



## Remote Hearings Protocol

### Introduction

- 1 The overarching objective of hearings before the Professional Conduct Committee is protection of the public. This requires complaints to be heard and adjudicated upon and, if appropriate, sanctions to be imposed or advice to be given within a reasonable time.
- 2 A delay in proceedings is capable of adversely affecting the overarching objective. It is also unfair to expect registrants, complainants and other witnesses to endure lengthy delays in the progression of cases,
- 3 The current pandemic has prevented the timely hearing of cases 'in person'. Commensurate with the overarching objective, the GOC considers that pragmatic and fair alternatives to 'in person' hearings should be used where appropriate. As such, the pandemic necessitates the use of remote hearings (where the hearing is conducted by on line video conference platform) or 'blended' hearings (where some of the parties, including witnesses, in the hearing attend in person at the GOC's hearing rooms while others attend by video conference) to ensure that all those involved in its fitness to practise hearings can participate in proceedings safely.
- 4 Not all cases are suitable for being dealt with remotely. The overarching consideration is whether fairness and justice can be achieved remotely.
- 5 Effectiveness depends upon the individual witness feeling enabled to give their best evidence. Provided that the technology functions properly and witnesses are given the same advice as other parties about presentation, sound and lighting, there is no empirical research to suggest that vulnerable or other witnesses including registrants are less effective 'online' as opposed to being 'seen' in person by a court or tribunal. The PCC should focus on the content of the witnesses' evidence together with its clarity and consistency with other evidence and known facts in the case.
- 6 In practice, it is relatively routine for witnesses, including vulnerable witnesses, to provide evidence via live link and this has been shown to assist witnesses in achieving their best evidence.<sup>1</sup>

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<sup>1</sup> The use of live link is now standard in criminal and regulatory proceedings where a witness is vulnerable through age or where the complaint is sexual in nature.

- 7 This protocol is designed to assist all hearing attendees including fitness to practise committee members, case parties, legal representatives, the legal assessor, witnesses and GOsC hearing staff. It sets out guidance for attending a remote hearing and covers the process, presentation and access to documentation and management of witnesses.
- 8 This guidance will be reviewed regularly and updated as the government advice on managing the transmission risk of COVID-19 evolves.

## **At the Hearing**

- 9 The Chair should establish a speaking protocol at the outset. This may involve participants, when introduced, acknowledging the introduction by raising their hand rather than speaking. This is preferable to a brief nod which may be imperceptible on smaller thumbnail videos.
- 10 The Chair should remind parties and witnesses in 'plain terms' that a remote hearing is a formal tribunal hearing and they are expected to behave accordingly. The PCC, the legal assessor and the parties will need to be more proactive in relation to remote hearings. If something does go wrong (a critical participant drops offline, for instance, or some connection fails) the PCC should pause until it is sorted out.
- 11 Once parties have successfully joined the hearing, they should leave their camera on but with their microphone on mute. This ensures that any background noise and feedback is kept to a minimum.
- 12 The Chair should ensure they can see everyone on their screen and be alert throughout the hearing to raised hands and other visible cues from hearing participants.
- 13 Participants should take turns to speak as they are invited to do so by the Chair.<sup>2</sup> This ensures that the proceedings are easy for all participants to follow. All participants should be made aware of and guard against the risk of 'talking over' each other. There is frequently a delay in transmission and participants engaged in a dialogue such as question and answers should take account of this.
- 14 When invited to speak, a participant should unmute their microphone before doing so and place their microphone on mute again once they have finished speaking.
- 15 Hearings are usually held in public unless the hearing is before the Health Committee, or the Professional Conduct Committee makes an order for all or part of the hearing to be heard in private. Remote hearings before the Professional Conduct Committee should, so far as possible, still be public hearings. Where a

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<sup>2</sup> The hearings Clerk will ensure that the Chair is given control over the microphones during the public sessions of the hearing

member of the public is attending the virtual hearing, the Chair should invite them to introduce themselves before the hearing is formally opened.

- 16 Anecdotal evidence suggests that hearing cases remotely is more tiring than hearing cases in person. It is important that the Chair and PCC members take account of the fact that long hours in front of a screen concentrating hard can be more tiring than sitting in a physical room with all the participants present. The Chair should therefore allow for frequent comfort breaks.

## **Practical Arrangements for Remote Hearings**

17 Remote hearings will be listed by the GOsC to take account of the extra time that will be needed to accommodate the need for regular breaks (for all participants to have comfort breaks or to seek/ provide instructions) and that there should be relatively shorter sitting days.

### *Joining Instructions*

18 Once the hearing clerk has listed a virtual hearing, an email will be sent to all participants. This email will confirm the date, time and joining instructions for the hearing. You will also be asked to confirm your availability for a test call prior to the hearing.

