

# Format of hearings

## Consultation outcome report

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# 1. Introduction

This report provides a summary of the responses from the General Dental Council's (GDC's) public consultation on proposed guidance to panellists on determining the format of substantive hearings, and on the position that hearings be held virtually ('remote hearings') by default, while retaining the in-person option where appropriate.

The report also provides our considerations of the responses, including any amendments made because of this feedback received. The consultation opened on 23 November 2023 and closed on 15 February 2024.

The consultation asked for views about:

- Holding remote hearings by default, including the approach for determining the format of hearings for practice committees, the registration appeals committee and the interim orders committee where parties cannot agree on the format.
- The draft panel guidance.
- The impacts of remote hearings on dental professionals and witnesses with certain protected characteristics, of different professional groups or those facing resource challenges.

The consultation was published on the GDC's website.

## 2. About the GDC

The GDC is the UK professional regulator of more than 121,000 members of the dental team, including over 44,000 dentists and over 76,000 dental care professionals (DCPs). We regulate the whole dental team across all four nations of the UK.

Our primary objective is to protect the public, and in doing so to:

- Protect, promote, and maintain the health, safety, and wellbeing of the public.
- Promote and maintain public confidence in the professions we regulate.
- Promote and maintain proper professional standards and conduct for members of those professions.

All patients should be confident that the treatment they receive is provided by a dental professional who is trained, qualified and meets our standards. To achieve this, we:

- register qualified dental professionals
- set standards for the dental team
- investigate complaints about dental professionals' fitness to practise, and
- work to ensure the quality of dental education.

## 3. Consultation on the format of hearings

### Why we consulted

This consultation was about:

- making permanent the current policy of holding hearings remotely (online) unless a different format is requested
- what happens if parties cannot agree the format of the hearing
- the guidance to decision makers who may be asked to determine the format.

A hearing may take place if the outcome of an investigation into concerns requires a hearing to determine whether a dental professional's fitness to practise is currently impaired, and whether they can continue to practise. The panels that make decisions at these hearings are called practice committees. Ahead of a practice committee hearing, parties can hold 'preliminary meetings' to narrow, refine or resolve issues, and it is at these meetings that they may be asked to determine the format of the hearing.

A different committee called the Interim Orders Committee (IOC) may hold a hearing if the concerns suggest a serious or imminent risk, or to review any restrictions which a previous IOC has put in place.

Committees called Registration Appeals Committees also hold hearings where a dental professional has been removed from the register but not by a practice committee, for example for not meeting our CPD requirements, or has been refused entry or restoration to the register.

Prior to the COVID-19 pandemic, we held most of our hearings in person, at our Wimpole Street office in London. In common with most other regulators, in March 2020 we moved all hearings to a remote format, after national lockdowns were imposed. We reverted to holding some hearings in person from September 2020 but have continued to hold most hearings remotely.

In January and February 2021, we consulted on revisions to the guidance to practice committees on preliminary meetings, which included a new section on the factors that should be considered when asked to determine the format of a hearing. We published the [outcomes of the consultation](#) and the updated [guidance on preliminary meetings](#), including the considerations on deciding the format of a hearing, in 2022. At the time, we said that the policy of operating hearings remotely by default would be temporary, and we would consult again should we decide to make the policy permanent.

On 23 November 2023 we opened a consultation on making the default position of holding hearings remotely permanent and proposed changes on how it would apply to IOC hearings. The consultation closed on 15 February 2024.

### Experience of remote hearings since 2020

Since March 2020, we have held most hearings remotely, with some in person and hybrid hearings also taking place where the remote option was not appropriate. Since the introduction of guidance to panel members on determining the format of hearings in January 2022, nearly 90% of substantive hearings and 100% of IOC hearings have been held remotely.

Our consultation proposals including statistics relating to the number of remote and in-person hearings up to the end of July 2023. Since then, the majority of hearings have continued to be held remotely. In total, between January 2022 and the end of May 2024, just over 87% substantive hearings (443) were remote.

Just under 13% (65) were held in person: 43 fully and 22 in part as hybrid hearings. In the majority of these, and in all applications since 2023, where a registrant made a request for an in-person hearing, this request was agreed by both parties without the need to involve a panel. Where parties could not agree, the applications were referred to panels who agreed to 20 applications and rejected five.

Some of the common reasons for requesting an in-person hearing have included cases involving dishonesty, complex or voluminous cases that required counsel's assistance, and cases where it was thought important for the panel to assess the demeanour of a witness or a registrant in-person and to take it into consideration.

Since 2020, there have been no appeals against the GDC that have challenged the decision on the basis that the hearing was held remotely.

### **Consultation feedback summary**

There was a high degree of consensus that remote hearings have a role and that they provide real advantages for, at the very least, some participants in some cases.

There was also general agreement that there are circumstances where a remote format is not appropriate, and in those circumstances, registrants should be able to have a different kind of hearing.

There was also a great deal of agreement with the GDC's view that most hearings have been remote without it being an issue of significant concern, and that registrants overall have been able to have the hearing in a format they wanted.

However, there was a significant difference of opinion on how decisions on the format of hearings should be made, and whether it was reasonable that the burden of asking for an in-person hearing should fall on the registrant.

### **Impact on vulnerable participants**

Consultation feedback has contributed to our review of impacts of the proposals on different groups of participants, which also looked at our experience of identifying the needs of participants and helping them to take part effectively, and the available research into experiences of different groups that participate in Fitness to Practise (FtP). We have concluded that our proposals could benefit participants who find it difficult or burdensome to attend in-person hearings, for example if they have certain disabilities or caring responsibilities.

We have also concluded that on the whole, our proposals do not have defined negative impacts on particular groups of participants. We assess the needs of every participant and use that information to support their attendance and mitigate any impacts. We have seen multiple examples of how such mitigations and adjustments can support participation, and provide the option to request an in-person hearing for any reason.

We acknowledge that we do not currently collect data on (any) impacts to each participant's protected characteristic or their ability to effectively attend a remote hearing, nor on whether protected characteristics played a role in the participant's request for a different format. We have committed to developing processes for collecting, analysing and reporting this data, and to reviewing our approaches should the analysis point to any systemic impacts.

### **Consultation structure**

We asked all respondents if they were replying as an individual or on behalf of an organisation. If they told us they were an individual, we asked if they were a registrant and for their title, if they were a student or recent applicant to the register, or a member of the public or a patient.

We then asked nine questions about the proposals. Questions 2-7 were scale questions, which required the respondent to select one response on a five-point scale, followed by a prompt to explain their answers in a free text box. Questions 8-10 asked for a free text box answer. There were no compulsory questions.

## How we analysed consultation responses

We started the analysis of responses when the consultation window closed. Responses for closed (quantitative) questions are reported in the form of summary tables. For open text (qualitative) questions, a coding framework was prepared for each question to categorise each response and identify key themes across all responses.

## How we promoted the consultation and engaged with stakeholders

We made the consultation materials available on our website and promoted them with correspondence to our stakeholders, social media posts and a press release. We also included announcements and reminders about the consultation through our monthly newsletter to stakeholders. We used the opportunities in our regular meetings with stakeholders to introduce the consultation and encourage responses. Respondents had the option to either submit a response using an online survey or to submit their response by email.

