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# Remote Hearings Protocol

To support the Fitness to Practise Committee Hearing during the COVID-19  
Emergency

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## 1. Introduction and purpose

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- 1.1 The over-arching objective of the General Optical Council (GOC) in exercising its functions is the protection of the public. The aim of this document is to support all parties to the Fitness to Practise (FtP) process with the administration and progression of hearings during the Covid-19 pandemic.
- 1.2 The purpose of the GOC is to protect, promote and maintain the health, safety and well-being of the public; promote and maintain public confidence in the professions it regulates; promote and maintain proper professional standards and conduct for members of those professions; and promote and maintain proper standards and conduct for business registrants.
- 1.3 The GOC recognises that it is in the fair administration of justice and important to registrants and to other parties involved in our FtP proceedings, to follow a fair process and achieve a fair resolution as quickly as possible.
- 1.4 In each case, the GOC will consider whether a case is suitable to be heard physically, remotely or as a hybrid hearing.
- 1.5 Within this document when we refer to:
  - 1.5.1 'remote hearings' that is one where all of the hearing takes place by video/audio link;
  - 1.5.2 'hybrid hearings' that is one where one or more of the parties to the hearing are physically present at the hearing venue for one or more of the hearing days with the remainder attending remotely; and
  - 1.5.3 'physical hearings' that is one where all of the hearing takes place at a

physical location.

- 1.6 This document should be read in conjunction with the guidance to committees on remote hearings which is an addendum to the [hearings panel and indicative sanction guidance](#).
- 1.7 In reviewing this guidance, the GOC also had regard to the [guidance for regulators on fitness to practise hearings during the Covid-19 pandemic](#) published by the Professional Standards Authority.
- 1.8 The Fitness to Practise Committee ('FtPC') will make such arrangements as is required to achieve a fair hearing.

## 2. Scope

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- 2.1 This protocol applies to all hearings including new interim order applications, interim order reviews, substantive hearings, substantive reviews, registration appeals, restorations, hearings on the papers and procedural events. It should be applied in accordance with the fair administration of justice.

## 3. Suitability factors

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- 3.1 The Hearings team will determine on a case by case basis whether a case is most suitable to be heard physically, remotely or as a hybrid.
- 3.2 The Hearings team will consult the parties, their representatives and witnesses to determine what type of hearing is appropriate for each case.

This may include, but is not limited to the following:

- 3.2.1 **Whether the registrant and other participants have sufficient access to and understanding of technology, and access to an appropriate environment to enable them to take part effectively in a remote hearing, including having access to advice:** The GOC are able to allow registrants or witnesses to attend the office to participate in a hearing or attend by other means such as audio.
- 3.2.2 **Whether there is a reason to believe that there are risks of a breach of privacy that the GOC cannot overcome**
- 3.2.3 **Any features of the case which make it particularly difficult for it to be held remotely,** for example difficulties in presenting evidence which cannot be accommodated at a remote hearing.

- 3.2.4 **Any evidence which suggests that the integrity or fairness of the hearing may be compromised by a remote hearing**
  - 3.2.5 **The impact of any disabilities or other vulnerability of any of the participants**
  - 3.2.6 **The public interest in the expeditious disposal of cases** - pausing hearings may lead to backlogs of cases and may delay necessary action to protect the public or restore registrants to practise and may impact on the wellbeing of those taking part.
  - 3.2.7 **The health of participants and, in particular, whether they fall within the groups likely to be at high risk of serious adverse effects if they contract Covid-19** may dictate the necessity of a remote hearing. The pandemic is not over, and social distancing and other restrictions are likely to continue for some time which will make it difficult for regulators to hold the same number of physical hearings.
  - 3.2.8 **The ability to ensure that the hearing complies with Government guidance on the safety of all involved**, for example if a full or local lockdown is in effect then a remote hearing may be the most appropriate option.
  - 3.2.9 **Any other matters that may affect the smooth running of the hearing**
- 3.3 With the exception of 3.2.1, we do not consider that any single factor above has, of itself, any greater weight than the others. Different conditions will apply in individual cases and will need to be considered accordingly.

## **4. Procedure for scheduling a remote hearing**

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- 4.1 The service of all documents will be undertaken in accordance with the [GOC's statement](#) on the approach in fitness to practise for the service of documents and hearings during the pandemic.
- 4.2 It is likely that most decisions about the format of the hearing can be taken by the Scheduling Officer in consultation with the parties.
- 4.3 A Hearings questionnaire will be completed by each party in preparation for listing the matter. Both parties should complete the questionnaire and highlight if any of the suitability factors deem that a fully remote hearing is not appropriate. Parties should clearly set out their reasons so the most suitable mode of hearing, namely remote, hybrid or physical, can be determined. Parties are encouraged to refer to the suitability factors and

any other exceptional circumstances present in the case.