19 The choice of platform used by the GOsC for remote hearings is GoToMeeting (<https://www.gotomeeting.com/>).

20 In advance of the hearing the GOsC will set up three virtual meeting rooms for the hearing. The first will be the 'Hearing Room', in which the hearing will take place. The second will be the 'Panel Room', where the panel will retire to deliberate and make their decision. The third will be the 'Advocates' Meeting Room', where the case presenters and/or an unrepresented registrant can meet with the legal assessor during hearing breaks if required.

21 All participants will receive a link to the Hearing Room. The panel members will receive a link to the Panel Room. The case presenters, case parties and legal assessor will receive a link to the Advocates' Meeting Room.

### *Test Call*

22 All participants and witnesses in a remote or a blended hearing will be asked to participate in a test call with the hearing clerk prior to the hearing. The purpose of the test call is to check that they are able to connect to the videoconference and that the overall connection, microphone and camera are compatible with GoToMeeting and any document sharing platform that may be used from time to time.

### *Presentation and Location*

23 The test call will give you an opportunity to consider your background for the call. We recommended that you set your camera up somewhere with a neutral background if possible.

24 You should also give consideration to where you are going to situate yourself for the hearing. You should ensure that you are in a quiet room by yourself (unless you are the registrant and are accompanied by your representative) where you will not be disturbed for the duration of your participation in the hearing.

- 25 The lighting of the room you are in should be checked at the time of your test call. It is important that the lighting is sufficient so that you can be clearly seen without obstructions on the screen.
- 26 You are reminded that remote hearings are just as formal as attended hearings and your clothing should therefore be appropriate to reflect this.

### *Hearing Papers*

- 27 The parties should ensure that the electronic bundle of documents is sent to the hearing clerk in accordance with the Standard Case Directions for each remote hearing. Electronic bundles should contain only documents and authorities that are essential to the remote hearing. Each electronic bundle should be indexed and paginated.
- 28 The hearing clerk will provide all participants with an electronic copy of the hearing papers in advance of the hearing. For panel members and the legal assessor, the papers will be uploaded onto the same document sharing platform as is used for attended hearings. For case parties, the hearing clerk will send the papers to you as a password protected email attachment. Witnesses will be provided with a copy of their statement in the same way.<sup>3</sup> Should a witness need to be taken to a specific document within the bundle, this will be facilitated by an online sharing platform or by email. However, email should only be used in exceptional circumstances. It may not be possible to facilitate the provision of additional documents during a hearing and all parties should work to avoid this.
- 29 Hard copies of the papers will not usually be provided. If hard copies are required for accessibility reasons, however, please inform the hearing clerk.
- 30 For panel members, a copy of the PCC Hearings folder will be provided by email in advance of the hearing.

### *Preparation and Joining*

- 31 Before the hearing begins, you should ensure that you have the hearing papers open on your desktop. You may wish to have these open on a separate device, if this option is available to you.
- 32 All participants (except witnesses) are instructed to join the hearing at least 30 minutes before the start time to ensure their overall connection is running smoothly and avoid delaying the beginning of the hearing. Owing to the novelty of online hearings for many people the first day of any online GOsC hearings will start at 10:00, so you should aim to be signed in by 9:15. The start times for any subsequent hearing days will be confirmed by the Chair at the end of the day.

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<sup>3</sup> We will be piloting CaseLines from August 2020 onwards. This is an online platform for managing evidence and bundles electronically in virtual hearings

- 33 You can join the hearing by clicking on the link that has been provided to you by the hearing clerk with the joining instructions.
- 34 Once you have successfully connected, you can turn off your microphone and camera until the hearing start time.

#### *Managing Technical Problems*

- 35 Whilst online communications are becoming more prevalent, they are still unfamiliar to many people. The Panel and the GOsC also recognise that some people will be less adept at using technology. It is an important principle that technological glitches should not cause stress or adversely affect a witness or registrant's ability to participate fully in proceedings.
- 36 If you experience any technical problems during the hearing, please inform the Chair or use the chat function to inform the hearing clerk. The chat function can be accessed by clicking on the speech bubble icon on your screen.
- 37 If you are disconnected from the hearing and cannot reconnect, please call the GOsC's caseworker on their direct number, or call 020 7357 6655 extension 236.
- 38 If any party is experiencing technical difficulties that prevent them from participating in the hearing, the hearing must be paused to allow the issues to be resolved.

#### *Recording*

- 39 All GOsC hearings are recorded. At the beginning of the hearing, the hearing clerk will inform participants that the recording is going to be switched on. You will then hear an automatic announcement confirming that the meeting is being recorded. The recording will be of both sound and video.
- 40 When the panel retires to make its decision, the recording will be switched off. You will again hear an automatic announcement confirming this.
- 41 Participants are not permitted to make their own recordings or take a 'screenshot' of the hearing.

#### *Providing instructions to Case Presenters (GOsC or Registrant)*

- 42 During an attended hearing, the case presenters are usually seated next to the case party they are instructed by. This enables instructions to be sought and given during the hearing with minimal disruption. For remote hearings, we recommend that instructions are communicated via email where possible while the hearing is ongoing.
- 43 Where telephone instructions are necessary, the Chair should allow short breaks for case presenters to receive instructions if required.