## Headline analysis of consultation responses

We received 66 responses to the consultation. 62 of these were submitted using JISC Online Surveys (the online form) and four were sent to us by email. Not all respondents answered every question.

Question 1 asked for information about the respondent. Of the 66 responses received, 20 were submitted by an organisation. Of these, one response was submitted twice, on behalf of the organisation and on behalf of an individual. In another instance, one organisation submitted two separate but similar responses. All four were considered as separate submissions.

### The following organisations submitted a response:

- BDA Benevolent Fund
- British Association of Clinical Dental Technology (BACDT)
- British Association of Dental Nurses (BADN)
- British Association of Dental Therapists (BADT)
- British Association of Private Dentistry (BAPD)
- British Dental Association (BDA)
- British Society of Dental Hygiene and Therapy (BSDHT)
- Bupa
- CFC Underwriting Ltd.
- Clyde & Co.
- Dental Defence Union (DDU)
- Denplan, part of Simply Health
- Dental Laboratories Association (DLA)
- Dental Protection Ltd.
- General Medical Council (GMC)
- Medical and Dental Defence Union of Scotland (MDDUS)
- Professional Standards Authority for Health and Social Care (PSA)
- RightPath4 Ltd.
- Society of British Dental Nurses (SBDN)

46 responses were provided by individuals. Of those, two indicated they were dental students or had applied to join the register, and four indicated that they were members of the public or patients. The remaining 40 responses were provided by registered dental professionals, of whom, 29 were dentists including three specialists, five were dental nurses, two were dental therapists, and one was a clinical dental technician.



In general, responses from organisations contained more detail than those from individuals, and this is reflected in the analysis of the feedback. A small number of submissions did not follow the proposed structure, and where this happened, we have grouped feedback thematically.

Substantive consultation questions were numbered 2-9, with question 10 asking for any additional comments. A summary of the consultation feedback and the GDC's response, are set out below.

Questions 2-5 were about the GDC's proposals to continue to hold hearings remotely by default on a permanent basis, while retaining the option for parties to request or for the panel to direct that a hearing be held in person (question 2) and for chairs and members of practice committees and the Registration Appeal Committee to continue to decide on the format of hearings where parties disagree (questions 3 and 4).

Question 5 asked about the new proposal to hold an IOC hearing in person if a registrant requests it. Respondents were asked to provide an answer on a five-point scale between 'strongly agree' and 'strongly disagree', to say 'not sure' or to give no answer, and then provide reasons for their response as free text.

## 4. Analysis of consultation responses

### Holding all hearings remotely by default

#### Question 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)?

63 out of 66 respondents answered this question. 39 of these either 'strongly agreed' or 'somewhat agreed' with this proposal and 21 'strongly disagreed' or 'somewhat disagreed'.

Table 1 – Extent of agreement with remote by default

Response	No. of responses	%
Strongly agree	24	36.4%
Somewhat agree	15	22.7%
Neither agree nor disagree	3	4.5%
Somewhat disagree	5	7.6%
Strongly disagree	16	24.2%
No answer	3	4.5%
<b>Total</b>	<b>66</b>	<b>100</b>

#### Benefits of remote hearings: increased convenience, and reduced cost and stress

Among the 39 respondents who agreed with the proposals, there were 11 organisations and 28 individuals. 34 provided an additional comment. Of these, 19 listed specific benefits to registrants and witnesses.

The most common suggested benefits among both individuals and organisations were reduction in cost associated with attending a meeting in person and greater convenience. 16 respondents cited lower cost and personal convenience, and the reduction in stress and anxiety due to the ability to participate from familiar or convenient surroundings.

One dental professional commented:

“I am currently going through this process as I made a complaint back in 2021. I feel that as I live in the Northwest, it would mean a journey of over 250 miles each way to attend a stressful hearing. Being able to have a remote hearing would be less stressful and would ensure that more people could attend these meetings due to work constraints, and the sheer stress of travelling and attending the hearing.”

Another dental professional said:

“I personally would find visiting a distant city an overwhelming experience. I feel if I had to attend a hearing it would be stressful but additional stress would be added by arranging transport, hotels, not getting lost, being on time etc.”

Another suggested that:

“Being on [sic] their own home it might help during the hearings”, and a further echoed this with, “also the opportunity to be in a familiar environment close to support networks may reduce mental health toll of hearing.”

Several other respondents mentioned reduced environmental impact, and a few respondents mentioned that remote hearings could be more speedily and flexibly arranged and suggested that it could lead to reduced lead times for hearings.

The DLA said they “support this measure, as it will reduce the costs associated with attending hearing for the individuals involved, it may reduce the anxiety attached to attending a hearing.”

BADN said they agreed that “remote hearings will have the advantage of cutting out travel costs, childcare costs, etc. that dental nurses – who are 99% female and very often paid only minimum wage – struggle to pay.”

Bupa said they supported “the stated aims to improve the efficiency of the process by reducing timescales for hearings to be held, reduce costs, and facilitate registrant attendance.”

### **Remote hearings are effective**

At least one respondent told us that in their view remote hearings have been effective. One registrant said:

“Having been involved in a significant number of remote Registration Appeal hearings in recent time [*sic*], I think the most important element is that the appellant has the opportunity to be visible, can state their case and be questioned. This has worked very effectively in the majority of hearings I have been in.”

Another said:

“I also act as an expert witness and am acutely aware of the number of people involved and how long some of these hearings take. With virtual meeting software as reliable as it is, costs could be drastically reduced by holding hearings online and registrants’ money from registration fees that is saved could be put to much better use.”

Bupa was among the 16 respondents who ‘somewhat agreed’ rather than ‘strongly agreed’ with the proposal. They qualified their support by noting calling on the GDC to “improve communications with stakeholders, including practice owners, in requests for information, witness attendance, and hearing scheduling” and to ensure that in the pursuit of expediency, the GDC does not “place unreasonable expectations on speed of response to GDC requests.”

### **Retention of in-person format alongside remote hearings**

Several organisations and individuals who ‘somewhat agreed’ or ‘neither agreed nor disagreed’ qualified their support or absence of disagreement by stressing that face-to-face and hybrid hearings would still be available.

BADN said that “provision must be made for in person hearings in specific circumstances”, while the BACDT said, “a face to face hearing should always be available to the dental professional”, and the PSA noted that the “options of hybrid and in-person hearings remain.”

CFC Underwriting, ‘somewhat agreed’ with the proposals, and also noted that “provided that allowances are made for the specific circumstances of each case and the integrity of the hearing is not compromised as a result of holding it remotely”, that the proposals “should not disadvantage registrants.”

The GMC noted that “there may be circumstances in which a remote hearing is not appropriate at all”, and that “proactive consideration should be given to whether holding hearings remotely is in the best interests of the parties involved in the proceedings.”

Individual respondents also expressed this preference, with one saying, “registrants must be able to state their preference for remote or in person hearings, the options must be made clear to registrants”, and another saying that they were “pleased that there is an option for discussion regarding whether hearings should be in person where requested.”

