of the Committee is limited to consideration of whether or not a warning should be issued to a doctor. Committee hearings are relatively short and any adjournment should therefore normally be brief.

28. Should the need to appoint a new tribunal member arise, any adjournment should be kept as short as possible as prolonged uncertainty should be avoided.

29. Rule 29(5) requires that, when a Committee hearing is resumed following an adjournment, if there has been substitution of a Committee member, the

Committee may, having first heard representations from the parties, issue directions which it considers necessary in the interests of justice, about:

- The stage at which the hearing is to be resumed; and
- Any special procedure which must be followed.

30. The factors which the Committee will take into consideration when deciding how to continue with the hearing will include, but are not limited to:

- The stage the hearing has reached.
- Fairness to the parties if there is further delay due to resuming at a particular point.
- Where the Committee has decided that oral evidence is necessary to enable it to reach a decision, the Committee will decide whether transcripts will be a sufficient substitute to rehearing oral evidence already given; it will take into account whether it is possible or appropriate to recall witnesses and the impact of doing so on the fairness and efficiency of the proceedings.

31. The Committee will provide a reasoned determination setting out, for example, the stage at which the hearing will resume and directions as to the procedure to be adopted to enable the hearing to be concluded with the substituted Committee member.