

**General
Dental
Council**

GDC consultation

Consultation on the format of hearings

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Consultation on the format of hearings

Overview

The Dental Professionals Hearings Service arranges and holds hearings about dental professionals' fitness to practise and registration under the:

- Dentists Act 1984
- General Dental Council (Fitness to Practise) Rules Order of Council 2006
- General Dental Council (Registration Appeals) Rules Order of Council 2006.

The GDC is consulting on proposed changes to standard practice for the conduct of those hearings and making permanent the current practice of holding hearings remotely¹ except where there are circumstances requiring an in-person hearing.

We believe that settling our approach to this for the long term is the right thing to do for the future, and will enable us to:

- plan effectively and with confidence
- ensure we are using resources efficiently
- convene hearings in the format that is most appropriate for the circumstances of the case.

There will of course be differing views about the format of hearings, and we are consulting to better understand those views. We will carefully consider responses to this consultation and welcome any thoughts on possible benefits or drawbacks from the proposed approach.

To support the proposed change, we have developed guidance for decision makers who are asked to determine the format of a hearing. It is proposed that this guidance will replace the section entitled "Direction on the format of the substantive hearing (remote or in-person)" of the [GDC Fitness to Practise: Preliminary Meetings Guidance](#) (21 February 2022), and will apply to all practice committees and Registration Appeals Committee hearings. The proposed guidance is set out below and a version of the section of the Preliminary Meetings Guidance, with the proposed changes indicated, can be found at [Appendix A](#) for ease of reference.

Prior to the onset of the COVID-19 pandemic in early 2020, GDC hearings were held in-person accommodated by the five-room hearing suite in the GDC's Wimpole Street offices. In common with other organisations, from March 2020 we were unable to convene in-person hearings due to the government-imposed lockdown measures. To ensure we could continue to hold hearings during the period where in-person meetings were not viable, we developed methods for holding hearings remotely. Since introducing remote hearings, we have made improvements to the process, and as a result have continued, since the end of the series of

¹ Remote hearings are those where participants join by video or audio link. We currently use Microsoft Teams to support remote participation in hearings. In-person hearings are those in which participants join at a specified physical location. Hybrid hearings are those where one or more of the participants are physically present for some or all of the time, while others join remotely.

lockdowns and work-from-home orders, to operate hearings remotely, except where there are circumstances that require an in-person hearing to be convened. The current process still relies, however, on the position reached due to the pandemic and is therefore a temporary arrangement. We have previously committed to consulting stakeholders prior to making the current arrangements permanent.

Under the current arrangements, to ensure that the process is fair, that the parties are able to engage effectively with the proceedings, and that the outcome is not prejudiced by the format of the hearing, parties can request that a hearing be held in-person. Where parties cannot agree the format of the hearing, the decision will be referred to a panel. In making the decision the panel will balance the interests of the registrant and the need to ensure the overall fairness of the proceedings against the public interest in fitness to practise cases being heard as expeditiously as possible. Decisions are made on a case-by-case basis, weighing the advantages and risks. The views of the parties are sought, and all points raised are considered. Neither party has a veto over the method of hearing.

We propose to deal with interim order hearings slightly differently due to the urgent nature of such hearings. The default position will be that these hearings are heard remotely, in common with other hearings. However, if a registrant requests that an interim order hearing is in-person, then it will be held in-person.

We propose to continue these arrangements, with remote hearings being the default format.

Having successfully operated remote hearings for over three years and having improved and refined the process over this period, we are now confident that the format works effectively. Since introducing remote hearings, we have not faced any legal challenges in the courts in relation to fairness² or privacy. There is also some anecdotal information to suggest that some registrants may find it easier to engage with a virtual hearing than an in-person one, and some regulators have found that remote hearings have resulted in increased levels of participation³.

We also recognise, however, that there are times when hearings are best held in-person, either fully or in part to meet the needs of participants or for the presentation of evidence⁴.

In this consultation, we are seeking views on our plans to hold hearings remotely by default. If we go ahead with this, it means that in future, unless one or both parties provide reasons that suggest that a hearing, or part of one, should be convened in-person, all hearings will be held virtually. Making this change means that we need to provide guidance to decision-makers, which sets out how to determine the method of a hearing where parties do not agree on the format of the hearing. We are therefore also consulting on that guidance.