Several respondents suggested that the remote format could reduce the perceived formality of the proceedings. For example, one registrant who supported the proposal suggested the loss of formality could impact the integrity of the meeting.

### **GDC response**

We have shared these insights with the Dental Professionals Hearings Service and will share them with panel chairs and members, to help further improve experiences of participants.

We have carefully considered the examples of reported and perceived advantages and disadvantages of remote hearings, and comments on our processes and the guidance that underpins it.

We describe below how some of the suggested changes will be incorporated into the guidance, supporting materials and training for panellists, and how we will use the feedback to shape how we monitor impacts on participants.

This feedback has confirmed our understanding that the remote format on the whole works effectively and can bring real benefits to many dental professionals, but there are times when hearings are best held in person fully or in part, for example to give support to vulnerable participants or for effective presentation and testing of evidence. Both registrants and the GDC will continue to have the option to request a different format.

In the consultation document we said that the method of hearing (remote, hybrid, in person) had been agreed by parties for each hearing in 2023. We have listened to the concerns that for some registrants, the very possibility that their request for a different format could be challenged, may be a barrier to making requests or a source of additional stress.

We will remove this barrier by making clear that while remote hearings will continue to be the default starting point, everyone will retain the option to request an in-person hearing. If other parties agree, the change will be made. The GDC will normally agree to a request made by the registrant involved in a hearing, in which case, there would not be any need for a panel to make a decision.

If a case arises, where the GDC considers that there are compelling reasons for all or part of the hearing to take place remotely, and the other parties disagree, the decision will be referred to a panel.

Compelling reasons might include, but are not limited to, the protection of vulnerable witnesses; the interests of parties, witnesses or panel members with disabilities, for whom accessing an in-person hearing would present a significant challenge; or the avoidance of significant delay in proceedings. If such a case arises, we will refer the decision to a panel.

### **Alternative location for in-person hearings**

Two respondents suggested the GDC could hold hearings at alternative locations. One dental professional who said they were a former GDC FtP panellist suggested that “having face-to-face hearings in the regional area” using “existing resources at the regional ICB’s, the local LDC (local dental communities) [sic]” was one of the “alternative options which haven’t been fully considered” to increase attendance and engagement for certain types of cases and dental professionals.

A different dental professional who ‘strongly disagreed’ with the proposal suggested that hearings could be held at a rented space “somewhere central in the UK, other than London, which would help defray travel costs”, and noted that the GDC had an office in Birmingham.

### **GDC response**

We are confident that we can hold a secure and efficient hearing of any format, and that the choice of a format is not determined by availability of in-person facilities.

In-person hearings normally take place at the GDC’s London office because it has several dedicated hearing suites with modern technology. These suites are suitable for in person, hybrid and remote hearings.

The GDC’s Birmingham office does not have such facilities. However, where an in-person hearing was required, and such a hearing could not take place in London, we have held hearings efficiently and securely at other locations, for example at hearings venues of other health and social care regulators, who have also on occasion used GDC facilities.

### **Criticisms of our proposals**

21 respondents ‘somewhat’ or ‘strongly disagreed’ with the proposals. 15 of these were individual respondents and six were organisations, and all of them provided further comments.

Key issues among those who disagreed with the proposals were:

- the perceived right of a registrant to an in-person hearing or to a format of their choosing
- perceived or experienced disadvantage of online meetings due to poor access to suitable technology and skills
- impact on the use of non-verbal communication and procedural elements and of this on the wellbeing of registrants and witnesses and on their perception of the proceedings
- the overall evidence base for the change.

The dental defence organisations and indemnity providers that ‘strongly disagreed’ with the proposals – MDDUS, DDU and Dental Protection – provided extensive comments which covered most of these areas.

It is important to note that none of these organisations called for a cessation of the use of remote hearings, with several stating that they worked well for many or most registrants and hearings.

Dental Protection stated in one part of their submission that “For the most part both parties are content with fully remote hearings”, and in a different section, that “a large proportion of dentists going through the hearing process would prefer to do so remotely as they find this format less stressful”. DDU said that “in many instances a remote hearing would be preferable for all parties, or perhaps a hybrid of in-person and remote”. The BDA also noted that “in many cases, remote hearings work well and bring the benefits of easier access and timely attendance”, notwithstanding its objection to the principle of holding hearings remotely by default.

### **Alternatives to a default setting**

Dental Protection explained that in its view, “the default position should be that substantive hearings are in person save where it is agreed by the parties that they be remote or hybrid”. The DDU also stated that the default format for all hearings should be in person unless parties agreed otherwise.

The MDDUS said that it “would be more appropriate for decisions to be made on a case-by-case basis, with the discussion taking place at a teleconference with a view to agreement being reached between the parties”, although later in the submission MDDUS also expressed a preference for the default position to be in person rather than remote. The BDA argued for the format to be determined individually.

### **The burden of requesting an in-person hearing**

The three indemnity providers who ‘strongly disagreed’ with the proposal in question 2 also commented on the perceived unfairness or disadvantage to the dental professional to have to put forward a case for their preferred format. The DDU put this as follows: “it should not be incumbent on a registrant, at a time of considerable challenge in their career, to first have to rebut a presumption against an in-person hearing before they and their representatives have even begun to present their case”.

Dental Protection similarly stated that “dentists should not have to fight for the right to appear in person before a regulator that is bringing an action against them”. The MDDUS also put forward this point, it stated that “it should not be for a Registrant to argue for an in-person hearing and risk that argument being rejected”.

The BDA raised a similar point, stating that the default position was wrong “as a matter of principle” and noted that “it is not fair to put the onus on the registrant to prove that a remote hearing in their case would be ‘impractical’ or ‘affect the fairness of the hearing process’ when they are already in a stressful situation and might simply prefer that their legal team is in the same physical room as the panel and all others involved”. An individual respondent commented: “A registrant should not have to justify an in person hearing when they will be experiencing extreme duress as a result of the GDC investigation.”

### **Rationale for the default remote setting**

The DDU argued that the default remote format made the GDC an “outlier in healthcare professional regulatory proceedings, as well as in the criminal and civil jurisdictions”, and that the evidence base used to support the policy was lacking, concluding that: “The advent of remote hearings in regulatory and judicial proceedings is still in its relative infancy, so the GDC should allow more time to collate its evidence base before proposing such a far reaching, permanent change.”

The MDDUS told us that “an absence of concern or criticism regarding the GDC’s approach should not be taken as an endorsement of that approach as an acceptable or appropriate default position”, and Dental Protection cautioned against interpreting the high percentage of hearings held remotely “as an indicator for Registrants to lose their right to have an in person or hybrid hearing if they wish this”. The DDU also said that they were “unclear as to the policy rationale”.

Dental Protection argued that a registrant had a “right to appear in person before those judging them irrespective of their circumstances or the nature of the allegations”. The BAPD indicated that it ‘neither agreed nor disagreed’ with the proposal and explained that it strongly disagreed with the proposal to make practice committee hearings remote by default. The BAPD stated that “Registrant respondents must be entitled to see the person accusing them of misconduct face to face, so that their evidence can be properly tested”, and that the current proposals and draft guidance, if not amended, “seems to favour the GDC at the expense of the registrants right to fair hearing”.

