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## Giving evidence – guidance for registrants & representatives

### Fitness to practise fact sheet

#### What does giving evidence mean?

Evidence is gathered during the investigation and may be produced at a hearing. It can be spoken (oral evidence), on paper (documentary evidence) or in another format such as a video. Registrants have a right to give evidence at a hearing. There will also be other people, such as witnesses, giving their evidence at a hearing. The HCPC's case will be presented by a presenting officer, who is a lawyer acting for the HCPC.

Before someone gives evidence, they will be asked to take an oath or affirmation to confirm that they promise to tell the truth during their evidence.

When someone gives evidence:

- the Committee will listen to what is being said or look at what is being shown;
- the Committee may ask questions about what is being said or shown;
- the HCPC, registrant or representatives may ask the other party questions about their evidence - this is called cross-examination.

You can find more information about [what happens at a hearing](#) on the HCPTS website.

#### Should I give evidence?

You have the right to give evidence, but you do not have to. The Committee or the HCPC cannot require you to give evidence. However, there could be consequences for you if you do not give evidence, which are explained below. Therefore, deciding whether or not to give evidence is an important decision. Key factors to take into account are explained in this fact sheet.

The HCPC or HCPTS cannot advise you on whether you should give evidence.

At the hearing, the Committee is advised by an independent lawyer called a legal assessor. They can explain to you what giving evidence means and the process involved, but they cannot advise you on whether or not you should give evidence.

A trade union, professional body, or legal representative can give you advice to help you with your decision. If you do not have a representative, you may want to consider speaking to one before making a decision.

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## What happens if I give evidence?

If you give evidence, the Committee hearing the case will listen to what you have to say. The Committee and the presenting officer may ask you questions about:

- what you have said; and
- things you have not said, but which are relevant to the issues the Committee have to consider.

## What could happen if I decide not to give evidence?

You do not have to give evidence. When considering whether or not to give evidence, you should remember:

- the HCPC have made the allegation against you;
- the HCPC must prove this allegation (this is sometimes called the burden or standard of proof) and the burden of proof is on the HCPC;
- the Committee cannot find the facts proven unless:
  - you admit them; or
  - the Committee is satisfied that, on the balance of probabilities, you did or failed to do what is alleged.

### **Adverse inferences**

In some circumstances, if you do not give evidence, the Committee may draw what is often called an 'adverse inference'. This means that they may decide that you do not have a justifiable explanation for some or all of the facts alleged against you.

They can only draw an adverse inference where:

- you have been given notice and have been warned that such an adverse inference may be drawn by the Committee;
- the Committee are satisfied that it would be fair and appropriate to do so; and
- if certain procedural safeguards and conditions have been met.

The requirements are set out on page 7 of the [Practice Note on Evidence](#) under the heading 'Registrants not giving evidence'. Please read this carefully because it contains important information which will help you decide whether to give evidence or not.

## Jargon buster

### **Adverse inference**

The decision that there is no justifiable explanation for some or all of the alleged facts.

### **Burden of proof / standard of proof**

The responsibility to prove whether an allegation is true or not.

### **Legal assessor**

An independent lawyer who has the ability to advise you on what giving evidence means and what the process looks like.

### **Presenting officer**

A lawyer acting for the HCPC and presenting the case.