² Since 2020, there have been no appeals that take the point of unfairness on the basis of remote hearings.

³ HCPC has found “increased registrant attendance” where hearings are held remotely [remote hearings consultation HCPC](#), and GPhC has found “increased engagement and attendance” [GPhC Council Papers 12 May 2022](#).

⁴ See the PSA’s [Guidance for regulators on fitness to practise hearings during the COVID-19 pandemic](#).

We are particularly interested in views on any positive or negative impacts of this proposal on any individuals or groups sharing any of the protected characteristics in the Equality Act 2010.

Consultation period and deadlines for responses

This 12-week consultation exercise opened on 23 November 2023.

It will close at 23.59 on 15 February 2024.

We will be unable to consider responses submitted after that deadline.

Ways to respond

Please respond to this consultation using the [online survey](#).

You can also submit your response by email. When doing so please include the name of the consultation in the subject line, or something similar that helps it to be identified easily.

When submitting by email, please reference your responses using the question numbers used in this document.

For details of how your data will be processed and stored, please see our [Privacy Notice](#). Information held by the GDC is subject to Freedom of Information requests, so please do not provide any information you would not want to be disclosed.

Response to your views

The GDC will respond to views raised during the consultation by producing a consultation outcome report. The report will be published on the GDC website.

Contact us

If you have any questions or queries about this consultation:

Email: stakeholder@gdc-uk.org

Phone: 020 7167 6330

Details of the proposals for hearings

Background

The GDC is the regulator of dental professionals, and it exists to protect the public. In seeking to protect the public, the GDC pursues three key objectives, which are set out in the [Dentists Act 1984](#) (“the Act”). These are:

- to protect, promote and maintain the health, safety and well-being of the public
- to promote and maintain public confidence in the professions regulated under the Act
- to promote and maintain proper professional standards and conduct for members of those professions.

The work we do in pursuit of these objectives is focused on our registers, and is aimed at ensuring that:

- only those who are appropriately trained and qualified are entered onto the Register
- those who are on the Register continue to practise safely and professionally
- where a person on the Register falls short of the required standards and thereby poses a risk to the public as a result of their competence, conduct or health, that risk is managed effectively.

Such risks are managed by our fitness to practise process. This process begins with an investigation into an allegation of impaired fitness to practise. The outcome of that investigation may require a hearing to determine whether a professional’s fitness to practise is impaired, and whether they should be allowed to continue practising without restrictions. The panels that make decisions at these hearings are called practice committees.

Preliminary meetings provide an opportunity for parties to seek directions on a case prior to a practice committee hearing. They are a case management tool that can be used to narrow, refine or resolve issues ahead of a hearing. They can also be used to decide the format of a hearing, whether it be remote, in-person or a hybrid (a combination of the two).

In some cases, particularly those where there is thought to be a serious or imminent risk to the public, we convene hearings to consider whether to impose an interim order. Such an order can restrict a professional’s practice before the full facts of the case have been determined. The panels that make decisions at these hearings are called Interim Orders Committees.

Where a practice committee or an Interim Orders Committee has placed a restriction on a professional’s practice, via, for example, conditions on their practice or suspension of registration, we also convene hearings to review those restrictions.

Committees called Registration Appeals Committees can also be convened to consider appeals from dental professionals where they have been refused entry onto the Register, removed from the Register (but not by a practice committee, for example, for failing to comply with CPD requirements), or not restored to the Register (but not by a practice committee).

A directions hearing can be convened ahead of a Registration Appeals Committee hearing and functions similarly to a preliminary meeting before a practice committee hearing and provides for the committee to give directions as to the conduct of the case.

Prior to March 2020, hearings were held in-person at our hearing facilities in London. When national lockdowns were imposed in March 2020 we were, in common with other regulatory bodies, unable to hold in-person hearings. We therefore explored alternatives and arranged for hearings to take place remotely, initially via Skype and later via Microsoft Teams. We initially focussed on interim orders and review hearings before starting to hold substantive hearings online in August 2020.

From September 2020, we held some hearings in-person, in line with national restrictions, but most hearings continued to be held remotely. In January and February 2021, we consulted on revisions to the guidance to practice committees for preliminary meetings, which included a new section on the factors they should consider if asked to determine how a practice committee hearing should be heard.