44 Where either telephone, text or email communication are or may be necessary during a hearing the Chair should ensure that all phones are on silent mode and are not a distraction.

#### *Witness Support<sup>4</sup>*

45 Unlike the other hearing participants, witnesses do not join the hearing at the outset. They attend only to give their evidence. The caseworker will inform the witness in advance of the likely time when they will be called. The witness should ensure that they are available during the time period given by the caseworker.

46 When the panel is ready to hear the witness's evidence, the hearing clerk will contact them and ask them to join the Hearing Room.

47 The witness will have been sent their preferred oath or affirmation by email in advance of the hearing by email and will be asked to read this out before giving their evidence.

48 Panel members should refer to the Interim Practice Note on Witness Questioning for guidance on managing witness evidence.

49 The witness will have a copy of their witness statement. Where the witness is required to be taken to documents within the bundle during questioning by the parties, they will be enabled to have online, restricted and redacted case access<sup>5</sup>. The witnesses, Committee and parties will be able to view the particular document or page number at the same time via the online platform. However, members of the public or press attending the hearing will not be given access.

50 Witnesses should be afforded the opportunity for regular breaks to enable them to give their best evidence.

51 If a witness or the registrant is vulnerable or requires technical support in order to give their evidence, it is likely that the hearing will be held as a blended hearing and the witness or registrant will attend the GOsC office to give evidence. A registrant may wish to give evidence from their solicitor's office or counsel's chambers if that can be facilitated. If a witness or registrant is unable to give evidence via videolink from home or attend the GOsC office or their representative's premises (e.g. if they are shielding during the pandemic), then a remote hearing will not be suitable to the circumstances.

#### *Attendance by Members of the Public*

52 If any member of the public wishes to attend a hearing, they will be provided with the meeting link.

53 If part of the hearing is to be held in private, members of the public will be required to sign out of the Hearing Room. The hearings clerk will "lock" the room

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<sup>4</sup> Witness will also be able to have a pre-hearing call : see paragraph 22 of the protocol

<sup>5</sup> See footnote 1

once any members of the public have left, which will prevent any person from joining the hearing until the lock is removed. The hearing clerk will inform the members of the public once the public hearing has resumed and will unlock the room to enable them to rejoin the hearing.

- 54 If you are a member of the public attending the hearing, your microphone must remain muted for the duration of the hearing. You should also ensure that you do not cause a distraction to any of the hearing participants in any other way, for example through facial expression or excessive movement.
- 55 You are not permitted to make a recording of the hearing or take a screenshot of the participants.

#### *'In Camera' Sessions*

- 56 At each stage of the hearing, having heard any submissions and evidence, the committee will make its decision in private. The panel will withdraw to the Panel Room when this part of the hearing is reached.
- 57 Before the parties leave the Hearing Room, the Chair should provide them with a time estimate for when they will be required to rejoin the hearing.
- 58 The Chair should provide the hearing clerk with updated time estimates as the discussions progress. The hearing clerk will then update the parties as necessary.
- 59 It is the responsibility of the Legal Assessor to produce the first draft of the written reasons of the panel's decision for the consideration of the panel. The Legal Assessor will also make revisions to the draft as necessary. The Legal Assessor can share this draft decision with the panel by sharing their screen. This can be done by clicking the screen icon in the bar of buttons at the bottom centre of the screen. Alternatively, drafts can be emailed to the hearing clerk to upload to the Committee. Please note that drafts must be emailed in a password protected format. The hearing clerk will provide a password for this purpose.
- 60 After the panel's in camera discussions are complete and the written reasons for the decision has been finalised and agreed by the panel, the Chair will notify the hearing clerk. The hearing clerk will contact all participants and invite them to re-join the hearing. All participants should remain contactable by phone or email during the in-camera session to ensure that they are able to promptly return to the Hearing Room when contacted. Once all participants have re-joined the hearing, the recording will be turned on again.

#### *Case Presenter Discussions*

- 61 It is sometimes necessary during a hearing for the case presenters to speak to one another in the presence of the legal advisor to discuss preliminary applications, points of process, etc. For remote hearings, these discussions can take place in the Advocates' Meeting Room.



62 The Advocates' Meeting Room is another virtual meeting room, which can be accessed using the second link provided by the hearings clerk to case parties, case presenters and the legal assessor.

63 If either party wishes to discuss any matters with the other party, they should inform the hearing clerk. The hearing clerk will inform both case parties and the legal assessor and ask them to join the Advocates' Meeting room.

### **After the Hearing**

64 After the hearing has concluded, panel members must delete all downloaded papers from their device. This includes deleting any items in the recycling bin so that no confidential information remains on their computers.

65 The decision will be sent to all parties via email and uploaded to the GOsC website in line with our Publication Policy.

66 All parties are encouraged to share feedback about the virtual hearing process to [regulation@osteopathy.org.uk](mailto:regulation@osteopathy.org.uk).

General Osteopathic Council