



Council
10 May 2021
Draft Remote Hearings Guidance and Protocol

Classification	Public
Purpose	For decision
Issue	This paper invites Council to agree the amended draft Remote Hearings Guidance and Protocol following a public consultation held between 15 February - 5 April 2022.
Recommendation	To agree the draft Remote Hearings Guidance and Protocol.
Financial and resourcing implications	Within existing budgets.
Equality and diversity implications	An Equality Impact Assessment was carried out prior to a public consultation being undertaken.
Communications implications	A public consultation has been undertaken. The results of the consultation are set out in Annex A. If approved, the guidance will be published on our website and available to all participants in our hearings.
Annexes	A. Consultation Responses B. Draft Remote Hearings: Guidance and Protocol
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Key messages from the paper:

- Prior to the COVID-19 pandemic and the introduction of national restrictions in March 2020, our fitness to practise hearings were held in-person at Osteopathy House, London.
- The Interim Remote Hearings Protocol, approved by Council in July 2020, was introduced as an interim measure to enable us to continue to fulfil our statutory function and progress fitness to practise hearings during the Covid 19 pandemic and lockdowns.
- As part of our pre-consultation activity, we carefully evaluated the experiences of remote hearings both at the GOsC and other jurisdictions. We also conducted a comprehensive literature review of existing protocols and guidance within other jurisdictions, including the civil and criminal courts.
- We also actively sought feedback from all participants post-hearing to ensure that any improvements identified are proactively addressed and incorporated within our new draft guidance and protocol.
- A public consultation took place from 15 February to 5 April 2022. The results of which are set out at Annex A.

Background

1. Throughout the whole period of the pandemic and restrictions imposed, we continued to manage urgent hearings remotely, including hearings of interim suspension orders, reviews and some part-heard cases. Over a short period of time, we acted quickly, flexibly and responsibly in adapting to significant challenges arising due to the pandemic. We recommenced listing substantive hearings remotely from July 2020 onwards.
2. We have held some cases as 'blended' or 'hybrid' hearings. These are hearings in which some people attend 'virtually' via our online platform and others are physically present at Osteopathy House. Our aim has always been to ensure that all those involved in fitness to practise hearings are able to participate in proceedings safely and effectively. To facilitate and manage this, several measures were introduced and activities undertaken to ensure our hearings and meetings continue to be fair, accessible and transparent, including:
 - an Interim Protocol for Remote Hearings was introduced and approved by Council in July 2020;
 - a bespoke half-day training session was held in June 2020, attended by all panellists, and led by an experienced legal assessor;
 - tailored training and assistance on the use of the relevant electronic meeting platforms was made available for every panellist;

- a revised Practice Note on Questioning Witnesses was approved by Council to assist at remote hearings;
 - a cloud-based system called 'CaseLines' was piloted successfully in August 2020. CaseLines is an electronic evidence preparation and presentation system which enables confidential hearing documents to be prepared, shared and accessed securely for fitness to practise hearings. Following training being provided to both the Investigating Committee and Professional Conduct Committee members in November 2020, CaseLines is now used by all parties in our meetings and hearings;
 - we drafted a separate fitness to practise risk register to identify and manage risks in remote and blended hearings.
3. Between 23 March 2020 and 31 December 2021, we held 63 remote/blended hearings and meetings over a total of 168 days. These comprised interim order applications, substantive reviews, investigating committee meetings and both review and final hearings.

Discussion

4. Prior to consultation, we conducted a general review of the interim remote hearings protocol to incorporate feedback, insights and build on the learning we have acquired so far. We have developed this understanding from:
- the experiences of participants of our remote and blended hearings;
 - careful evaluating the experiences of remote hearings across other jurisdictions;
 - a literature review we conducted of existing protocols and guidance within other jurisdictions, including the civil and criminal courts and in particular, the HMCTS (HM Courts and Tribunal Service) remote hearing evaluation of remote hearings during the COVID-19 pandemic, which was published in December 2021.¹
5. The HMCTS report concluded that in determining whether to hold hearings remotely, the perceived vulnerability of parties was, by some extent, the most important factor in influencing this decision. Other relevant factors were: likely hearing length and complexity, self-representation of the party, type of case (i.e. crime), number of witnesses; severity of the case and therefore potential seriousness of outcome; stated preference of public users; and health considerations. Two thirds of public users felt remote hearings were an acceptable alternative during the pandemic, and over half felt they would be acceptable afterwards. Reassuringly, many participants interviewed for the

¹https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1040183/Evaluation_of_remote_hearings_v23.pdf

HMCTS report felt that remote hearing had not impacted on fairness and impartiality of the proceedings.