Five individual respondents made similar points, speaking to the ‘right to appear in person’ or for the default format to be ‘in person’, with one noting that there was a “right to actually face their accusers”, another saying that they “consider it a basic right that should [they] be accused of something serious enough to endanger [their] practicing life, [they] can be present...and hear the evidence first hand”, a further respondent said that “registrants must be able to state their preferences for remote or in person hearing”, and another said that “the final decision is up to the individual who is facing the hearing”.

### **GDC response**

Consultation respondents overall have accepted the GDC’s conclusion that remote hearings have been taking place without a significant issue of concern, based on the experience of the last few years of conducting nearly 90% of substantive hearings remotely.

We do not accept that having a default remote setting is inherently unfair to registrants. Our experience shows that most registrants and their representatives have been content with a remote hearing, where this has not been the case, the registrant has had an opportunity to have the hearing held in a different format.

Nevertheless, we recognise the concerns that have been expressed. We consider that they will be addressed to a very large degree by adopting the approach set out in the GDC response above, which will give the dental professional involved in a hearing the ability to opt for an in-person hearing in most circumstances.

### **Technical and process issues with remote hearings**

Some respondents commented on technical and procedural issues of remote hearings. The MDDUS provided examples of these:

“Technical difficulties, which include parties being on mute when speaking, weak internet connections, Registrants or witnesses not having the correct equipment to participate fully in the hearing (for example, joining via a mobile phone), interruptions from third parties, or parties not being able to view electronic bundles at the same time as viewing the hearing screen and people having to repeat themselves due to failing connections.

“In situations where a Registrant’s instructions are required on a particular point, parties have to leave the hearing link altogether in order to facilitate a private discussion before then rejoining the link.

“If such situations arose in an in-person hearing, then they would typically be resolved swiftly by a quiet word in Counsel’s ear or a message on a post-it note for example. These issues inevitably cause delays and interrupt the flow of proceedings.”

### **Impact of the format on the perceived formality of the hearing**

Several respondents suggested that a remote format could reduce the perceived formality of the proceedings. For example, one registrant who supported the proposal suggested the loss of formality could impact the integrity of the meeting. Another respondent said that the “comfort of their own homes might potentially diminish the perceived gravity of the situation for dental professionals, potentially eroding their sense of urgency”, arguing that an element of “discomfort” of an in-person hearing could make participants “treat the matter with the seriousness it deserves”. Another, who also ‘strongly disagreed’, said that the remote format “Reduces the gravitas of the hearing...[and] Will increase trivial complaints”.



## Personal support in remote hearings

The MDDUS and other respondents noted the impact of remote hearings on representatives' ability to provide personal support, with MDDUS noting that it was important to them "to offer in person support to its members who find themselves before the Practice Committees, particularly where the likelihood of a suspension or erasure is high. It is impossible to provide the same level of support remotely."

Among the individuals who disagreed with the proposals, three said they had direct experience of participating in FtP proceedings, and that they felt that remote participation had put them or others at a disadvantage. One said:

"My experience has been less than ideal connections and the inability to fully see all participants may unfairly disadvantage the registrant."

Another respondent, a dentist, said they had given evidence in person and remotely, said that giving evidence remotely "puts all participants at a disadvantage". The respondent explained:

"The subtleties of human communication are lost when people are not in the same room. The format is stilted and lacks nuance. There is no 'ebb and flow' that illuminates the subject under discussion. Insights into the dialogue are missed. Due to the format, there is no opportunity to interject. Often you are answering a question without knowing who is asking it, or even if they are dentally qualified or a lay person. You may as well do it by written submissions."

A third respondent, who had been a patient witness, went further, and stated that they found "the online meeting harrowing and terrifying. I can't stand the lack of eye contact with other attendees when speaking with one person. I need to be able to look around the room freely and see how I am coming across and focus on those people who are supporting me." They went on to say: "Although there were 4 others at the meeting, I was unable to indicate to them that I was extremely distressed by [another witness's testimony]", concluding that they would refuse to participate in any future online hearings.

Our consultation stated that the method of hearing (remote, hybrid, in person) had been agreed by all parties for each hearing in 2023. Going forward, we will continue to accept, without challenge, registrants' requests for different formats, regardless of the reason. In a small number of cases, where the GDC wants to list an in-person hearing but the registrant has a different preference, we reserve the right to refer the decision to a panel.

### GDC response

We have noted the examples of technical and organisational issues which have arisen in some hearings and given the information to the Dental Professionals Hearing Service and panellists.

Since 2020, we have invested in technology and staff to ensure that remote hearings can be conducted effectively, and all participants can attend and access bundles.

In that time, we have not had to re-list a remote hearing to be heard in person because of technical difficulties, but we have had experience of in-person hearings being rescheduled or re-listed as remote hearings because of travel issues.

Our committee secretaries and hearing support officers help participants download software and test it before the hearing is held. The work to ensure that everyone has joined the call and is visible on the screen on the day.



We understand that being in a hearing can be stressful, especially for lone or unrepresented participants. Our team works together to identify any participants who could benefit from our support, signpost them to others who can help, and signpost or refer them directly to the GDC's Participant Support Officer.

The GDC's Participant Support Officer provides non-technical support. For example, they call or meet with participants to explain what FtP means, what it is like to be involved in a hearing and what the legal team might do during it. They alert the panel if a participant plans to attend with a person to support them. During the hearing, they may attend off-screen, if required, and can flag up appropriate time for a break or help participants find pages in case bundles. They may check in on the participant during a break.

Registrants and their representatives can attend remote hearings together from the same location if they wish, without having to request a fully in-person hearing. We are aware of several instances of the dental professional attending remotely from their Counsel's office.

We understand that in some instances, the necessary support cannot be provided other than at an in-person hearing. Both registrants and the GDC will be able to continue to request to hold the hearing in person, including to provide support to vulnerable participants.

### **Assessing credibility of witnesses at a remote hearing**

Some respondents made distinctions between the types of allegations. The MDDUS stated that "allegations of dishonesty or criminality but also in any case where there is a dispute of fact", and another respondent stated that the "gravity of the allegations... particularly where there is an element of dishonesty should allow for a face to face hearing".

Some respondents provided comments on paragraph 6 of the updated draft guidance (paragraph 34 of the existing guidance), which advises panels that 'It is unlikely that the wish to assess the demeanour of the witness in person would, on its own, justify the need for an in-person hearing' and includes a footnote reference to 'R (Dutta) v GMC [2020] EWHC 1974 (Admin)'.

Bupa noted that "Additionally, whilst footnote 13 referring to Dutta Vs GMC 2020 provides a judicial opinion that witness demeanour is an ineffective measure of assessing witness credibility, there are many other studies that provide contrary evidence, and the matter is not clear." Clyde & Co. asked for a clarification on the guidance, and made a distinction between an "ordinary factual witness" and "assessing the demeanour of the registrant under investigation".