The [Preliminary Meeting Guidance](#) was introduced in February 2022. At the time of introducing the Guidance we were still working on the assumption that changes would be temporary, and we are now consulting on making remote hearings our permanent approach.

The effect of these changes would be for hearings to be held remotely except where parties agree that they should be in-person, or:

- For practice committees – the Chair or members of the committee at a preliminary meeting conclude, based on reasons provided by one or both parties, that it should be held in-person.
- For Registration Appeals Committees – the Chair or members of a committee at a Directions Hearing conclude, based on reasons provided by one or both parties, that it should be held in-person.
- For Interim Orders Committees – due to the urgency of these hearings if the registrant requests an in-person hearing, it will be held in-person.

The current position

As explained above, since March 2020 most hearings have been held remotely or on papers and the current presumption is that hearings will be remote. Parties can agree to hold the hearing, in full or in part, in-person, or the Chair or members of a practice committee panel can direct that a hearing be held in-person if asked at a preliminary meeting.

Since 2022, for practice committee and Interim Orders Committee hearings:

- 89% have been remote and 11% have been heard (fully or in part) in-person
- 81% (166 cases) of initial hearings have been remote and 19% (39 cases) have been heard (fully or in part) in-person
- there have been 42 applications for hearings to be held in-person or hybrid with 17 of these agreed by parties without being referred to a panel, 20 were granted by a panel, and only five were refused

- the method of hearing (remote, hybrid, in-person) has been agreed by parties for each of the 124 hearings in 2023, up to the end of July.

This suggests to us that holding hearings remotely by default is perceived by dental professionals and their representatives to be working well and the way we determine whether a hearing needs to be held in-person is also effective.

There have been no appeals against the GDC, since 2020, that have challenged the decision on the basis that the hearing was held remotely. This, as well as the other data regarding requests for in-person hearings, suggests to us that there are no widespread concerns that remote hearings are unfair or that there are any widespread concerns with the process that the GDC have for deciding on whether a hearing should be in-person or remotely if there is no agreement.

Our data from hearings does not indicate whether or not representation and attendance is increased at remote hearings compared to in-person hearings but some regulators have reported higher levels of engagement by registrants in remote hearings⁵. We will continue to monitor these trends to determine whether the use of remote hearings has a measurable impact. If remote hearings lead to increased attendance and participation, it is likely that this would benefit registrants.

However, there are also a range of potential disadvantages to remote hearings. Other regulators have highlighted issues such as:

- reduced support for the registrant from their representatives when they are joining from different locations, which may raise wellbeing issues
- potential distractions and privacy issues where environments that participants join from are not arranged appropriately.

We currently provide support to participants in remote hearings and propose to continue this support if we adopt our current remote hearings position on a permanent basis. Our Participant Support Officer is available to signpost participants to support, particularly for unrepresented dental professionals.

We also offer support for participants who have difficulty using the required technology. We discuss their needs and have hearing support officers who are available to offer test calls to check connectivity and discuss use of the technology. We also have guidance available for those who need it advising on how to join a Microsoft Teams call.

Proposals

We are proposing that our default position will be that hearings will be held remotely going forward, while preserving the ability for parties to request the hearing be held in-person. When such a request is made, if not agreed between parties, the request will be made to:

⁵ HCPC remote hearings consultation [enc-07---remote-hearings-consultation.pdf \(hcpc-uk.org.uk\)](#); GPhC consultation analysis [gphc-council-papers-12-may-2022.pdf \(pharmacyregulation.org\)](#).

- For practice committees – the Chair or members of the committee will make a determination about the format of the hearing at a preliminary meeting.
- For Registration Appeals Committee – the Chair or members of the committee will make a determination about the format of the hearing at a directions hearing.

In relation to Interim Orders Committee, we propose a different process due to the urgency of these hearings. If the registrant requests a hearing in-person, it will be held in-person.

The draft guidance ([see section below](#)) sets out the matters that the Chair or committee members should take into account when making this decision.

