

DRAFT Guidance on Remote Hearings

1. On 19 March 2020 the Lord Chief Justice advised the Civil and Family courts on the obligation to continue their work as a vital public service. He stated:

“The default position now in all jurisdictions must be that a hearing should be conducted with one, more than one, or all participants attending remotely.”¹

2. Unless there are exceptional factors requiring a physical hearing, the GOC will list all matters for a remote hearing.

What is a remote hearing?

3. A remote hearing (sometimes referred to as a virtual hearing) is a hearing held by telephone or video link. A remote hearing can be heard wholly or partly by telephone or video link.
4. 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.

Can hearings be conducted remotely?

5. The Opticians Act 1989 and GOC FTP Rules 2013 do not prohibit remote hearings and in these circumstances, the Committee should be mindful of the need to maintain a hearing in order to avoid delay.
6. Remote hearings must comply with the relevant legislation; this Guidance outlines the relevant provisions from the Opticians Act and FTP Rules.

Process for listing remote hearings

7. The GOC has previously arranged for participants to join a hearing remotely by telephone or video link and has recently introduced wholly remote hearings.
8. The Hearings team may list a matter for a remote hearing in appropriate cases, as set out in the GOC’s emergency statement on the approach to service documents and hearings during the COVID-19 emergency at [GOC/COVID/05](#)
9. If one or both parties disagree with the holding of a remote hearing, they can apply for a Committee to consider the issues at a procedural hearing.
10. Rule 27(3) requires that a procedural hearing must be held in private so care should be taken to ensure there are no unauthorised persons present at a remote procedural hearing.

¹ www.judiciary.uk/announcements/coronavirus-covid-19-message-from-the-lord-chief-justice-to-judges-in-the-civil-and-family-courts/

² Opticians Act 1989 at www.optical.org/about_us/legislation/opticians_act.cfm

³ GOC Fitness to Practise Rules 2013 at www.optical.org/about_us/legislation/rules_and_regulations.cfm

11. The Committee should consider whether the remote hearing should proceed as listed or the matter adjourned to a date when all or some parties can attend a physical hearing.

Deciding whether there should be a remote hearing

12. In all cases, the Committee must ensure that proceedings are fair and comply with legislation. This applies to all hearings, whether or not there is party agreement to a remote hearing.
13. During the coronavirus emergency, Courts have considered whether cases should be heard remotely. There are many factors to consider, with an overriding factor being access to justice and fairness.
14. In *Municipio de Mariana v BHP Group PLC*⁴, the Court gave guidance on how to consider applications to extend time for complying with directions, or adjourn hearings during the coronavirus emergency:
 - a. 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.
 - b. There is to be a recognition of the extent to which disputes can in fact be resolved fairly by way of remote hearings.
 - c. 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.
 - d. 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.
 - e. 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.

⁴ *Municipio de Mariana & Ors v BHP Group PLC & Ors* [2020] EWHC 928 (TCC)

15. In the case of *Re P*⁵, 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:
 - a. Available local facilities and technology.
 - b. Personalities and expectations of key participants.
 - c. Category of case or impact of its outcome.
16. There may be additional issues relevant to individual cases and the Committee should consider all relevant matters, such as participants' physical and emotional needs, and the impact of up to a further year's delay on the administration of justice.

Factors relevant to all remote hearings

17. The Committee should consider all relevant legal factors, in particular:
 - a. Rule 43 requires a legal adviser to be present at all hearings.

Care should be taken to ensure the legal adviser is present throughout a remote hearing.
 - b. Rule 44 requires a clinical adviser to be present at the hearing when the registrant's physical or mental health is to be considered.

Care should be taken to ensure the clinical adviser is present throughout a remote hearing.
 - c. Rule 45 requires a specialist adviser to be present at a hearing where they have been appointed in relation to a matter to be considered at a substantive hearing.

Care should be taken to ensure the specialist adviser is present throughout the remote hearing.
 - d. Rule 60 requires a verbatim record of each hearing to be taken.

Care should be taken to ensure speakers can be heard and recorded appropriately.
18. The Committee should remind all participants that the proceedings must not be recorded, and that confidential information must not be disclosed without the Committee's prior consent.
19. A Committee may decide to introduce different methods of working during a remote hearing to ensure the hearing is conducted fairly and properly, including:

⁵ Re P (A child: remote hearing) [2020] EWFC 32

- a. Ensuring appropriate breaks, which may be needed more frequently in remote hearings.
- b. Enabling appropriate participation by everyone.
- c. Managing undue influence and confidentiality.
- d. Observing impact on appropriate and respectable behaviours.
- e. Ensuring the transcriber can make a complete and accurate record.

Proceeding in the absence of the registrant

20. 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.
21. The Presenting Officer will provide proof of the efforts made to inform parties, particularly unrepresented registrants, about how they can participate remotely.

Factors relevant to Interim Order applications

22. The Committee should be mindful of the different challenges that arise when an Interim Order hearing is held remotely, and should consider:
 - a. Rule 17 requires the notice of the interim order hearing to include the venue. In wholly remote hearings, the venue will be listed as being via videoconference or teleconference facilities.
 - b. Rule 20(2) requires an interim order to be a private hearing. Care should be taken to ensure there are no unauthorised persons present during the remote hearing.
 - c. Rule 20(8)(c) requires the Committee to deliberate in private. Care should be taken to ensure there are no unauthorised persons present during their deliberations.
 - d. If a registrant speaks directly during an Interim Order hearing (i.e. not via his representative), steps should be taken to address whether the registrant is giving evidence (in line with Rule 20(4) FTP Rules) or making submissions.
 - e. Rule 20(8)(d) requires the Committee to announce its decision, together with reasons for its decision, in public and so care should be taken to ensure all parties, and any observers, are offered the opportunity to be in attendance on the telephone / video link when the decision is being delivered.

Factors relevant to Review hearings

23. The Committee should be mindful of the different challenges that arise when a review hearing is held remotely, and should consider:

- a. Rule 58(1) requires an interim order to be a private hearing.

Care should be taken to ensure there are no unauthorised persons present during the remote hearing.

Factors relevant to Substantive hearings

24. The Committee should be mindful of the different challenges that arise when a substantive hearing is held remotely.

Public and private hearings

25. Rule 25(1) requires that substantive hearings before the Committee must be held in public.

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

26. The Committee may determine that the proceedings, or any part of the proceedings, are to be a private hearing, where it considers it appropriate having regard to the matters set out in Rule 25(2).

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

Witnesses

27. Witnesses are required to take an oath, or to affirm, before giving evidence (Rule 42).

If the relevant holy book is not available to remote witnesses, the hearing officer will take the witness through the required affirmation.

28. The Committee 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.
29. 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.
30. 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.

Vulnerable witnesses

31. The Committee may 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 under Rule 41.

Order of proceedings

32. Under Rule 46, the Committee may hear submissions and announces findings on the facts, grounds of impairment, finding of impairment and sanction, in separate stages. The Committee should give particular attention to whether to consolidate two or more of these stages, to reduce the impact of interruptions on the participants.