6. From feedback we have received, and from our own observations from managing remote and blended hearings since July 2020, the main issues for all participants have been technological issues including inconsistent audio quality, Wi-Fi issues such as 'freezing' screens and people being disconnected. Our wider research together with our experience of remote hearings to date is that certain requests are easier to manage in remote hearings. For example, where a vulnerable witness requires screens in the hearing, this can be effectively achieved in a remote hearing by switching cameras off.
7. In addition, for parties with certain health conditions or requiring reasonable adjustments and where it may be challenging for them to travel to the in-person hearing, we have found that remote hearings can make attendance more straightforward. However, people who do not communicate regularly in the remote setting can find it disconcerting and struggle to follow what is happening in an already unfamiliar legal process. Body language and signs of distress might also be more difficult to pick up.
8. Because of the efficiencies and flexibility afforded by remote hearings, we anticipate that they will continue to be utilised for the foreseeable future, post pandemic. We have therefore revised the Remote Hearings Guidance and Protocol which has been designed to set out the framework and our approach to managing remote hearings into the future, providing guidance for all hearing attendees, including members of the public.
9. The Remote Hearings Guidance is separated into two parts, the first part is guidance the conduct of hearings that may be conducted remotely (whether fully or in part). The second part sets out the procedural and logistical arrangements for preparing and attending a remote hearing and covers the process, presentation and management of witnesses. We have also included within the annexe a guide to CaseLines, the secure, purpose-built software for managing evidence review in our remote hearings. This is intended to provide hearing participants with guidance about how to use the basic functions of CaseLines during a hearing.
10. A summary of the main changes in the draft Remote Hearings Guidance and Protocol includes:
 - a new section on identifying in advance cases that should be conducted in person or remotely.
 - general updates on the conduct of the hearing and procedure taking account of our experiences of remote hearings and learning.
 - a new guide on using CaseLines.

The Consultation

11. As part of our pre-consultation engagement plan, we also invited feedback from panellists and legal assessors in August 2021 and again at the annual training days in November and December 2021, on their experiences of remote/hybrid hearings. Feedback was very positive on the facilities and support provided to all witnesses.
12. A public consultation on our draft guidance was undertaken from 15 February to 5 April 2022. In total, we received 3 formal responses to the consultation (from a Legal Assessor, the Chair of the Professional Conduct Committee and an osteopath member of the Professional Conduct Committee). These responses, together with our responses are set out in Annex A.

Recommendation: To agree the Remote Hearings: Guidance and Protocol at Annex B

Annex A to 11

Responses to the consultation on the Remote Hearings Guidance and Protocol

Consultation Question	Yes	No	Consultation response ²	GOsC Response (where relevant)
<p>Did you find the guidance clear and accessible?</p> <p>Please provide any suggestions about how the draft Guidance might be made clearer or more accessible</p>	3	0	<p>I suggest in para. 28 making it clear that legal assessors will receive a link to the panel room too, just for the avoidance of doubt.</p> <p>In para. 62 it is not always possible to password protect documents if using a Mac of example. In those circumstances there is end to end encryption often - I would suggest being less prescriptive about this element.</p>	<p>We have made this amendment to make it clearer that legal assessors will also receive a link to the panel room.</p> <p>We consider that the paragraph, as drafted, provides sufficient flexibility as to the circumstances of sharing the panel draft decision whilst adhering to confidentiality and our compliance with data protection.</p>
<p>Have you had direct experience of a remote hearing at GOsC?</p> <p>If so, in what context or in what capacity were you involved, e.g.</p>	3	0	<p>Legal Assessor, Panel Chair, Registrant panel member</p> <p>Works well to use MS Teams in the panel room and advocates rooms as the band width required is less and it is easier to share the screen</p>	<p>We intend to conduct an internal review of the platform we use for different types of meetings and hearings</p>