We believe this process to decide on the method of hearings is fair to dental professionals and enables a fitness to practise process that is fair to registrants. If a dental professional wishes to have the hearing in-person due to the particular circumstances of the case, then they are able to apply to a Chair or a panel if it is not agreed, which ensures that any particular issues are set out and considered by a panel in accordance with objective criteria. This is an important safeguard to ensure that hearings are held in-person when it is fair to do so.

The evidence base in relation to remote hearings is still developing, in regulatory contexts and others. However, we believe that introducing a permanent position of holding hearings remotely, by default, will have the following benefits:

- There will be certainty of all parties about the likely method of hearing a case.
- It will reduce the cost to registrants who would otherwise have had to travel to, and stay in, London.
- It will reduce the need to make alternative arrangements for those who have caring responsibilities and would otherwise have had to travel to, and stay in, London.
- There are potential significant cost savings to the GDC, including in not paying the expenses of witnesses and experts to travel to hearings.

We will monitor and evaluate the impact of the proposed changes should they be introduced, including paying particular attention to whether anyone faces disadvantages that relate to protected characteristics, or other personal circumstances, such as those related to professional role or resources.

Guidance for deciding the method of hearing

The following proposed guidance reflects the guidance for preliminary meetings which was introduced in February 2022. It is intended to clarify the basis on which the panel will consider any application to hold a hearing in-person where parties do not agree to a remote hearing.

The GDC consulted on guidance for panels in 2021 on the basis that it would be included on a temporary basis whilst pandemic concerns remained. We are now consulting to implement this guidance on a permanent basis to support our proposed process to hold hearings remotely by default, unless the parties agree to hold the hearings in-person, or, in the absence of an agreement, a panel directs a hearing to be held in-person.

Proposed Panel Guidance

Direction on the format of the substantive hearing (remote or in-person)

1. If parties do not agree to a remote hearing, the Chair or committee members will be asked to give a direction whether the hearing should be held remotely or in-person at a preliminary meeting or directions hearing.
2. It is the GDC's position that hearings be held remotely, with in-person (or hybrid) hearings being the exception.
3. Where there is a request for a hearing to be held in-person, the Chair or committee members must balance the interests of the registrant and the need to ensure the overall fairness of the proceedings, against the public interest in fitness to practise cases being heard as expeditiously as possible.
4. When determining whether a hearing currently listed should be held in-person (or as a hybrid), the Chair or committee members must adopt the appropriate approach on a case-by-case basis, weighing the advantages and risks in each case. In that regard, where available, the views of the parties should be sought. The Chair or committee members should ensure that all points raised by either party are considered when deciding on these matters and that these points are given appropriate weight in all circumstances. Neither party has a veto over the method of hearing.
5. The Chair or committee members when determining the decision, should also take into account⁶:
 - (i) Whether the registrant and other participants have sufficient access to and understanding of technology to enable them to take part effectively in a remote hearing, including having access to advice.
 - (ii) Whether there is reason to believe that there are risks of a breach of privacy – these might arise where the facts are sensitive, especially if they involve intimate medical or sexual matters or vulnerable people, the case has attracted media attention, or there are particular features of the case or of those involved that point to a heightened risk.
 - (iii) Any features of the case which make it particularly difficult for it to be held remotely (for example, difficulties in presenting evidence, difficulties for witnesses or parties in following proceedings or accessing evidential bundles when required, and/or where an interpreter may be required).
 - (iv) Any evidence which suggests that the integrity or fairness of the hearing may be compromised by a remote hearing.

⁶ See the PSA's [Guidance for regulators on fitness to practise hearings during the Covid19 pandemic](#).

- (v) The impact of any disabilities or other vulnerability of any of the participants.
- (vi) The ability to ensure that the hearing complies with government guidance on the safety of all involved.
- (vii) And any other matters that would be likely to affect the integrity or smooth running of the hearing (including, for example, whether providing evidence from a home environment has the potential for distractions which might impact on their involvement such as childcare).

6. It is unlikely that the wish to assess the demeanour of a witness in-person would, on its own, justify the need for an in-person hearing⁷.

Equality and diversity

We are required by the Equality Act 2010 in exercising our functions to have due regard to the need to eliminate discrimination, harassment, victimisation and any other conduct prohibited by or under the Act, advance equality of opportunity between persons who share a relevant protected characteristic and those who do not, and to foster good relations between people who share a protected characteristic and those who do not.