The DDU also referred to Dutta and pointed to other case law on demeanour of witnesses, and stated: "It is our contention that the demeanour of a witness – and the wish to assess it – is sufficient grounds for a registrant requesting an in-person hearing to have their application granted."

The MDDUS argued that "where the case concerns dishonesty, criminality or a dispute of fact, or there are likely to be questions around a Registrant or witness's credibility or reliability then it should be possible to agree to an in-person hearing, even where none of the other factors are present". It also stated that the proposed guidance should be amended to account for cases where that was relevant and should read:

"In the event that a party applies for a hearing in person on the basis of a wish to assess the demeanour of a witness in person, they will be required to explain why that cannot be achieved by that person's evidence being taken remotely."

In its response to question 6, the MDDUS said the guidance should contain a further factor:

“Whether this is a case involving a factual dispute and the credibility of the witnesses needs to be assessed, especially involving allegations of dishonesty or allegations of criminal nature. Consideration must be carefully given as to whether the assessment of evidence may be compromised by a remote hearing. In suggesting the additional factor, the MDDUS opine that truthful and honest evidence may lose its impact through a screen.”

Dental Protection argued that there were cases in which demeanour was not only relevant but pivotal, stating that “there [were] numerous types of allegations where it is incumbent upon a Practice Committee to make judgment on the conflicting oral evidence of witnesses in the absence of any documentary evidence, contemporaneous or otherwise”.

Clyde & Co.’s response to question 6, said that paragraph 6 was a “a flawed proposition”. It explained that the judgment in Dutta did not discount “some value of assessing demeanour to evaluate credibility and the proposed guidance should be more clear regarding this.” Clyde & Co. added that the “main concern is that this principle of assessing the credibility of witnesses does not apply in the same way to assessing the registrant under investigation as the significance of the registrant as a witness and the Committee’s assessment of their credibility is invariably to the hearing, and the case of Dutta, R did not seek to associate these two different concepts in the manner the proposed guidance does”.

The BAPD considered the point about demeanour in their response to question 7. It also queried GDC’s interpretation of the authority in Dutta, arguing that “a respondent must have the right to face their accuser and for their counsel to test the evidence. This is particularly important where dishonesty and sexual misconduct is alleged because these allegations tend to engage a debate about erasure if the facts are proved.”

### **GDC response**

Our experience of in-person hearings reflects consultation feedback on which types of cases and allegations are better suited to being heard with everyone or some participants present in the same space. Cases heard in person have included allegations of dishonesty, dental professional wishing to defend themselves in person, cases where assessment of demeanour was important and that assessment was better done in person, and where a case was complex or long and required assistance of counsel.

We do not accept that it is not possible to test evidence from witnesses remotely, and in our experience, it has been possible to do so fairly and effectively. However, both the GDC and the registrant have, in the past, requested to have a hearing in a format that is better suited to fair and effective presentation and testing of evidence and will continue to be able to do so. The approach set out above will give the dental professional involved in a hearing the ability to opt for an in-person hearing in most circumstances.

## Decisions on the format of a hearing – practice committees

### Question 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)?

64 respondents answered this question, a breakdown of answers is included in Table 2 below. 11 organisations and 23 individuals ‘strongly’ or ‘somewhat agreed’, and seven organisations and 14 individuals ‘strongly’ or ‘somewhat disagreed’. Nine respondents, all individuals, were ‘not sure’ or ‘neither agreed nor disagreed’. The GMC provided useful commentary on how similar decisions were made at the Medical Practitioners Tribunal Service, which makes decisions on doctors’ fitness to practise.

**Table 2. Extent of agreement with panels deciding the format of practice committee hearings**

Response	No. of responses	%
Strongly agree	19	28.8%
Somewhat agree	15	22.7%
Neither agree nor disagree	4	6.1%
Somewhat disagree	7	10.6%
Strongly disagree	14	21.2%
Not sure	5	7.6%
No answer	2	3.0%
<b>Total</b>	<b>66</b>	<b>100</b>

Question 3 was related specifically to the role of practice committee chairs and members when deciding the format of a hearing where parties could not agree. Many of the 51 respondents that provided further comment echoed the feedback provided to question 2.

### Mistrust of GDC staff and panellists

The feedback received included reference to the need to ask for an in-person hearing or, in rare circumstances, where requests were not successful, how that decision could affect the registrant’s trust in the proceedings. One person commented that “the party requesting a deviation from the default is automatically on the back foot” and another that “if practitioner believes (rightly or wrongly) that a virtual hearing is unfair then this sense of injustice will affect acceptance of sanctions for example and willingness to remediate”.

An area of concern for a small number of respondents who disagreed with the panel’s role was the perceived inability of panel members to make an independent decision on the format.

Dental Protection said: ‘it [was] not inconceivable that GDC/Hearings staff will come under pressure to drive the agenda of remote hearings in all but the most isolated instances, to the disadvantage of Registrants’.

However, the majority of those who commented on the panel’s role expressed confidence in their decision making, sometimes with caveats.

The comments included:

- “Committees strive to be fair to both sides so for them to have the final decision is fair”
- “seems a fair approach”
- “it seems fairest way if they do not agree”
- “We agree with the proposed process, however, would like to be assured of clear guidance to chairs and committee members to provide consistency of application of the guidance”
- “Seems fair. So long as due consideration is given so that the registrant's mental health is not impacted on by the decision of how/where to hold the hearing”
- “It seems sensible that the chair would make the final decision”
- “We believe this is a fair approach to resolving the matter.”

### **Use of preliminary meetings**

Several respondents referred specifically to the GDC’s proposal to continue to use preliminary meetings for decisions about the format where parties disagreed on this point.

Bupa asked if preliminary hearings called specifically to agree a format could be used to discuss other issues. The MDDUS said that it was “disproportionate to require the parties to attend a Preliminary Meeting to determine whether a hearing should be remote or in person. Preliminary Meetings are time consuming and costly, with Counsel often being instructed to represent our members interests. It should be possible for a decision to be made on written submissions alone, or at a teleconference.”

#### **GDC response**

For some time now, parties have been able to agree the hearing format without the need to involve a panel. Where a panel has been asked to determine the hearing format, they have used remotely held preliminary meetings to do so. We have not yet had to call a preliminary meeting solely to discuss the format of the substantive hearing.

The approach set out in the GDC response above, which gives the registrant involved the ability to opt for an in-person hearing in most circumstances, will mean that it will not normally be necessary to ask a panel to decide the format of a hearing.

## **Decisions on the format of a hearing – Registration Appeals Committee**

### **Question 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)?**

64 respondents answered this question. 34 ‘strongly’ or ‘somewhat agreed’, of them 12 replied on behalf of an organisation and 22 were individual respondents. 14 ‘strongly’ or ‘somewhat disagreed’, and three of them were from organisations.