² Some responses may have been shortened

Annex A to 11

Consultation Question	Yes	No	Consultation response ²	GOsC Response (where relevant)
<p>were you a witness, registrant, legal representative?</p> <p>What factors did you think worked well?</p> <p>What could have been improved?</p>			<p>Technology (ie GoToMeeting), generally. Caselines</p> <p>Witnesses could give their evidence from a familiar environment without the potentially daunting experience of coming to Osteopathy House.</p> <p>Go To Meeting uses considerable band width. I would suggest considering a wholesale switch to Teams</p> <p>Timekeeping of the parties</p> <p>Variations in individuals IT setups which occasionally caused connection issues. Perhaps, if an individual has low-quality tech, there could be on-loan substitutes. If their broadband is of low quality then an alternative venue might be necessary.</p>	
Do you think there are any implications for	2	1	I think there is an assumption that vulnerable witnesses might always be best supported by giving evidence remotely,	We recognise that the reliance on videoconference technology could potentially place barriers to access if not accompanied by

Annex A to 11

Consultation Question	Yes	No	Consultation response ²	GOsC Response (where relevant)
<p>vulnerable witnesses, children or groups with specific protected characteristics as a result of this guidance?</p> <p>If yes, please explain what could be done to address this?</p>			<p>largely from home. I have sat on some cases where it was evident that the witness was alone in the house and being asked questions about upsetting events or matters. We should be careful to ensure that we do not make assumptions about the best place to give evidence. Equally, we should not assume that the only remote location from which a witness might give evidence is their own home particularly if the only choice is a long journey to London.</p> <p>Chaperoning and screening of venues may be necessary.</p>	<p>appropriate support. We have therefore ensured that any potential accessibility and other issues are explored with all parties in advance of the hearing, including individual support for each witness to enable them to give their best evidence. We also provide individual training on Caselines (the secure, purpose-built software for managing evidence review in remote hearings at GOsC).</p> <p>We have also added an additional section to the guidance explaining that we will carefully review every case awaiting PCC consideration to determine whether or not an 'in person' or remote hearing will be appropriate, giving careful consideration to the individual features and circumstances of each case. This includes, where there are particular complexities specific to individual cases (for example, any disabilities or other vulnerabilities or requirements of any of the participants)</p>
Are there inclusion,	2	1	Any hearing format has the potential for discriminating and remote hearings are no	Please comments above

Annex A to 11

Consultation Question	Yes	No	Consultation response ²	GOsC Response (where relevant)
<p>diversity or equality aspects which may be unfair or discriminate against people with particular protected characteristics?</p> <p>If yes, please provide more information about these aspects and how any unfairness could be mitigated.</p>			<p>different. Protected characteristics should be identified and every attempt made to mitigate.</p> <p>Some [individuals] will find the use of digital platforms either challenging or impossible. There should be systems in place to identify these on a case-by-case basis.</p>	
Do you consider that the approach proposed in this consultation supports our overarching objective of	3	0	Clearly hearings can be conducted more expeditiously and more cost effectively. That is both helpful for the profession and the subscriptions paid by Registrants and also serves the overarching purpose of protecting the public.	

Annex A to 11

Consultation Question	Yes	No	Consultation response ²	GOsC Response (where relevant)
<p>public protection? This includes:</p> <p>a. protecting, promoting and maintaining the health, safety and well-being of the public</p> <p>b. promoting and maintaining public confidence in the profession of osteopathy</p> <p>c. promoting and maintaining proper professional standards and conduct for osteopaths</p>				

Annex A to 11

Consultation Question	Yes	No	Consultation response ²	GOsC Response (where relevant)
Please provide additional comments			Despite everyone's best efforts, remote hearings are not the same as in-person and, as such, may have different justice outcomes. It would be preferable to return to in-person hearings as soon as possible.	