

Draft for consultation

Protocol for Hearings

Introduction

1. The overarching objective of fitness to practise proceedings, and hearings before the Professional Conduct Committee (PCC) or Health Committee, is the protection of the public. We uphold this overarching objective by investigating and adjudicating on concerns and imposing a sanction within a reasonable timeframe.
2. It is vital that delays in proceedings are minimised as they can adversely affect our overarching objective and can have a detrimental effect on all parties to a complaint. It is unfair and can be distressing to registrants, complainants and witnesses if long delays occur.
3. The COVID-19 pandemic prevented the timely hearing of cases in 'physical hearings' (where all parties to the hearing are present in person). In line with the overarching objective, our response to the pandemic necessitated the holding of 'remote hearings' (where all of the hearing takes place via an online video conferencing platform) or 'hybrid hearings' (where some of the parties attend in person while others attend by video conference or where the live evidence, or some of it, is heard in person and the rest of the hearing takes place remotely) to ensure all those involved in a fitness to practise hearing did so safely.
4. This protocol sets out the factors to be considered when deciding the format of substantive hearings before the GCC's Professional Conduct Committee or Health Committee ('the Committee'). The format can be a 'physical hearing', a 'remote hearing', or a 'hybrid' hearing.
5. This protocol is designed to assist all hearing attendees including PCC and Health Committee members, case parties, legal representatives, the legal assessor, witnesses and hearing staff of the GCC. It applies to applications for and reviews of interim orders, substantive hearings, registration appeals, restorations and hearings on the papers and case management hearings.
6. However Interim Suspension Hearings will be listed remotely due to the public interest in these hearings taking place as soon as possible and on shorter notice periods than substantive hearings. Any representations from the parties involved in an Interim Suspension Hearing to request that the hearing is listed as a hybrid hearing or physical hearing will be considered by the GCC.
7. The protocol should be applied in accordance with the fair administration of justice. A separate guidance document *Practical arrangements for remote hearings* sets out the practical arrangements for remote hearings.

8. This protocol will be subject to review, at least annually, and where necessary updated as we learn from our experience to ensure that it continues to be fair and appropriate.

Overarching considerations

9. The overarching objective of the General Chiropractic Council is:

- to protect the health, safety and well-being of the public.
- to maintain public confidence in the profession of chiropractic.
- to maintain proper professional standards and conduct for members of the chiropractic profession.

10. When considering if a hearing should proceed physically, remotely or in a hybrid format, we consider several factors:

- Does the complexity of the hearing, including factors such as its length, the number of witnesses, the charges involved, the volume of papers/size of the bundle to be considered by the panel and any physical evidence, indicate that one format may be more appropriate than another?
- Can fairness and justice be achieved?
- Are there sufficient safeguards to ensure the integrity of the process and breaches of privacy can be avoided?
- Will the process protect the safety and wellbeing of our people, partners (decision makers, legal assessors or the individual taking an official note of the hearing), and the parties to the hearing (registrant, legal representatives and any witnesses), including in accordance with any Government guidance in place at the time?
- Can any considerations of duties under the terms of the Equality Act 2010 be adequately provided for in relation to those with protected characteristics?
- Can public access to hearings be supported, for example, if there are a large number of observers?

11. Guidance on how to use the video conferencing platform is provided to hearing parties directly.

Our approach

12. The fitness to practise team of the GCC consider, on a case-by-case basis, the appropriate hearing format. Careful consideration will be given to the individual features and circumstances of each case. The parties to the case, the representatives and any witnesses will be consulted to inform which format of hearing is most appropriate before the case is listed.

13. Having gathered feedback from participants, it is our assessment that in most cases a remote hearing is effective in ensuring fairness and justice. However, for each case, the appropriate hearing format will need to be considered.

14. The consideration will include, but is not limited to, the following factors:
- 14.1. **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 access to any advice:** depending on the circumstances, the GCC may be able to make provision for registrants or witnesses to attend our offices or those of our legal advisors to participate in a hearing or attend by other means such as audio.
 - 14.2. **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.**
 - 14.3. **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 or the number of participants or witnesses.
 - 14.4. **Whether there are any special measures or reasonable adjustments required to allow a participant to engage fully and effectively in the proceedings, which cannot be accommodated remotely.**
 - 14.5. **Evidence suggests that the integrity or fairness or smooth running of the hearing may be compromised by a remote hearing.**
 - 14.6. **The impact of any disabilities or other vulnerability of any of the participants:** this may dictate the necessity of a particular hearing format - ie. remote or hybrid hearing where this would allow an individual to participate in a hearing.
 - 14.7. **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 the wellbeing of those taking part.
 - 14.8. **The health and well-being of participants:** this may dictate the necessity of a particular hearing format - ie. remote or hybrid hearing where the health of a participant(s) makes it difficult for us to hold a physical hearing or physical hearing where the health of a participant may be negatively affected by long remote hearings.
 - 14.9. **The ability to ensure that the hearing complies with Government guidance on the safety of all involved:** in the event of the introduction of restrictions, a remote hearing may be the most appropriate option.
 - 14.10. **Any other matters that may affect the smooth running of the hearing.**