- 4.4 The Scheduling Officer will write to parties and set out the proposed mode of holding the hearing after considering the points raised by both parties in the Hearings questionnaires.
- 4.5 Each party will then have 14 days to respond if they object to the proposed method of disposal. The correspondence should set out clearly the reasons for their objection.
- 4.6 If an objection has been made, the Hearings team will request a response from the other party. If both parties agree that the matter should be adjourned to a later date, the Head of Hearings will consider the application against the suitability factors and if satisfied, may make a decision to adjourn the matter to a later date in accordance with our [statement](#). If the parties disagree on the course of action or the Head of Hearings considers it appropriate to consult the FtPC, the matter will be placed before the FtPC at a remote procedural hearing.
- 4.7 The procedural hearing will be scheduled in accordance with the Rules. If at any stage prior to the procedural hearing, both parties reach agreement on the hearing mode, then the procedural hearing will be cancelled.
- 4.8 Decisions taken to proceed by a mode of hearing will be kept under review throughout the process and the arrangements may be changed or modified if necessary, for example if further lockdown measures are implemented.
- 4.9 For any hearing that is currently listed, either party can make an application to adjourn in accordance with Rules 35-37 [see section 7 for further details].
- 4.10 All new interim order hearings will be listed to take place remotely due to the emergency nature of such orders.

## **5. Case management prior to a remote hearing**

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- 5.1 This document should be read in conjunction with the [case management meeting process](#), which provides specific information for unrepresented registrants.
- 5.2 A telephone conference will take place 4-6 weeks prior to the first day of the substantive hearing if required.
- 5.3 This call will be used to review and deal with any outstanding procedural issues to ensure that the case is ready to proceed on the first day of the hearing. The parties should ensure the following are considered when preparing for this call:

### 5.3.1 Timings

A review of the time estimate will be undertaken in conjunction with the parties agreed estimate as well as the Hearings team's own experience in facilitating remote hearings.

The time review should factor in the need for more frequent breaks, to deal with any unexpected technological issues that may arise, and additional time that may be required to support witnesses and the drafting process.

### 5.3.2 Witnesses

Rule 29 (Standard Direction 8) of the Fitness to Practise Rules 2013 states parties should submit an agreed witness schedule no later than five working days before the first day of a substantive hearing. If parties can facilitate this earlier, it will allow all participants additional preparation time which would support the smooth running of proceedings. The following information should be provided to the hearings team

- Name of witness
- Contact details of witness (email address and telephone number)
- Date(s) and time(s) available to give evidence
- Witness availability to undertake a test call (including video conference) with an appropriate legal party
- Method in which the witness intends to take the oath or affirm

Parties are encouraged to engage with witnesses to confirm they have suitable technological equipment if called to give evidence and they know how to operate it.

We will consider any application for a witness to give evidence by another method if Microsoft Teams is not suitable for them, including facilitating a hybrid or physical hearing.

Parties should be mindful that witness evidence may take longer than it would in person. Time estimates for the hearing should take this into consideration.

### 5.3.3 Bundles

Parties should prepare an agreed electronic bundle of documents for each remote hearing. Each electronic bundle should be indexed and paginated and should be sent to the Hearings team in advance of the hearing.

Rule 29 (Standard Direction 3) of the Fitness to Practise Rules 2013 states that this must take place no later than five working days before the Monday of the week in which the hearing is to take place. If parties can facilitate this earlier then it will allow all participants additional preparation time which would support the smooth running of proceedings.

Electronic bundles should only contain documents that are essential to the

remote hearing. Large electronic files can be slow to transmit and delay proceedings. If further amendments are made after the bundle has been sent to the FtPC, the updates should be clearly signposted in subsequent documents to avoid the need to unnecessarily re-read the entire bundle again.

If it is deemed suitable to provide a hearing party with a paper copy of a bundle, this should be sent to the Hearings team no later than 14 days in advance of the hearing to ensure suitable arrangements for printing and delivery prior to the event. If this time limit cannot be met, then it should be raised with the Hearings team.

## **6. The remote hearing**

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6.1 Please take account of the following information in relation to how our remote hearings operate and what all parties should consider prior to joining the call:

### **6.1.1 Our technology**

The preferred method for remote hearings at the GOC is video-conferencing facilities using Microsoft Teams ('MST'). The GOC may decide to switch platforms and this guidance would still apply.

Telephone conference facilities using the Avaya system are also available. Telephone conferencing facilities will be used, should video conferencing be unsuitable, or in circumstances where MST is temporarily unavailable for any reason, including technological failures.

Hearing participants will all need to join the dedicated facility for the stated start time of the remote hearing.

### **6.1.2 Timings**

Remote hearings will ordinarily be scheduled from 9:30am to 4:30pm, providing the committee and parties the flexibility to manage the hearing day according to individual circumstances.

Occasionally, there may be a need to sit outside of these hours, for example when completing witness evidence or handing down a final determination to prevent an adjournment, subject to the wellbeing of all participants.

