

Remote Hearing Guidance

The current pandemic necessitates that hearings should be undertaken in such a way as to minimise the risk of transmission of COVID-19, avoid any unnecessary delays and ensure that public protection is upheld.

Social distancing and the need to ensure we can hold hearings safely has meant that we are unable to hold as many physical hearings as would have taken place before the pandemic. We are mindful of the need to maintain hearings to avoid delays, and therefore will also use remote or hybrid hearings as a major part of our pandemic response to ensure fitness to practise cases can be heard expeditiously.

In this document we set out our approach to holding hearings during the pandemic.

Remote, hybrid or physical hearings

The Health and Care Professions Council (Conduct and Competence Committee) (Procedure) Rules 2003 (“the Rules”) and the Health Professions Order 2001 (“the Order”), do not prohibit the use of remote or hybrid hearings.

A remote hearing (sometimes referred to as a virtual hearing) is a hearing held by telephone or video link. A remote hearing can have every participant attending remotely or it can have some participants attending by telephone or video link, and other participants attending in person at a physical venue. This latter scenario is called a hybrid hearing.

We will consider whether a case is most suitable to be heard remotely, physically or as a hybrid. The approach taken will be considered on an individual basis, taking into account the relevant factors in each case (see below).

We will seek the views of registrants and/or their representatives on our initial assessment of the type of hearing to be held, and their reasoned views will be taken into account as part of our overall consideration of the relevant factors. However, there may be a number of competing factors that we need to assess when deciding the method of holding a hearing, and these may override a registrant’s preferences. As such, a registrant’s preferred means of holding of hearing cannot be the determinative factor in deciding how to proceed.

If a party disagrees with our approach to listing a case as a remote or hybrid hearing, we will ask a Chair of the relevant practice committee to give directions on how the case should proceed. The Chair will consider representations from the relevant party and the HCPC before deciding whether the case should be held as a remote or

hybrid event as listed, or the matter be relisted for a different type of hearing at a later date.

Where disagreement about the appropriateness of the hearing format arises after a hearing has already commenced, this may be dealt with through the HCPTS [Postponement and Adjournment process](#).

Remote hearings must comply with all relevant legislation. Every effort will be made to ensure that the usual requirements for a fair hearing will be met, notwithstanding the fact that the hearing is taking place remotely. Including, but not limited to:

- Enabling appropriate participation by everyone.
- Managing undue influence and confidentiality.
- Observing impact on appropriate and respectable behaviours.
- Ensuring the transcriber can make a complete and accurate record.

Requirements that arise uniquely from the fact that the hearing is taking place remotely, for example the need to take more frequent breaks, will also be met.

For some types of hearing activity, such as interim order reviews, preliminary hearings, or consensual disposal hearings, it may be possible for the hearing to take place on the papers. The Health and Care Professions Tribunal Service (HCPTS) will notify the registrant when it may be appropriate for the hearing to take place in this way.

HCPTS considerations for scheduling remote hearings

When considering whether a hearing should be held remotely we will take into account all relevant factors, such as those listed below. This list is not exhaustive and each case will be considered on its own merits:

- Any technical, logistical, personal or circumstantial barriers that might prevent a participant engaging effectively in the proceedings;
- Any features of the case which makes it particularly difficult for it to be held virtually. For example, the number of participants or witnesses;
- Whether there are reasonable adjustments or special measures required to allow a participant to engage fully and effectively in the proceedings, which cannot be accommodated remotely;
- Any evidence that suggests the integrity, fairness or smooth running of the hearing may be impacted by holding it in a particular format;
- The view of the registrant.

We may consider other reasonable factors when making a decision. As we learn from our experience in holding virtual hearings we will consider if we need to make changes to the above list of factors.

HCPTS process for scheduling remote hearings

A member of the HCTPS Scheduling Team will write to the registrant setting out the proposed means of holding the hearing, and a date range for when they propose to schedule the hearing.

Registrants will be asked to complete a pro-forma to provide the Scheduling Team with information to be taken into account in determining the date and format of the hearing. This includes the opportunity for the registrant to provide their view on the type of hearing that should be held. Registrants are encouraged to provide as much information as possible, and to contact the HCPTS if they need assistance completing the form.

Registrants will be given 14 days to return the pro-forma and provide their reasons if they object to the type of hearing proposed by the HCPTS.

A pre-hearing case management teleconference may also be scheduled with the parties, once a provisional hearing date has been identified, to resolve issues relating to the management of the hearing in advance. For example, the number of days required for the hearing or witness participation. This is to help facilitate the efficient running of the hearing. A pre-hearing case management teleconference may also be held to try and resolve concerns about the method of hearing to be held. For example, to discuss potential technical difficulties. The teleconference will be facilitated by HCPTS and representatives from the HCPC as well as the registrant and/or their representative may be invited to attend.

As set out above, where a party objects to our decision to hold a hearing as a remote or hybrid event, we will ask a Chair of the relevant practice committee to give directions on how the case should proceed.

Where a remote hearing does take place, we will use Microsoft Teams videoconferencing facilities to conduct the hearing. A member of the Hearings Team will conduct test calls with participants prior to the hearing to ensure any technical difficulties are resolved in advance and participants can engage fully in the process. We will also provide registrants with a copy of our guidance on attending a remote hearing.

Where some participants may be required to attend a physical venue as part of a hybrid hearing a risk assessment will be undertaken to ensure the health and safety of participants and HCPTS employees.