15. Aside from 14.1, 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.
16. While the Professional Conduct Committee (Procedure) Rules 2000 are silent as to whether hearings can be held remotely, they do not specifically prohibit virtual hearings and as such the registrant's (the registered chiropractor) consent is not required for hearings to be managed in this way.
17. However, our preference is to proceed taking into account all views. Where there is disagreement, the parties will be invited to raise concerns and present evidence for consideration about the most appropriate format to be heard at a preliminary hearing of the Committee.
18. Decisions taken to proceed by any format will be kept under review throughout the process and the arrangements may be changed or modified, if necessary, for example in the event of implementation of restrictions established by the government. Parties must swiftly notify the GCC of any relevant changes to their circumstances.
19. For cases identified as being suitable for remote or hybrid hearings, there are specific risks and processes that need to be managed carefully when dealing with evidence given via video conferencing. In view of this, there is separate guidance on *Practical arrangements for remote hearings* which sets out the practical arrangements for parties when taking part in a remote or hybrid hearing.

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Practical arrangements for remote hearings

1. This guidance sets out expectations on the conduct of how remote hearings are organised, what happens during the hearing and other relevant information. These procedures are intended for guidance only and do not constitute a direction to any Committee to take a particular course of action when hearing cases.

1.1 Technology

The preferred platform for remote hearings at the GCC is Microsoft Teams ('Teams'). Telephone conferencing facilities may be available and can be used where a participant does not have access to a device with a camera, or in circumstances where Teams is temporarily unavailable for any reason. If an alternative platform is used, this protocol will still apply.

In advance of the hearing, the GCC will set up virtual meeting rooms (including breakout rooms) for the hearing, with individual links sent to the relevant participants.

1.2 Timings

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

Occasionally, these times may be adjusted due to the needs of any party at the direction of the Chair, for example when completing witness evidence or handing down a final determination to obviate the need to adjourn. This will be determined by the Committee Chair taking into account the well-being of all participants.

Experience of remote hearings and meetings has shown that hearing cases remotely is more tiring than hearing cases in person. It is important the Committee take account and be responsive to the tiring impact affecting concentration and alertness.

The Committee Chair must ensure consideration is given to holding sufficient breaks, usually no less than every 90 minutes. A minimum 45-minute designated lunch break is expected.

All hearing participants must ensure that they log out of the main hearing link. During extended breaks, all participants may be asked to log out and on re-joining must be muted and only engage in the conversation when the Chair or the Committee Coordinator opens proceedings.

Prior to any break in proceedings, the Committee Chair will indicate the time that the hearing will resume. All participants must ensure that they return to the virtual hearing room promptly following any break.

1.3 Communication

The Committee Chair will ensure that parties are introduced and identify everyone present in the 'virtual' room.

A remote hearing is formal in the same way as a physical hearing and parties should ensure that communication, presentation and appearance are similarly formal. Parties to the hearing are expected to have their cameras on, with microphones muted while not speaking to limit background noise.

Participants should give consideration to where they are situated for the hearings. They should ensure that they are in a quiet room by themselves (unless the participant is the registrant and is accompanied by their representative) where they will not be disturbed. The Committee Chair may wish to confirm with a witness whether they are alone in a room and to confirm if they are being assisted. Where the witness is being supported by a friend or family member, this individual should be positioned so that they appear on screen sitting behind the witness giving evidence.

The lighting of the room should be checked to ensure that participants can be seen clearly without obstructions on the screen.

Parties should be alert to not talking over each other and should speak when invited to do so by the Committee Chair.

Where either the registrant's or the GCC's representative wishes to take instructions from instructing solicitors, the Committee Chair should allow appropriate breaks to facilitate this.

Test calls will be arranged with legal representatives (where they have not previously taken part in a GCC hearing), registrants and any other participant if needed to ensure they are familiar with Teams' functionality and to test their connection.

1.4 Witnesses

Test calls will be arranged with witnesses in advance of the hearing to ensure the hearing runs as smoothly as possible.

The witness will be asked to take a religious oath or make an affirmation prior to giving evidence. In line with page 277, paragraph 58 of the [Equal Treatment Bench Book](#), the oath can still be taken during a remote hearing if the witness does not have the relevant holy book physically present with them at home.

Witnesses will be provided with an electronic link to the waiting area for the main hearing room to allow them to join the hearing at the designated time. Access to the main hearing room will be controlled by the Committee Coordinator.

A witness will not be permitted to observe the hearing until after they have given their evidence. This is to ensure their evidence is not influenced or tainted.

The witness will have a copy of their witness statement and any exhibits. A witness ought not to have access to other material in advance of the hearing / their evidence being given.

Where the witness is required to be taken to documents within the bundle during questioning by the parties, they will be shown to the witness via the screen sharing facility – see paragraph 1.6 below or sent to the witness by secure email during the hearing.

In some cases, it may be appropriate to provide other documents to the witness in advance, by agreement between the parties, but that will be dealt with on a case-by-case basis.

