

**General
Dental
Council**

GDC consultation response

**Professional Standards Authority consultation:
Virtual fitness to practise hearings**

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Virtual fitness to practise hearings

Thank you for the opportunity to offer our observations on the draft guidance for regulators on fitness to practise hearings during the COVID-19 pandemic. As you will be aware, we have been successfully running remote hearings. We confined ourselves initially to interim order and review hearings but since June we have also held substantive hearings remotely.

We will resume a limited programme of hearings in person on 14 September and will seek to expand this as possible whilst complying with (or exceeding) Government safety guidance. However, we believe that we are likely to be running remote hearings for a considerable period, and indeed we are of the view that there is a good case for continuing to run some hearings remotely after the pandemic. We therefore welcome the proposed guidance, which we believe will help all parties, but in particular registrants and witnesses, understand how regulators will manage hearings for the foreseeable future, and the factors that panels need to consider when running remote hearings.

We will respond using the headings in the guidance.

Using this guidance

We note that you will be taking your guidance into account during the performance review period, and in particular with regard to Standards 15 (ensuring that investigations are fair and timely), 16 (ensuring that decision-making is fair and prioritise public safety) and 18 (ensuring that all parties are supported to participate in the process). We would be grateful for clarification about the point from which you will be considering our performance using this guidance, given that we are part way through our review period already. We would also welcome further details about your methodology for assessing our performance on remote hearings.

The Authority's Approach

We agree that FTP hearings should be heard expeditiously, and that hearings should be open to the public (except where the panel agrees evidence should be heard in private) regardless of the means by which the hearing is conducted. We agree that there are occasions when hearing a case remotely is inappropriate. However, we are clear that when the regulator and the registrant (or their representatives) disagree on the approach to the hearing, it should be left to a panel to hear the arguments on both sides and to decide on the approach for that hearing. We believe that the guidance should make it clear that panels are independent from the regulator when making these decisions, and that this section should reflect this. You might also wish to consider whether there are other parts of the guidance where it would be helpful to draw this distinction (as you have done in the section *Process for determining the type of hearing*, for example).

We have been working closely with colleagues from other regulators, our defence community and witnesses and we will continue to do so. In doing so, we have noted how other organisations, such as courts and tribunal services, have developed remote hearing activity and we have adapted our processes when necessary. We are also reviewing our procedures in line with the Community Research report.

Over-arching considerations for regulators

We do not have any comments on this section.

Public access to hearings

As you are aware, we currently provide members of the public with a link to view remote hearings, on condition that they do not record or publish information about the hearing. We note your other options for enabling members of the public to attend, including streaming the hearing within the hearings building or using alternative venues with increased available space. While both are options, we are mindful of the potential costs involved. We currently hold up to four remote hearings simultaneously and, while we could stream these into our existing hearing rooms, we would then need additional staff members in each room to ensure that the hearing was not being recorded (otherwise it is no more safe than providing a link). We have sought alternative venue space earlier this year, when our fellow regulators were unable to accommodate us, and the lowest priced rooms (which were a similar size to our own) was over £8,000 per week. We will not be pursuing either of these options because of the costs involved.

Consensual disposal

As we do not have any powers to resolve cases using consensual disposal, we do not have any comments on this section.

Matters to consider in determining the type of hearing

We are developing further guidance in determining the best approach to holding hearings, and we will incorporate the matters you have identified in that guidance. We have developed our approach to holding remote hearings with frequent consultation with our defence partners, and the decisions that have been made about which cases are not suitable for holding remotely have, so far, been made without reference to panels.

Process for determining the type of hearing

We agree that most decisions will be taken by listing officers, but that final decisions should be with panels (through the preliminary hearing process at the GDC) where necessary.

Conduct of virtual hearings

We note the matters you raise as examples that could be incorporated in good practice guidance. We have already developed guidance in many of these areas, and we will review to ensure that these aspects are covered appropriately.

For the future

We agree that, as we develop our process for remote hearings (and socially distanced in person hearings), there is scope for additional learning. We are already committed to consulting with organisations which represent registrants, and we have well-embedded processes for ensuring that witnesses can give evidence in an appropriate manner. We have amended our processes as we have gained further insight from our own experiences and from others, and we will continue to reassess our approach in light of our return to holding in person hearings.

Additional points

We note that the consultation refers to remote hearings, and hearings in person, but does not discuss hearings that are a mix of the approaches – for example, where evidence is heard in person, but where the panel deliberates and hands down their decision remotely. The GDC will be offering to run hearings using this method as we believe it offers most of the benefits of the in-person approach, while offering a significant reduction the risk caused by the pandemic. We would be happy to discuss this in further detail, but we believe that the guidance should also refer to this method of conducting hearings.

You will also be aware that some regulators, including the GDC, do not have strict prohibition on conducting remote hearings in our legislation and/or Fitness to Practise Rules – and we conclude that this leaves it ultimately for a panel to decide how they wish to hear the evidence. Hence our earlier comments on the risk of the Authority’s approach fettering the discretion of panels. We would find it helpful for there to be some acknowledgment of this in the guidance, that for those regulators who do not have explicit prohibition, your assumption will be that regulators can proceed with remote hearings.

General Dental Council