

## Health and Care Professions Tribunal Service

# PRACTICE NOTE

### Hearing Format and Location

This Practice Note has been issued for the guidance of Panels and to assist those appearing before them.

#### Introduction

1. Panels may conduct hearings using different formats:
  - a. **A physical hearing** is one where all (or the majority) of the hearing attendees<sup>1</sup> are in the same physical location. Hearings where some of the attendees are in the same physical location, while others attend by audio or video conferencing, are sometimes referred to as **hybrid hearings**.
  - b. **A remote hearing** (sometimes also referred to as a virtual hearing) is a hearing held by audio or video conferencing (or a combination of the two). At a remote hearing, the hearing attendees attend remotely from different physical locations, using telephone or video links.
2. For some types of hearing activity, such as interim order reviews, preliminary 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 parties when it may be appropriate for the hearing to take place in this way.
3. The decision about which format a hearing should take is a case management decision. This Practice Note sets out the approach to be taken when making that decision, and the process that will be followed.
4. This Practice Note also covers the approach and process for making case management decisions on the location of physical/hybrid hearings.

#### Power to hold remote hearings

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<sup>1</sup> Hearing attendees may include Panel members, their legal assessor, the Health and Care Professions Council (HCPC) presenting officer, the registrant (if they choose to attend), their representative (if they have one), any witnesses, and any members of the public who wish to observe a public hearing.

5. The HCPC's Procedural Rules<sup>2</sup> make provision for hearings to be conducted using audio or video conferencing facilities. They do not confine this power to any particular type of hearing or set of circumstances.

### **Remote and hybrid hearing requirements**

6. Remote and hybrid hearings must comply with all relevant legislation. Every effort must be made to ensure that the usual requirements for a fair hearing are met, notwithstanding the fact that the hearing is taking place remotely. These usual requirements include, but are not limited to, the following:
  - a. Enabling appropriate participation by everyone
  - b. Maintaining confidentiality and preventing unauthorised recording
  - c. Ensuring appropriate and respectable behaviours from all attendees
  - d. Managing undue influence
  - e. Ensuring a complete and accurate record is made
7. 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.

### **The general approach to making a decision on hearing format**

8. When listing a hearing, the HCPTS will consider whether a case is most suitable to be heard remotely, physically or as a hybrid. The approach to be taken will be considered on an individual basis, taking into account the relevant factors in each case. Those factors include, but are not limited to, the following (this list is not exhaustive, and the factors below are not listed in any order of importance or priority - each case will be considered on its own merits):
  - a. Any technical, logistical, personal or circumstantial barriers that might prevent a participant engaging effectively in the proceedings and/or which could cause delay in the resolution of the case
  - b. Any features of the case which makes it particularly difficult for it to be held remotely (for example, it can be more difficult to co-ordinate cases with a large number of attendees at a remote hearing than at a physical hearing)

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<sup>2</sup> Health and Care Professions Council (Investigating Committee)(Procedure) Rules 2003, Health and Care Professions Council (Conduct and Competence Committee) (Procedure) Rules 2003, Health and Care Professions Council (Health Committee) (Procedure) Rules 2003

- c. 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
- d. Any evidence that suggests the integrity, fairness or smooth running of the hearing may be impacted by holding it in a particular format
- e. The views of the registrant. The HCPTS will seek the views of registrants and/or their representatives on its initial assessment of the type of hearing to be held, and their reasoned views will be taken into account before the HCPTS lists the hearing. However, there may be a number of competing factors that the HCPTS needs to assess when deciding on the hearing format, and these may override a registrant's preferences. As such, a registrant's preferred means of holding a hearing cannot be the determinative factor in deciding how to proceed.

### **Process for making decisions on final hearing format**

- 9. A member of the HCPTS 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.
- 10. Registrants are asked to complete a pro-forma to provide the 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.
- 11. Registrants are given 14 days to return the pro-forma and provide their reasons if they object to the type of hearing proposed by the HCPTS.
- 12. A pre-hearing case management teleconference may 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, including any concerns about the hearing format. 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 will be invited to attend.
- 13. If there remain concerns and/or a party disagrees with the HCPTS's decision to list a case as a physical, hybrid or remote hearing, the matter will be considered by a Panel Chair of the relevant practice committee, who will give directions. The Panel Chair will consider representations from the parties before deciding whether the hearing should proceed in the format listed, or be relisted for a different type of hearing (which is likely to be at a later date).
- 14. 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](#). The final decision on the

hearing format always rests with the Panel. If it considers that the hearing cannot fairly proceed in its current format, it can make directions for the hearing to continue in a different format.

15. In all cases, the Panel and/or the Panel Chair must ensure the proceedings are fair, in the interests of justice and comply with legislation. There may be additional issues relevant to individual cases and all relevant matters should be considered, including attendees' physical and emotional needs.

### **Process for other hearing types**

16. All other hearing types will be listed as a remote hearing. If there is a concern or disagreement with the hearing format, the approach would follow that set out for final hearings above.

