
Remote Hearings Protocol

To support the Fitness to Practise Committee hearing process as we exit the COVID-19 emergency

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1. Introduction and purpose

- 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 as restrictions start to ease and parties will have the option to attend a hearing remotely or in person.
- 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 We recognise 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, we will consider the position with both parties in deciding whether a case is suitable to be heard physically, remotely or as a hybrid or blended hearing.
- 1.5 Within this document when we refer to:
 - 1.5.1 'remote hearings' we mean hearings where the entire hearing takes place by video or audio link;
 - 1.5.2 'physical hearings' are where all of the hearing takes place at a physical location;
 - 1.5.3 'hybrid hearings' are 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
 - 1.5.4 'blended hearings' are where some of the hearing takes place remotely, and some of the hearing takes place at a physical location. For example, evidence to be heard at a physical location and the remainder to take place remotely.
- 1.6 This document should be read in conjunction with the guidance to committees on remote hearings which is an addendum to the [hearing panel and indicative sanctions 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

- 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 [if no or minimal government restrictions in place]

- 3.1 Minimal restrictions will be classed as situations where formal restrictions may be reduced or removed, but where the parties to a hearing may reasonably still want to manage the risk of infection by practicing social distancing or other measures.
- 3.2 The Hearings team will consult the parties and their representatives to determine what mode of hearing is appropriate for each case. We expect most non-substantive events to take place remotely, including interim order applications and reviews, but will consider all relevant factors in relation to both non-substantive and substantive events, which will include but are not limited to, the following:
- 3.2.1 **The wishes of the registrant:** If the registrant would prefer the event to proceed remotely then we will explore this option. If the registrant would prefer the event to be heard in person, a physical hearing will be arranged.
- 3.2.2 **Whether the parties require in person evidence:** If parties consider that it would be beneficial for the FtPC to consider the evidence in person, for example due to the nature of proceedings, then it may be more suitable for the matter to be heard in person.
- 3.2.3 **Whether the entire hearing needs to proceed by the same method:** It may be possible to blend the mode of hearing in appropriate circumstances, for example, where it may be preferable for evidence to be heard in person but submissions at later stages remotely.

4. Suitability factors [if increased or enhanced government restrictions in place]

- 4.1 We consider 'increased or enhanced restrictions' to include situations where individuals are not able to move freely and/or need to maintain social distancing inside venues.
- 4.2 The Hearings team will consult the parties and their representatives to determine what mode of hearing is appropriate for each case. We expect most non-substantive events to take place remotely, including interim order applications and reviews, but will consider all relevant factors in relation to both non-substantive and substantive events, which will include but are not limited to, the following:
- 4.2.1 **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:** we can allow registrants or witnesses to attend the GOC's office to participate in a hearing or attend by other means such as audio.
 - 4.2.2 **Whether there is a reason to believe that there are risks of a breach of privacy** that can be more easily overcome at a physical hearing.
 - 4.2.3 **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.
 - 4.2.4 **Any evidence which suggests that the integrity or fairness of the hearing may be compromised by a remote hearing.**
 - 4.2.5 **The impact of any disabilities or other vulnerability of any of the participants.**
 - 4.2.6 **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 practice and may impact on the wellbeing of those taking part.
 - 4.2.7 **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.

- 4.2.8 **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.
- 4.2.9 **Any other matters** that may affect the smooth running of the hearing.
- 4.3 Except for 4.2.1, 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.

5. Procedure for scheduling a remote hearing

- 5.1 The service of all documents will be undertaken in accordance with the GOC's [Service of statutory notices by email policy](#).
- 5.2 Most decisions about the mode of the hearing can be taken by a member of the Hearings team in consultation with the parties.
- 5.3 A hearings questionnaire will be completed by each party in preparation for listing the matter. Both parties should complete the questionnaire and clearly set out their reasons for the proposed, or preferred mode of hearing (remote, hybrid, physical or blended). Parties are encouraged to refer to the suitability factors and any other exceptional circumstances present in the case.
- 5.4 After considering the points raised by both parties in the hearings questionnaires, the Officer will write to parties and confirm the mode of hearing.
- 5.5 If the proposed mode of hearing is contested, each party will have 14 days to respond. The correspondence should set out clearly any reasons for the objection.
- 5.6 If an objection has been made, the Hearings team will request a response from the other party.
- 5.7 If the parties cannot reach agreement on the mode of hearing, the matter will be placed before the FtPC at a remote procedural hearing.
- 5.8 The procedural hearing will be scheduled in accordance with the FtP Rules. If at any stage prior to the procedural hearing, both parties reach agreement on the hearing mode, then the procedural hearing may be cancelled.
- 5.9 Decisions taken to proceed by a particular 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.