The later start will ensure sufficient time is provided for all parties to join the dedicated facility and become familiar with surroundings. This will also enable the Hearings Officer to undertake any test calls that may be required as well as deal with any technological issues that may have arisen.

The Hearings Officer will request that regular comfort breaks are

scheduled with the Chair of proceedings, approximately every 60-90 minutes. A minimum 30-minute designated lunch break will be provided for all hearing parties, allowing valuable time away from the screen.

### 6.1.3 Witnesses

Test calls will be arranged with the Hearings Officer in advance of the hearing, to ensure the hearing will run as smoothly as possible.

If the witness wishes to take a religious oath, they will need the relevant holy book physically available with them. Otherwise, the witness will be asked to make an affirmation.

Witnesses will be invited into the hearing by a Hearings Officer and will not be provided with the dial in details in advance of the hearing.

If a witness requires any reasonable adjustments due to a disability or other need which will support them taking part in a hearing, they should contact their liaison officer and/or the Hearings team who will be able to assist.

Further information for witnesses on how to prepare for a remote hearing can be found [here](#).

### 6.1.4 Bundles

It is imperative for all concerned to become familiar and comfortable with a far greater use of electronic material than may have been the case previously.

Parties are encouraged to contact [hearings@optical.org](mailto:hearings@optical.org) if there are any concerns about operating by this method.

### 6.1.5 Sharing screens

Microsoft Teams allows participants to share their screens or documents with other participants.

Occasionally, for example if a document is submitted on the day of the hearing, it may be appropriate for a participant to share their screen. This should be done only with the agreement of the FtPC and taking care to mitigate any potential security or data protection risk that this may present.

### 6.1.6 Public access

In accordance with Rule 25(1), substantive hearings must be held in public. All hearings are listed on our website and if a member of the public wishes to attend, they will be invited to contact [hearings@optical.org](mailto:hearings@optical.org) and we can advise whether the event will be proceeding remotely, as a hybrid or physically.

There must be no recording of any part of the hearing, by any participant including the registrant, witness or observer. **This includes filming, audio recording, taking any pictures or screenshots.**

There is currently a maximum capacity of 25 participants (including committee members and observers) at each hearing which replicates the environment at 10 Old Bailey and hearing parties will be informed prior to the hearing if there will be observers in attendance.

If there is an unexpected technological issue on the day which prevents or restricts public access, it will be for the FtPC to decide whether to proceed with the hearing.

There may be times where certain information needs to be heard in private session and any observers will be required to exit the remote hearing at that time.

#### **6.1.7 Role of Hearings Officer**

An invitation to the remote hearing will be sent to all parties by a Hearings Officer in advance of the hearing. This link should not be shared with anyone without prior explicit written consent from the GOC's Hearings Officer.

The Hearings Officer is responsible for the smooth running of the hearings. The officer will update parties as to when they should return to the hearing link after a break in proceedings so please ensure that the officer has your best contact method.

#### **6.1.8 Hearing recording**

The hearing will be recorded to ensure compliance with Rule 60. At present we use a transcriber, although we may take the decision to record via the MST application or other technology.

***No other party is permitted to record any part of the hearing and will confirm this as part of our observation rules.***

#### **6.1.9 Technology failure**

If during the hearing, any participant experiences any technological difficulties, they must contact the Hearings Officer by the contact method provided. The officer may be able to assist by providing an alternative method to proceed, such as telephone conference facilities. If the proposed facilities are deemed unsuitable, a decision will be made by the FtPC on how best to proceed.

#### **6.1.10 Adjustments**

If the registrant, witness or other participant requires any reasonable adjustments due to a disability or other need which will support them taking part in a hearing, they should contact their liaison officer and/or the hearings team who will be able to assist.

## 7. Applications to Adjourn

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- 7.1 Any application to adjourn should be made by contacting the hearings team and notifying the other party.
- 7.2 Decisions to adjourn proceedings may be taken by the Head of Hearings in situations where both parties agree, primarily where the adjournment is likely to be for only a short period of time.
- 7.3 Where there is disagreement between the parties, the FtPC will continue to make decisions at a procedural hearing in line with Rules 35-37.

## 8. Compliance

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- 8.1 If there is any concern that this protocol is not being adhered to, they should contact the Head of Hearings ([hearings@optical.org](mailto:hearings@optical.org)) in the first instance stating that they have a concern about how this protocol is being applied.
- 8.2 If the concern is not resolved satisfactorily at this stage the matter can be raised via our corporate complaints policy. This can be found here:

[https://www.optical.org/en/Investigating\\_complaints/index.cfm](https://www.optical.org/en/Investigating_complaints/index.cfm)

## 9. Professional Standards Authority

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- 9.1 Determinations made by the FtPC (except those relating to interim orders) are reviewed by the Professional Standards Authority. They oversee the work of the GOC and can ask the High Court to review a decision if they decide that it is insufficient to protect the public.