

GCC Fitness to Practise

Protocol for Hearings

January 2023

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 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; and
 - 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 will assess how fairness and justice can be achieved, balancing both the Registrant's interest and the wider public interest in line with our overarching objectives. We will also consider factors including:
 - Does the nature or 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 well-being 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, including whether reasonable adjustments can be made for registrants with disabilities?
 - 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 can be 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 suggesting 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, for example, a Registrant or witness 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 well-being 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 remote 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, considering all views. Where there is disagreement as to the hearing format, 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 *Practical arrangements for remote hearings* which sets out the practical arrangements for parties when taking part in remote or hybrid hearings.

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