- 5.10 For any hearing that is currently scheduled, either party can make an application to adjourn in accordance with rules 35-37 of the FtP Rules (see section 8 for further details).

6. Case management prior to a remote hearing

- 6.1 This document should be read in conjunction with the [case management meeting process](#), which provides specific information for unrepresented registrants.
- 6.2 If required, a telephone conference will take place around six weeks prior to the first day of the substantive hearing.
- 6.3 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 points in the remainder of this section are considered when preparing for this call.

Time estimates

- 6.4 The time estimates for the hearing 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.

Witnesses

- 6.6 Rule 29 (Standard Direction 8) of the FtP Rules 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(es)
 - Contact details for witness(es) (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
- 6.5 Parties are encouraged to engage with witnesses to confirm they have suitable technological equipment available if required to give evidence, and that they know how to operate it.
- 6.6 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 or switching to an alternative platform.

- 6.7 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.

Bundles

- 6.8 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 no later than five working days before the Monday of the week in which the hearing is to take place in accordance with rule 29 (Standard Direction 3) of the FtP Rules.
- 6.9 If parties can facilitate this earlier then it will allow all participants additional preparation time which would support the smooth running of proceedings.
- 6.10 Electronic bundles should only contain documents that are essential to the remote hearing. Large electronic files can be slow to transmit and can 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.
- 6.11 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 less than 14 days in advance of the hearing to ensure suitable arrangements for printing and delivery can be facilitated prior to the event. If this time limit cannot be met, then it should be raised with the Hearings team.

7. The remote hearing

- 7.1 The following information in the remainder of this section should be taken into account in relation to how our remote hearings operate and what all parties should consider prior to joining the call.

Our technology

- 7.2 The preferred method for remote hearings at the GOC is video-conferencing facilities using Microsoft Teams. If an alternative platform is used this guidance will still apply.
- 7.3 Telephone conference facilities are available and will be used, should video conferencing be unsuitable, or in circumstances where Microsoft Teams is temporarily unavailable for any reason.
- 7.4 Hearing participants will all need to join the dedicated facility for the stated start time of the remote hearing.

Timings

- 7.5 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.
- 7.6 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.
- 7.7 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. This will be determined by the Chair and subject to the wellbeing of all participants.
- 7.8 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.
- 7.9 All hearing participants must ensure they log out of the hearing link during breaks, no matter how short the break. When a participant re-enters the link following a break, they must be muted and not engage in conversation until the Chair or Hearings Officer opens proceedings.

Witnesses

- 7.10 Test calls will be arranged with the Hearings Officer in advance of the hearing, to ensure the hearing will run as smoothly as possible.
- 7.11 The witness will be asked to take a religious oath or affirmation prior to giving evidence. In line with the [Equal Treatment Bench Book](#), the oath can still be taken even if the holy book is not physically present.
- 7.12 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.
- 7.13 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.
- 7.14 Further information for witnesses on how to prepare for a remote hearing can be found [here](#).

Bundles

- 7.15 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.
- 7.16 Parties are encouraged to contact hearings@optical.org if there are any concerns about operating by this method.

Sharing screens

- 7.17 Microsoft Teams allows participants to share their screens or documents with other participants.
- 7.18 Occasionally, for example if the advocate wants to draw the attention of a witness to a certain document for all parties to see, 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.

Public access

- 7.19 In accordance with rule 25(1) of the FtP Rules, 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 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.

- 7.20 There is 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.
- 7.21 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.
- 7.22 There may be times where parts of the hearing need to be heard in private session and any observers will be required to exit the remote hearing at that time.

Role of Hearings Officer

- 7.23 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.
- 7.24 The Hearings Officer is responsible for the smooth running of the hearings. The officer will update parties regarding when they should return to the hearing link after a break in proceedings, so please ensure the officer has your best contact method and a back-up if helpful.

Recording the hearing

- 7.25 The hearing will be recorded to ensure compliance with rule 60 of the FtP Rules. At present we use a transcriber, although we may take the decision to

record via the Microsoft Teams application or other technology.

No other party is permitted to record any part of the hearing and will need to confirm their understanding and compliance with this, prior to being permitted to observe.

Technology failure

- 7.26 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.

Adjustments

- 7.27 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.

8. Applications to adjourn

- 8.1 Any application to adjourn should be made by contacting the Hearings team and notifying the other party.
- 8.2 Decisions to adjourn proceedings will be taken by the FtPC at a procedural hearing in line with rules 35-37 of the FtP Rules.

9. Compliance

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

10. Professional Standards Authority

- 10.1 Determinations made by the FtPC (except those relating to interim orders and procedural hearings) 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.