**Table 3. Extent of agreement with panels deciding the format in appeals hearings**

<b>Response</b>	<b>No. of responses</b>	<b>%</b>
Strongly agree	20	30.3%
Somewhat agree	14	21.2%
Neither agree nor disagree	9	13.6%
Somewhat disagree	4	6.1%
Strongly disagree	10	15.2%
Not sure	5	7.6%
No answer	4	6.1%
<b>Total</b>	<b>66</b>	<b>100</b>

Question 4 referred to the Registration Appeals Committee which considers appeals from dental professionals if 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).

43 respondents provided further comments. Most of those who disagreed or were ambivalent either directed the GDC to the reasons cited provided to questions 2 and 3 or simply restated their position.

### **Suitability of appeals for remote hearings**

We received several comments on whether Registration Appeal Committee hearings were suitable for a remote hearing. The GMC noted that although it currently heard internal appeals remotely and in person, going forward, as set out in their draft rules for physician associates and anaesthesia associates, it intended to hold them in writing, unless the appellant requested a hearing and chose an 'oral' hearing.

The BDA Benevolent Fund commented that the appeal process "seems straightforward, therefore we believe it is a good method" but the BDA noted that registrant preference was still important despite these hearings being on "administrative matters", because "the likelihood of individuals to be unrepresented might be higher in such cases".

Both the MDDUS and the BAPD explained that they were neutral on the issue. One individual told us that they were "neutral" on this issue because there was "less of a significance...because registrants will either not be on the register or suspended eg CPD".

Bupa asked the GDC to clarify if a directions meeting would always be held to determine the format for a specific case.

### **GDC response**

Most GDC registration appeals take place in writing ('on the papers'). Where a registrant requests that a hearing takes place, the default option will be for a remote hearing. If they don't want to have a remote hearing, they can request a different format.

Remote hearings will continue to be the default starting point, and everyone will retain the option to request an in-person hearing. If other parties agree, the change will be made.

If a case arises, where the GDC believes that there are compelling reasons for all or part of the hearing to take place remotely, and the other parties disagree, the decision will be referred to a panel.

Compelling reasons might include, but are not limited to:

- the protection of vulnerable witnesses
- the interests of parties, witnesses or panel members with disabilities, for whom accessing an in-person hearing would present a significant challenge
- the avoidance of significant delay in proceedings.

If such a case arises, the decision will be referred to a panel.

## Decisions on the format of a hearing – IOC

### Question 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 IOC (please provide your reasons for your answer)?

37 respondents ‘strongly’ or ‘somewhat agreed’ to these proposals, including 16 organisations and 21 individuals. 14 ‘strongly’ or ‘somewhat disagreed’, including two organisations. Please see the breakdown in Table 4 below.

**Table 4. Extent of agreement with panels deciding on IOC hearings**

Response	No. of responses	%
Strongly agree	21	31.8%
Somewhat agree	16	24.2%
Neither agree nor disagree	6	9.1%
Somewhat disagree	3	4.5%
Strongly disagree	11	16.7%
Not sure	4	6.1%
No answer	5	7.6%
<b>Total</b>	<b>66</b>	<b>100</b>

Some 44 respondents provided a comment, with 15 expressly referencing IOC in their responses. This question asked about a change in policy, whereby the registrant’s request to hold an in-person hearing would be acceded to.

### Suitability of interim order hearings for remote format

Reasons for supporting the measure fell into three broad categories:

- the need for expedience
- the ability of registrant to choose the format
- the remote format working well.

The MDDUS commented: “remote IOC hearings are working well”. It explained further: “These hearings do not require an assessment of the facts of a case and so witness evidence is not required. Registrant participation is also minimal (though this is of course not the case for unrepresented Registrants). We have found that remote IOC hearings are in fact more streamlined and time efficient than in person IOC hearings.”

The BAPD commented that it was “reasonable to hold Interim Orders and Registration Appeal hearings remotely as default position”, because “these tend to be dealt with within one day or less”. An individual respondent made a distinction based on the potential impact on the dental professional, arguing for in-person Interim Order and practice committee hearings, but noted that “For other types of hearing such as registration appeal there is less of a requirement for an in-person hearing as the registrant is already either not on the register or suspended and these could be done remotely without detriment.”

One respondent argued for the need to choose “the most expeditious method”. Another stated that there was “a sense of urgency” which meant it made sense to eliminate “an appeal” and a further respondent commented that the “priority in these hearings is speed”.

Several of those who supported the proposal said that it was important that dental professionals could choose the format of an IOC hearing. Bupa said: “We would be concerned that registrants subject to an IOC hearing may not receive an appropriate level of advocacy in a remote format in some cases due to any impairment of the ability of a registrant to confer with their representatives” which is why it supported “the ability for any registrant to choose an in-person format should they be so advised, or if they prefer this format”.

The BAPD in its support for the policy said IOCs were “essentially risk assessment hearings, not fact-finding hearings where the registrant rarely speaks it is reasonable for the default to be a remote hearing, with very rare exceptions, on application as GDC has proposed”.

The MDDUS explained that its view, “remote IOC hearings are working well. These hearings do not require an assessment of the facts of a case and so witness evidence is not required. Registrant participation is also minimal (though this is of course not the case for unrepresented Registrants). We have found that remote IOC hearings are in fact more streamlined and time efficient than in person IOC hearings.”

### **GDC response**

The GDC will continue to list IOC hearings remotely, as per our proposals. If a registrant requests an in-person hearing, the hearing will be held in person.

### **Revisions to guidance**

Questions 6 and 7 asked respondents to look at the draft guidance to panel members and chairs, and to consider if the factors listed for panel’s consideration are appropriate (question 6) and clear (question 7).

The draft guidance lists seven factors or types of factors for consideration concerning:

- the dental professional’s ability to use technology
- the impact on vulnerable and disabled registrants
- the particulars of the case and of the evidence
- matters that could affect integrity and smooth running of the hearing.

These factors closely follow [guidance issued by the PSA](#) in 2020, referenced in a footnote to paragraph 5 of the draft guidance.



## Appropriateness of proposed revisions to guidance

### Question 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 your reasons for your answer)?

This question asked if the factors listed in paragraph 5 of the draft guidance to panel members (paragraph 33 of the existing guidance and page 16 of the consultation document).

62 respondents provided an answer to question 6 and a breakdown is provided in Table 5. 36 respondents 'agreed' or 'strongly agreed', including 13 organisations. 12 'strongly' or 'somewhat disagreed', including three organisations.

**Table 5. Extent of agreement that factors in the guidance are appropriate**

Response	No. of responses	%
Strongly agree	15	22.7%
Somewhat agree	21	38.1%
Neither agree nor disagree	10	15.2%
Somewhat disagree	2	3.0%
Strongly disagree	10	15.2%
Not sure	4	6.1%
No answer	4	6.1%
<b>Total</b>	<b>66</b>	<b>100</b>

45 respondents provided comments to support their answer. Of these, 28 directly addressed the factors or the wider workings and the role of the panel.

Among those who commented, 12 gave specific reasons for why they agreed that the factors were appropriate, such as:

- factors were “reasonable and supportive”
- “fair guidelines helpful”
- “the list appears to cover all considerations”
- “Committee will take all circumstances into consideration”.