### **Conducting remote and hybrid hearings**

#### *17. Access to the legal assessor*

- a. The Panel needs to ensure that all relevant legal factors can be considered and satisfied during the hearing. They need to ensure that the legal assessor can participate effectively in the remote hearing and is present throughout.

#### *18. Effective participation*

- a. Where a remote/hybrid hearing does take place, the HCPTS will use videoconferencing facilities to conduct the hearing. If required a member of the HCPTS 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. They will also provide all hearing participants with a copy of our guidance on attending a remote hearing.
- b. At the start of the hearing (and as required during the hearing), the Panel will need to ensure that all parties can participate effectively. The Panel Chair needs to confirm that the parties:
  - i. Can hear (and where the hearing is conducted via video conferencing, see) everything that takes place while they are present at the hearing

- ii. Have access to any documents that they need to refer to during the hearing, and are able to access those documents without compromising their ability to see and hear what is happening in the hearing
  - iii. Can communicate confidentially with their representative (where relevant) and/or other sources of support required during the hearing
- c. When deciding whether to proceed in the absence of a registrant, extra care may need to be taken, particularly where the registrant is unrepresented and has indicated an intention to attend. The Panel should make appropriate enquiries as to any technical barriers that may affect or prevent the registrant attending, and what steps have or may be taken to explore and address any such barriers.
- d. 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. If they are giving evidence, the relevant considerations for witnesses apply (see below).

#### *19. Maintaining confidentiality and preventing unauthorised recording*

- a. The Panel Chair should remind all attendees that the proceedings must not be recorded and that confidential information disclosed during the hearing must not be disclosed further without necessary consent(s).
- b. Please see below for more information on public and private remote hearings.

#### *20. Witnesses*

- a. 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.
- b. 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.

- c. The Panel should be mindful of the risk of witness interference while the witness is giving evidence. The Panel must ensure that the witness is alone while giving evidence, or, if they are accompanied for support, the Panel must ensure that the witness and the person present are clear about the role of the supporter and what they may and may not do. When a witness is giving evidence using a video link, where possible, both the witness and supporter should be visible on screen at the same time. The Panel should ensure that witnesses are given very clear instructions on what they may and may not do during a break.
- d. The panel should also 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. The Panel is ultimately responsible for ensuring that witnesses are treated fairly and supported to give their best evidence.

#### *21. Public and private remote hearings*

- a. 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 applies to remote and hybrid hearings. Details of remote and hybrid hearings will be listed on the HCPTS website in line with its publication policy, and members of the public or press who wish to attend are invited to contact the HCPTS.
- b. The HCPTS will provide members of the public or press who having made contact, wishing to attend a remote hearing, with a virtual link. A virtual link is not published on the HCPTS website. This is to enable the HCPTS to set out expectations, including confirmation that any recording of proceedings is strictly prohibited. The recording function on video conferencing facilities is disabled for external parties, so that they cannot use it to make recording to make a recording of the hearing.
- c. Panels have the discretion to exclude members of the public from the hearing where appropriate, for example if there is any disruption or if the Panel is concerned that they are not completing with the HCPTS 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.

- d. 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.
- e. Panels must take care to ensure there are no unauthorised persons present when 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.
- f. Where a hearing goes into private session, or a panel needs to deliberate in private, separate 'rooms' will be made available on video conferencing facilities to facilitate this.

### **Geographical location of hearings**

22. Article 22(7) of the Health Professions Order 2001 provides that Panel hearings (including preliminary hearings) at which the registrant is entitled to be present or represented must be held:
- a. in the UK country where that person's registered address is situated;
  - b. if not registered, in the UK country where that person resides; or
  - c. in any other case, in England.
23. These are mandatory requirements which cannot be waived by the HCPC or the person concerned. Accordingly, where a physical hearing takes place, it must be at a location which complies with these requirements.
24. Regardless of where the panel members or any other parties to the hearing are physically situated, remote and hybrid hearings are deemed to take place in accordance with these requirements.
25. Although physical hearings must be held in the relevant UK country, the HCPTS (and ultimately, the Panel) does have a discretion as to exactly where a hearing is held within that country. Hearings do not need to be confined to Belfast, Cardiff, Edinburgh and London. However, before deciding to hold a hearing in a different location, the Panel should give careful consideration to the practical and financial implications of doing so.
26. The HCPTS has a purpose built and dedicated hearing space in London and access to carefully selected hearing venues in Belfast, Cardiff and Edinburgh.

27. Finding equally suitable venues in other locations, at relatively short notice and within the finite resources and funds available may not always be feasible.
28. Before making a decision that a hearing should take place outside one of the HCPTS's hearing venues in London, Belfast, Cardiff or Edinburgh, the Panel should consider whether any issues identified could be better addressed by directing that all or part of the hearing should be held remotely, or that a hybrid hearing should be held.