If a witness requires any reasonable adjustments due to disability or other needs which will support them to take part and give the best evidence, they should contact the Committee Coordinator in advance.

1.5 Documents and bundles

Documents and bundles will be shared with the relevant parties electronically via secure methods prior to the hearing. It is advisable to always have these to hand during the hearing.

If documents need to be handed up on the day, they will need to be sent electronically to the Committee Coordinator, who will then circulate them securely to the Committee, Legal Assessor and any other relevant party.

Hard copies of the bundles will not usually be provided. However, if hard copies are required for accessibility reasons, please inform the Committee Coordinator.

1.6 Screen share functionality

Teams allows participants to share their screens. Occasionally, for example, if the GCC's or registrant's representative wants to draw the attention of a witness to a certain document for all parties to see, it may be appropriate for them to share their screen. This can however lead to incorrect information being shared by accident or the right document being shared, but the information contained on screen could breach theirs or someone else's privacy.

Participants must only share their screen with the agreement of the Committee Chair and have taken care to mitigate any potential data security risks.

1.7 Public access

Rule 9 of *The General Chiropractic Council (Professional Conduct Committee) Rules Order of Council 2000* requires that hearings in front of the Professional Conduct Committee take place in public by default but the Committee may, where appropriate, choose to conduct some or all of it in private.

Rule 9 of *The General Chiropractic Council (Health Committee) Rules Order of Council 2000* requires that hearings in front of the Health Committee take place in a private session by default but the Committee may, where appropriate, choose to hear some or all of it in public session.

All hearings are listed on our website. If a member of the public wishes to attend, they can make a request to adjudication@gcc-uk.org.

Observers will be sent an agreement form to confirm their agreement to several rules of admittance. **No recording of a hearing of any kind** is permitted– this includes recording audio, video, taking photos of the screen on a second device or taking screenshots. Observers must also confirm they will not share information on social media.

Once the agreement form has been returned, a link for the main hearing room will be shared with the member of the public. The link must not be shared with anyone else. Hearing parties will be notified of the names of observers prior to the hearing commencing. The Committee Chair will also reiterate the rules of admittance at the opening of the hearing. Observers will be ejected from the remote hearing if they breach these rules.

Access to the main hearing room will be controlled by the Committee Coordinator. Anyone attempting to access the main hearing room who has not provided a signed agreement form will be ejected from the virtual lobby.

There may be times when certain information needs to be heard in a private session. Any observers will be required to exit the remote hearing at that time and will be notified by the Committee Coordinator when they are permitted to re-join once the hearing resumes in public session.

Observers should have their camera and audio turned off unless requested to do otherwise by the Committee Chair. Ultimately it will be for the Chair to direct what is appropriate on a case-by-case basis. For example, the Chair may ask an observer to turn on their camera and

audio to identify themselves to the panel/ parties and then direct them to turn it off again.

Interim suspension hearings are held in public by default but the GCC routinely requests that these hearings are heard in private. Public access to these types of hearings is therefore usually restricted.

1.8 **Technical issues**

The Committee and the Committee Coordinator actively monitor if technical issues are occurring during the hearing. If any party experiences technical issues during the hearing, they must be raised with the Committee Chair or Committee Coordinator as soon as possible. This includes poor connectivity issues that impede anyone's ability to hear or see proceedings. Proceedings should be halted until technical issues have been resolved, or, as a last resort, an alternative way to proceed is identified.

This is to ensure that all parties have fair access to proceedings and that vital information or evidence is not misheard or missed altogether.

If an observer is unable to hear or see proceedings, they should raise this with the Committee Coordinator as soon as possible to ensure public access to the hearing is maintained.

Despite thorough preparation prior to a hearing, sometimes technical issues arise on the day that cannot be avoided. This can slow or pause proceedings which can be disruptive so patience may on occasion be necessary.

The Committee Coordinator will provide parties and observers with email and telephone contact details in case of technical issues.

1.9 **Role of the Committee Coordinator**

The Committee Coordinator is responsible for the smooth running of the hearing. They will update parties and observers about start and finish times when to return from breaks or private sessions, so it is imperative that contact details are available to them.

They will also create virtual meeting rooms and control access to them.

Outside of their duties on hearing days, the Committee Coordinator also facilitates the scheduling of the hearing, monitors case management direction deadlines, coordinates disclosure and paperwork and supports all parties with queries, and technical support and provides support to witnesses.

The Committee Coordinator will also provide additional support to unrepresented registrants and vulnerable witnesses if required.

1.10 **Record of the hearing**

A formal record of the hearing will be taken by a stenographer, along with an audio recording. Alternatively, the GCC may take the decision to record via the Teams application or other technology. A verbatim written note of proceedings is then produced – this is called a transcript.

No other party is permitted to record any part of the hearing.

1.11 **Adjustments**

If any participant in the hearing requires any reasonable adjustments due to disability or other needs which will support them taking part in the hearing, they should contact the Committee Coordinator who will be able to assist.

2. For further information or support, please contact the Committee Coordinator at adjudication@gcc-uk.org.

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