

COUNCIL

Guidances on Remote Hearings

Meeting: 13 May 2020

Status: For decision

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Purpose

1. To ask Council to approve panel guidance on the holding of remote FTP hearings.

Recommendations

2. Council is asked to approve:
 - The guidance to Fitness to Practise Committee (FTPC) panels on remote hearings at Annex 1

Strategic objective

3. This work contributes towards the achievement of the following strategic objective – continuous improvement.

Background

4. The UK Government's declaration of a coronavirus emergency, and the attendant health risks, is making physical hearings almost impossible. Even where participants may be willing to travel to a hearing, reduced transport services, much reduced catering availability and the need for social distancing make such arrangements impractical. Accordingly, the GOC's realistic options are to (a) list an FTP matter for remote hearing or (b) adjourn to an unknown date when physical hearings will again be achievable. We have not been able to hold any physical hearings since 17 March 2020.
5. The Lord Chief Justice and the Courts have said that justice can and should continue to be administered with remote hearings, and professional regulators including the GOC started holding remote FTP hearings in March. Initially this was done only with registrant consent, but the current process, in line with the GOC's emergency statement COVID/05, is to list all cases for remote hearing unless there are exceptional factors where one or more participant needs to attend in person.

6. It is for our hearing panels to determine whether a hearing should proceed as listed by the GOC, whether or not either party objects. This includes determining whether a matter should proceed remotely or be adjourned pending the possibility of a physical hearing in the future.
7. Since remote hearings do not have a specific statutory basis, registrants can (and have) argued that they are not permitted by the Opticians Act and the GOC's FTP Rules. It is therefore recommended that the GOC issues specific guidance to highlight the legislative requirements that would be engaged by the holding of a remote hearing, and to set out how these requirements can be met. The draft guidance is at **Annex 1** and the Impact Assessment screening tool is at **Annex 2**.
8. The issuing of specific guidance by the GOC will also assist a panel in taking a consistent approach in considering relevant factors, including as set out in caselaw, in making its decision on the appropriateness of a remote hearing. Without such guidance, each committee will be more reliant on the representations made by individual advocates and the advice given by individual legal advisers, which may result in greater divergence in decision-making. Inappropriate adjournments will cause delay and may reduce the likelihood of a fair hearing; conversely, inappropriate holding of a remote hearing may affect registrant and witness participation, affecting the fairness of the proceedings.
9. It is also for the panels to determine any procedural adaptations to assist fairness and proper participation, and the guidance can point to specific issues that may arise in remote hearings, on which the panel can give appropriate directions. Eg there may be higher risk of witnesses discussing their evidence while still under oath as a remote hearing may require more breaks, and so the guidance reminds panellists of the need for appropriate witness directions.
10. As with the GOC's existing FTP Hearings and Indicative Sanctions Guidance, into which the proposed remote hearing guidance will be incorporated, the document must be worded objectively, recognising the independence of committees' decision-making. The aim is to assist decisions that are consistent, proportionate and fair, which would reduce the risk of successful appeal.
11. Remote hearings can have wider benefits, and can be more convenient for participants, so we may continue to list these, in appropriate cases, even after the emergency has ended. We have conducted a full impact assessment for this process, which is at **Annex 3**, and are drafting a process note to capture this. When finalised and approved by SMT, this process document will be reported to Council and published on our website.

Analysis

12. Between 19 March and 1 May, the GOC has completed 17 remote hearings: comprising four substantives, 10 interim orders, one substantive review and two procedural events. We have agreed to adjourn five substantive hearings at the

request of the registrant (which will result in hearing costs being pushed back to later in the year), and one panel acceded a registrant's application for the matter to be adjourned to a physical hearing. None of the participants have indicated an intention to challenge our process or the hearing outcomes, by way of appeal or judicial review.

13. We are supporting participation in remote hearings, by:

- providing short 'How to' guides on good practice at remote hearings
- Criminal QC hosting developmental sessions on managing and maintaining professionalism during remote proceedings (20 and 22 April),
- Head of IT hosting drop-in sessions to support staff understanding the MST software (28 to 30 April)

We are mindful of the public interest in speedy justice, and the already well-reported aged profile of many of our scheduled hearings.

14. We are also mindful of the increased strain from remote hearings, and are listing with longer time estimates, eg allocating only one (rather than the usual two) interim order cases to each panel: this allows for longer breaks to help maintain the well-being of all parties.
15. As indicated above, the listing of remote hearings will be assisted by specific guidance for the FTPC, to be published as an addendum to, or incorporated within, our [Fitness to practise panels hearings and indicative sanctions guidance](#). It will set out the factors for FTPCs to consider when deciding on applications that request or oppose a remote hearing, and will assist more consistent decisions.
16. In drafting this guidance, we have considered the GOC's overriding objective of public protection, our emergency statement at COVID/05, recent caselaw, the public interest and the broader interests of justice.
17. The guidance opens with the Lord Chief Justice's direction that remote hearings should now be the default position in civil and family cases.

Finance

18. The guidance has been produced in-house so there are no additional costs.
19. There have been some efficiency savings realised with running remote hearings through member expenses although these may be offset against the need for verbatim transcribers, additional panels and (at least initially) extended time estimates. As at 1 May, the 17 remote hearings have realised savings in the region of £7k.
20. Events that do not proceed as planned will have these costs postponed to later in this year, or, possibly, in 2021-2022.

21. All hearing costs are currently within the approved budget. At this stage, no adjustments are being made to the budget as effective case management should mitigate any unplanned costs.

Risks

22. Failing to have clear guidance documents could lead to inconsistent approaches taken by our panels when making an assessment as to whether a hearing should proceed remotely.
23. The guidance will summarise relevant factors for panels to consider in balancing the risks and benefits in an individual case proceeding remotely, thus supporting fair process; its publication will assist transparency.

Equality Impacts

24. IA screening has been completed for the issuing of the draft Guidance. There is low risk from this publication, as the decision-making will remain with the FTPC, and a full Equality IA is not needed.
25. A full IA has been completed in relation to the GOC's process for listing matters for remote hearing.

Devolved nations

26. There are no implications for the devolved nations.

Communications

27. The Guidance documents will be shared with stakeholders and included in the panels' Hearings and Indicative Sanctions Guidance published on our website.

Next steps

28. The panel guidance, if approved, will be implemented with immediate effect.

Attachments

- Annex one: Addendum Guidance for remote hearings
Annex two: Impact Assessment Screening Tool for the Guidance
Annex three: IA screening and full assessment for GOC process