### Consideration of access and skills in using technology

A key issue for many respondents, including those who supported the policy, was ensuring that the panel considered fully the impact of technology on the participants' ability to effectively participate in the meeting and the capacity of mitigation measures to sufficiently reduce such impact, especially for unrepresented or vulnerable participants.

The GMC commented that circumstances which made a remote hearing inappropriate included “for example, if an individual cannot access appropriate technology”.



Bupa explained that “it does not appear that variations in technology performance are considered”, going on to say that “many people now use only tablets smartphones, which may not be suitable or ideal for these proceedings. How would participants simultaneously be able to view documents or records as well as see and hear the proceedings on a single (possibly small) screen.”

Bupa suggested mitigation for the issue, which was a “preliminary session in advance of any hearing to reveal any possible issues that might prevent a successful online meeting taking place”.

The BDA stated that:

“Assurances of support for those with concerns or insecurity, for example around technology, are only helpful if the support is such that it will ensure the elimination of any problems by 100%, which is clearly not possible. Technology, especially for those not comfortable with it, is a major stress factor.”

The MDDUS provided several examples of the issues they have observed with the participants’ internet access and with skills in using the technology:

“In one particular case, the member’s Wi-Fi stopped working and he had to finish giving evidence over the telephone which was not acceptable given it was a case involving dishonesty allegations where it was critical to assess witness credibility.

“Some... members, often ones who are older in age, lack much experience in using technology and struggle with remote hearings. For example, they often ‘drop out’ of hearings and then struggle to rejoin; in addition to this they often struggle to open and read documents online whilst attending a remote hearing.”

The MDDUS also noted that during some of their members’ hearings, panel members had also had similar struggles, which again, had led to additional and unnecessary delay.

The BAPD commented that:

“The GDC is perhaps unaware of the difficulties that respondents have with technology. The expectation seems to be that respondents will have good internet connections, powerful laptops/PCs with screens that make a Teams meeting manageable. We understand that respondents try to manage Teams hearings on their mobile phones. This may trivialise what is a very serious process, let alone the difficulty of concentrating on a hearing for several days at a time, looking at a phone screen.”

The DDU commented that guidance issued by the Judicial College in 2020 “caution[ed] judges against assuming ready access to technology”.

### **GDC response**

Our staff ensure that all participants can download and test the technology. In our experience of conducting hearings mostly online over the last few years, we have not had to abandon a remote hearing due to poor access to or understanding of technology of the participants.

The PSA guidance stresses both the link between access to and understanding of technology to the fairness of the hearing, and the importance to the panel of assuring themselves that this can be achieved. Namely, it says that if “sufficient access to and understanding of technology” cannot be achieved, it is “unlikely to be possible to hold a fully virtual hearing fairly”.

In response to consultation feedback, we have amended the guidance to make it explicit that a hearing cannot be held remotely without all parties having sufficient access to and understanding of technology.

## Impact of remote hearings on wellbeing and mental health of participants

A key issue for respondents on revisions to guidance, and elsewhere in their submissions, was the impact that remote hearings could have on the mental health and wellbeing of participants. We have discussed some of the feedback on the impact of remote hearings above.

In response to this section of the consultation, Dental Protection said that:

“The proposed guidance also fails to take into account those who may be neurodivergent or may struggle with mental health, and having a supportive network in person and appearing in person can be of benefit.”

The BAPD suggested that the proposed paragraph 5(v) should be expanded to give “proper consideration... to the pastoral and mental wellbeing of the registrant”, and explained:

“The stress of the GDC FtP process is well recognised in the dental profession, albeit perhaps less so by the GDC. One of the main benefits of an in-person hearing is that a particularly vulnerable respondent can be closely supported throughout the hearing process. The GDC is, correctly, quite unaware of the pastoral care and support delivered to respondents in the privacy of the defence meeting room. This care is much harder to deliver when the respondent and their defence team are not in the same room. Signs of mental distress may only become apparent in the privacy of the meeting room. The GDC will say that respondents can be supported at home, but family members are not usually competent or experienced in the identification and management of the sort of mental distress caused by the FtP process.”

The DDU, with a caveat that they disagreed with the remote by default proposal, argued for expanding paragraph 5(v):

“Paragraph 5(v) should be expanded to make it clear that any concerns about the health and wellbeing of the registrant, in respect of an application for an in-person hearing, should be given due weight to ensure the GDC is meeting its duty of care to vulnerable registrants.”

### **GDC response**

We note that the feedback on the potential impact of remote hearings on stress and wellbeing of participants is mixed. As described above, many respondents told us that personally for them or for their professional members, attending remotely would be less stressful, citing being in familiar surroundings and not having to travel, to arrange accommodation and childcare.

If dental professionals or their representatives do not want to attend a remote hearing, they can request a different format. Remote hearings will continue to be the default starting point, and everyone will retain the option to request an in-person hearing. If other parties agree, the change will be made. The approach set out in the GDC response above will give the dental professional involved the ability to opt for an in-person hearing in most circumstances.

We have described above some of the ways in which the GDC’s Participant Support Officer offers support to vulnerable and unrepresented participants before and during the meeting.

As in an in-person hearing, a participant can invite a person to support them and attend the hearing with them. That person can be in the same room with the participant. They cannot address the hearing, but they are visible on the screen, and the chair and parties will be made aware that a support person is present.

## Default position and panel decision making

In addition to the responses summarised above, those who ‘disagreed’ with the proposals or were ambivalent, restated that:

- hearings should be in person by default
- that preferences of registrants should be either paramount or given greater weighting
- that panels were not qualified to make such decisions or to make them consistently (three respondents).

Dental Protection said “we do not consider a panel should be considering this question. If a Registrant wishes to appear in person, they should be afforded this opportunity without the need for an application.”

One individual respondent said: “I am not opposed to virtual hearings, but the chair of the panel should not have the capacity to over-rule the registrants’ choice on in-person versus remote”. Another said: “the GDC imposes the chair, sets the expectation that the hearing will be conducted remotely - then the chair decides if they will allow an in-person hearing. Hardly impartial or fair.”

The BDA said:

“There is a risk of variation here – where two cases with very similar requests for an in-person meeting might be treated differently depending on Chair or Committee preference or pressure from the GDC Team; or where the Chair/Committee at the main hearing are not the people who initially made the decision about the format of the hearing.”

### GDC response

In the consultation document we said that the method of hearing (remote, hybrid, in person) has been agreed by parties for each hearing in 2023. Going forward, we will continue to accept without challenge registrants’ requests for different formats, regardless of the reason. In a small number of cases where the GDC wants to list an in-person hearing but the registrant has a different preference, we reserve the right to refer the decision to a panel.

We are confident that independent chairs and members of panels are well equipped to make decisions on format of the hearings where parties do not agree. Panellists receive regular training and performance feedback and have a mechanism for managing any matters arising. Their work is overseen by the Statutory Panellists Assurance Committee of the Council chaired by an independent chair.

## Suggestions for additions to the guidance

Clyde & Co. argued that to improve fairness for registrants and better support the panel, the guidance needed updating in three key areas. It needed to make clear that:

- each application would be judged on individual merit
- it needed to give greater weight to the registrant’s preference
- it needed to amend the reference to ‘demeanour’.