As part of this we ensure that the equality and diversity implications of any new proposal are considered. We believe that the proposals to hold hearings remotely by default are likely to benefit those who will find it difficult to travel to attend hearings in-person, for example people with disabilities or those with caring responsibilities, who are likely to be female. We also believe that the ability to apply for the hearing to be held in-person will ensure that there is no particular detriment suffered by those who would find remote participation difficult due to their protected characteristics.

We have asked for views on the impact of our proposals on those with protected characteristics.

Consultation questions

1. Are you responding to this consultation as:

- an individual
- on behalf of an organisation?

1(a). If an individual, please tell us the option that best describes you:

- registered dental professional
- dental student or have applied to join the register
- member of the public and/or a patient.

⁷ Mr Justice Warby observed in *Dutta, R (On the Application Of) v General Medical Council (GMC) [2020] EWHC 1974 (Admin)*, that witness demeanour was an ineffective method to exclusively evaluate credibility and reliability. He stated: 'Reliance on a witness's confident demeanour is a discredited method of judicial decision-making'.

1(a)(i). If you are a registered dental professional, what is your title (tell us all that apply from the list below)?

- Clinical dental technician
- Dental hygienist
- Dental nurse
- Dental technician
- Dental therapist
- Dentist
- Orthodontic therapist
- Specialist (on one or more specialist lists).

1(b). If you are responding on behalf of an organisation, please provide the name of your organisation, and a contact email address or phone number (for any questions about your response only; the need to do that is rare).

2. To what extent do you agree with the proposal to hold all hearings remotely by default unless parties agree otherwise (please provide your reasons for your answer)?

- strongly agree
- somewhat agree
- neither agree nor disagree
- somewhat disagree
- strongly disagree
- not sure

Please provide reasons for your response:

3. To what extent do you agree with the proposed method to decide the format of a hearing where the parties do not agree in relation to practice committees (please provide your reasons for your answer)?

- strongly agree
- somewhat agree
- neither agree nor disagree
- somewhat disagree
- strongly disagree
- not sure

Please provide reasons for your response:

4. To what extent do you agree with the proposed method to decide the format of a hearing where the parties do not agree in relation to the Registration Appeals Committee (please provide your reasons for your answer)?

- strongly agree
- somewhat agree

- neither agree nor disagree
- somewhat disagree
- strongly disagree
- not sure

Please provide reasons for your response:

5. To what extent do you agree with the proposed method to decide the format of a hearing where the parties do not agree in relation to the Interim Order Committee (please provide your reasons for your answer)?

- strongly agree
- somewhat agree
- neither agree nor disagree
- somewhat disagree
- strongly disagree
- not sure

Please provide reasons for your response:

6. To what extent do you agree with the factors in the proposed guidance are the appropriate ones when a panel considers whether to hold a hearing in-person (please provide reasons for your answer)?

- strongly agree
- somewhat agree
- neither agree nor disagree
- somewhat disagree
- strongly disagree
- not sure

Please provide reasons for your response:

7. To what extent do you agree with the factors in the proposed guidance are sufficiently clear to assist all parties when deciding whether to request on agree to an in-person hearing (please provide your reasons for your answer)?

- strongly agree
- somewhat agree
- neither agree nor disagree
- somewhat disagree
- strongly disagree
- not sure

Please provide reasons for your response:

8. We want to understand whether and how our proposals might advantage or disadvantage people. Please consider the characteristics and factors listed below and

indicate for each whether you think remote hearings might be advantage or disadvantage people in these groups or categories.

- Age
- Disability
- Gender reassignment
- Marriage and civil partnership
- Pregnancy and maternity
- Race
- Religion or belief
- Sex
- Sexual orientation
- Dental professional role
- Challenges with resources (time, travel costs etc.)

9. If you think that our process for holding remote hearings by default as set out in this paper would be advantageous or disadvantageous in relation to any of the characteristics or factors listed at Question 8, please provide your reasons.