Panel considerations on remote hearings

In all cases, the panel must ensure the proceedings are fair and comply with legislation. During the pandemic, the courts have considered whether cases should be heard remotely. The courts have indicated a number of factors to consider, with an overriding factor being access to justice and fairness.

In *Municipio de Mariana v BHP Group PLC*¹, the Court gave guidance on how to consider applications to extend time for complying with directions, or adjourn hearings during the coronavirus emergency:

- Regard must be had to the importance of the continued administration of justice. Justice delayed is justice denied even when the delay results from a response to the currently prevailing circumstances.
- There is to be a recognition of the extent to which disputes can in fact be resolved fairly by way of remote hearings.
- The courts must be prepared to hold remote hearings in circumstances where such a move would have been inconceivable only a matter of weeks ago.
- There is to be rigorous examination of the possibility of a remote hearing and of the ways in which such a hearing could be achieved consistent with justice, before the court should accept that a just determination cannot be achieved in such a hearing.
- Inevitably the question of whether there can be a fair resolution is possible by way of a remote hearing will be case-specific. A multiplicity of factors will come into play, and the issue of whether, and if so to what extent, live evidence and cross-examination will be necessary is likely to be important in many cases. There will be cases where the court cannot be satisfied that a fair resolution can be achieved by way of a remote hearing.

In the case of *Re P*², the Court identified some factors to consider when deciding to proceed with a family case hearing remotely; these factors are also relevant to Fitness to Practise proceedings:

- Available local facilities and technology.
- Personalities and expectations of key participants.
- Category of case or impact of its outcome.

There may be additional issues relevant to individual cases and the panel should consider all relevant matters, including participants' physical and emotional needs, and the impact of potentially significant delay on the administration of justice.

Factors relevant to remote hearings

The panel should consider all relevant legal factors. Care should be taken to ensure the Legal Assessor can participate in the remote hearing, and is present throughout.

¹ *Municipio de Mariana & Ors v BHP Group PLC & Ors* [2020] EWHC 928 (TCC)

² *Re P (A child: remote hearing)* [2020] EWFC 32

The panel should remind all participants that the proceedings must not be recorded and that confidential information must not be disclosed without the panel's prior consent.

Extra care may need to be taken when considering whether to proceed in the absence of a registrant, especially where the registrant is unrepresented and has indicated an intention to attend.

The Health and Care Professions Council (HCPC) Presenting Officer will provide proof of the efforts made to inform parties, particularly unrepresented registrants, about how they can participate in remote hearings.

Witnesses

Witnesses are required to take an oath, or to affirm, before giving evidence. If the relevant holy book is not available to remote witnesses, the Hearing Officer will take the witness through the required affirmation.

The panel should be mindful of the risk of witness interference, as witnesses will not be observable during breaks, and should consider whether it is safe to proceed.

Witnesses should be invited to join and give evidence only at the appropriate time and warned not to discuss their evidence while they are under oath. Care should be taken to ensure that other witnesses are not present in the remote hearing during the evidence of a witness.

The panel may also need to take extra care when considering what is fair for a vulnerable witness. Some vulnerable witnesses may, for example, have difficulty using the technology involved in remote hearings or may require special measures.

If a registrant is unrepresented and speaks directly during a hearing, steps should be taken to address whether the registrant is giving evidence or making submissions.

Public and private hearings

The HCPTS is required by law to hold its hearings in public. This means that hearings are publicised on the HCPTS website in advance of the event and allow any interested parties, including members of the media, to attend the event and report on proceedings. This approach still applies to remote hearings. Remote hearings will be listed on the HCPTS website in line with our publication policy, and members of the public or press who wish to attend are invited to contact the HCPTS.

A link to the virtual hearing will be provided to members of the public or press who have contacted the HCTPS. The link will not be provided on the HCPTS website. This is so that we have the opportunity to set out expectations and processes for those observing the hearing remotely. This will include confirmation that any recording of proceedings is strictly prohibited. The recording function on Microsoft Teams has been disabled for external parties.

Care should be taken to ensure that any observers are offered the opportunity to attend on the telephone / video link, so that any interested parties may observe the hearing.

Panels have the discretion to exclude members of the public from the hearing where appropriate, for example if there is any disruption or concerns that someone observing is not complying with our guidance for doing so. In such cases, a new link to the remote hearing may be provided to allow the hearing to continue without access to the excluded parties.

As with physical hearings, all or part of a remote hearing may be held in private in line with the [Practice Note on Conducting Hearings in Private](#). It is open to the registrant or HCPC to make an application to the panel, either before or during any part of a virtual hearing, for the whole or remainder of that hearing, or any part of it, as may be the case, to be held in private.

Care should be taken to ensure there are no unauthorised persons present where the panel considers it necessary to start a remote hearing in private, switch a public remote hearing to private during the course of the hearing, or deliberate in private.

Where a hearing goes into private session, or a panel needs to deliberate in private, separate 'rooms' will be made available in Microsoft Teams to facilitate privacy requirements.

Other

Whilst access to the HCPTS offices remain restricted due to the pandemic, Notices of Hearings will be sent to registrants by email at the address they have provided to the HCPC, as well as any other known email addresses for the registrant. Where we do not have a confirmed email address for the registrant, hard copy Notices will be sent by post to the registrants' registered address. It is a requirement of continued registration with the HCPC that registrants ensure that their contact information is kept up to date and accurate. We therefore expect that the contact details the HCPC has on file for the registrant are current.

We will keep our approach and this guidance under regular review.

Next review due by: 31 January 2021