10. Please let us know if there is anything else you would like to raise regarding our proposals.

Appendix A

Preliminary Meeting Guidance (V1) (21 February 2022)

Extract of paragraphs 29 to 34 for consultation

Direction on the format of the substantive hearing (remote or in-person)

29. The [If parties do not agree to a remote hearing, the Chair or Committee] members or Chair may [will] be asked to give a direction as to the format that the substantive hearing should take in terms of whether the hearing should be held remotely or in-person [at a preliminary meeting or directions hearing]. Wherever possible, the hearings team will bring this matter before the Chair or Committee listed for the substantive hearing.
- [30] [It is the GDC's position that hearings should be held remotely, with in-person (or hybrid) hearings being the exception.]
30. ~~Since the COVID-19 pandemic began in early 2020, many legal jurisdictions have had to adapt to hold hearings remotely, where holding in-person hearings may put the participants or public at risk of harm⁸. As the pandemic continues, it is likely that the majority of GDC hearings will need to be held remotely, with in-person (or hybrid) hearings being the exception.~~
31. ~~However, where~~ [When] there is a request for a hearing to be held in-person, the [Chair or Committee] members or Chair must balance the interests of the registrant and the need to ensure the overall fairness of the proceedings, against the strong public interest in fitness to practise cases being heard as expeditiously as possible.
32. When determining whether a hearing currently listed should be held in-person (or as a hybrid), the [Chair or Committee] members or Chair must adopt the appropriate approach on a case-by-case basis, weighing the advantages and risks in each case. In that regard, where available, the views of the parties should be sought. The [Chair or Committee] members or the Chair should ensure that all points raised by either party are considered when deciding on these matters and that these points are given appropriate weight in all circumstances. Neither party has a veto over the method of hearing.
33. ~~Whilst the COVID-19 pandemic and its after-effects continue to impact on the GDC and other parties, it is likely that the majority of GDC hearings will need to be held remotely, with in-person (or hybrid) hearings being the exception. If a request for an in-person hearing is received in such circumstances, the Registrar has instructed that the GDC's primary submission will always be that hearings should be held remotely, unless this is considered to be unfeasible or inappropriate. This reflects the GDC's~~

⁸On 19 March 2020 the Lord Chief Justice made an announcement to judges in the Civil and Family Courts that 'The default position now in all jurisdictions must be that hearings should be conducted with one, more than one, or all participants attending remotely.' On 5 January 2021, in his message on the latest COVID-19 restrictions, the Lord Chief Justice reiterated that 'Facilitating remote attendance of all or some of those involved in hearings is the default position in all jurisdictions, whether backed by regulations or not.'

~~position that, in the circumstances of the pandemic, remote hearings provide the best balance between public safety and the efficient exercise of the organisation's statutory responsibilities.~~

[33] ~~[The Chair or Committee members when determining the decision, should also take into account⁹] The members or Chair when determining the decision, should also take into account:~~

- (viii) Whether the registrant and other participants have sufficient access to and understanding of technology to enable them to take part effectively in a remote hearing, including having access to advice.
- (ix) Whether there is reason to believe that there are risks of a breach of privacy – these might arise where the facts are sensitive, especially if they involve intimate medical or sexual matters or vulnerable people, the case has attracted media attention, or there are particular features of the case or of those involved that point to a heightened risk.
- (x) Any features of the case which make it particularly difficult for it to be held remotely (for example, difficulties in presenting evidence, difficulties for witnesses or parties in following proceedings or accessing evidential bundles when required, and/or where an interpreter may be required).
- (xi) Any evidence which suggests that the integrity or fairness of the hearing may be compromised by a remote hearing.
- (xii) The impact of any disabilities or other vulnerability of any of the participants.
- (xiii) The ability to ensure that the hearing complies with government guidance on the safety of all involved.
- (xiv) And any other matters that would be likely to affect the integrity or smooth running of the hearing (including, for example, whether providing evidence from a home environment has the potential for distractions which might impact on their involvement such as childcare).

[34] It is unlikely that the wish to assess the demeanour of a witness in-person would, on its own, justify the need for an in-person hearing¹⁰.

⁹ See the PSA's [Guidance for regulators on fitness to practise hearings during the Covid19 pandemic](#).

¹⁰Mr Justice Warby observed in [Dutta, R \(On the Application Of\) v General Medical Council \(GMC\) \[2020\] EWHC 1974 \(Admin\)](#), that witness demeanour was an ineffective method to exclusively evaluate credibility and reliability. He stated: 'Reliance on a witness's confident demeanour is a discredited method of judicial decision-making'.