Clyde & Co. argued that as currently drafted, the guidance has “the potential to be misunderstood and misapplied”.

On the weight given to a registrant's application, Clyde & Co. explained their views: "the factors in paragraph 5 of the proposed guidance all go towards the practical impact of whether to hold a hearing remotely or in person and does not, in any way, recognise that a registrant may wish to have the hearing in person for personal reasons or preference, considering it is their registration and ability to practise their profession that may be in the balance". It said that as currently drafted, the guidance "makes the prospect of succeeding with a submission... based upon personal preference of the registrant... remote".

The BAPD also disagreed with the apparent primacy of practical considerations of the draft guidance:

"We don't think that the GDC has got its priorities right in the way that the factors have been set out in the draft guidance. Somewhat perversely the first consideration 5(i) when determining that a face-to-face hearing should take place concerns the availability of technical equipment to allow a remote hearing. That cannot be the first consideration when the request is to meet face to face."

### **GDC response**

In response to consultation feedback, we have amended the guidance to make it explicit that without sufficient access to and understanding of technology a hearing cannot be held remotely.

As currently drafted, paragraph 4 of the guidance makes clear that each application must be considered on a case-by-case basis, that the panel should consider "all points raised by either party," and that "these points are given appropriate weight in all circumstances".

The GDC's experience to date suggests that where panels have been asked to do so, panels have been able to consider all factors when deciding the format.

### **Recording of hearings**

In addition to the comments about benefits or otherwise of remote hearings, Bupa asked the GDC to clarify "whether hearings would be recorded, whether any recording would be in the public domain (as are stenographer's records of FtP hearings), or whether remote hearings would have public access. We would also like to know the GDC's proposals for retention of recordings and for how long recordings may be publicly available."

The PSA, elsewhere in their submission, stressed that "for transparency, the presumption should be that hearings are held in public unless there are reasonable grounds for them to be held in private."

### **GDC response**

Remote hearings have not presented difficulties with ensuring public access and privacy for the discussion of private matters. All hearings are recorded by the GDC regardless of the format. In-person hearings are recorded using technology in hearing rooms, and remote hearings are recorded using an external logger.

Recordings are not made public, but transcripts are available to parties on request. Following a hearing we publish a determination, redacted where necessary at the direction of the panel or committee. It sets out the committee's decision, but it is not a verbatim record of the hearing.

## Witness interference

Further suggestions were made for additions to the guidance relating to 'risk of witness interference' and to making the guidance applicable to all participants, not just registrants. One respondent raised the issue of participants giving evidence from abroad.

The PSA said that "the risk of witness interference... has been identified by other regulators as a factor that should be taken into account". It added that the Health and Care Professions Tribunal Service [Remote Hearing Guidance](#) stated that "the panel should be mindful of the risk of witness interference, as witnesses will not be observable during breaks, and should consider whether it is safe to proceed".

The point was echoed by the MDDUS, which had concerns, expressed elsewhere in their submission, on the security of remote hearings. The MDDUS stated:

"It is not possible to tell if there is anyone else in a room with a participant attending remotely. This has potential implications for private hearings or other situations where there is a possibility of a third party exercising undue influence, which could impact upon the evidence given."

## GDC response

As currently worded, section 5(xiv) of the draft guidance draws the attention of the panel to considering any matters that could 'affect the integrity or smooth running of the hearing'.

We have not had any reports of remote hearings being accessed by anyone other than those who have requested the link.

We also have not had reports of anyone who should not be there being present in the room with participants. The GDC will remind chairs to be aware of the risk of witness interference. We will include this in future chair training sessions. We will also review the guidance and protocols of other regulators around remote hearings and ensure that best practice is shared with GDC panellists and legal advisers.

The GDC's position on evidence from abroad is set out in a published [Practice Note](#).

## Preference of witnesses

The PSA also noted that the "proposed panel guidance refers only to the interests of registrants", and added:

"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. In our view, all participants should be consulted about the mode of the hearing and their views given careful consideration. The views of witnesses may be particularly relevant where they are vulnerable or have particular support needs."

## GDC response

When a case progresses to the substantive hearing stage, the GDC legal representation team conduct an early review of witnesses' needs to ensure that they can give their evidence in the way that works for them. If witnesses are not able to give their evidence remotely for whatever reason, the GDC legal team can request that the hearing is held in part or fully in person.

When hearings were mostly held in person, witnesses on occasion have been able to give evidence remotely or in person from behind a screen. Remote technology has enabled witnesses to attend virtual hearings, and for us to provide further adjustments, such as the ability to enable witnesses to give evidence remotely with the registrant being off camera.

## Clarity of proposed revisions to guidance

### Question 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)?

This question referred to the same factors as question 6, but asked if they were clear.

63 respondents provided an answer to the question and the breakdown is provided in Table 6 below. Some 34 respondents 'agreed' or 'somewhat agreed', including 11 organisations. 16 'somewhat' or 'strongly disagreed', including six organisations.

**Table 6. Extent of agreement that factors in the guidance are clear**

Response	No. of responses	%
Strongly agree	14	21.2%
Somewhat agree	20	30.3%
Neither agree nor disagree	5	9.1%
Somewhat disagree	8	12.1%
Strongly disagree	8	12.1%
Not sure	6	9.1%
No answer	5	7.6%
<b>Total</b>	<b>66</b>	<b>100</b>

40 respondents provided further comments to support their answer. 24 of them directly addressed the factors or the wider workings and the role of the panel. Among those who qualified their support, a key concern was the understanding and interpretation of the guidance by panels and by applicants.

## Interpretation and weighting of factors

The BDA commented that “the factors themselves might be reasonably clear, but the consideration and weighting given to them, and the room for potential variation between similar cases due to Chair or Committee preferences, availability or simple willingness to travel, leave a high level of uncertainty.”

CFC Underwriting said [of the factors]: “I think they are clear but what is clear to one person may not be to another. The register includes a large number of registrants who may [have] little formal or academic qualifications (dental nurses in particular).” It suggested that the GDC “should ensure they have approached the appropriate professional associations for guidance on this”.

Bupa suggested that “a more expansive explanation in simpler terms may be required for certain participants to fully understand the requirements of them in a hearing held in a remote format; this may apply to witnesses”. Bupa also noted that the level of detail provided in the draft guidance was “not sufficiently clear to fully reassure us on the robustness and completeness of process”.

The MDDUS provided further detailed suggestions for amending the guidance in relation to technology, privacy, and to types of cases and allegations. It suggested adding to paragraph 5(i):

- “access to reliable internet connection”
- “good understanding and sufficient experience of using technology”, as distinct from having “access” to it
- “ease/understanding/experience of the registrant with technology” to “communicate easily and promptly with their legal team... throughout a hearing”
- the ability to use the technology “without being interrupted” while being “heard clearly and easily”.

The DDU suggested that paragraph 3 should refer to hybrid, as well as in-person hearings.

The MDDUS also suggested expanding paragraph 5(ii) to add cases which were “likely” to attract media attention, and “allegations of criminal nature”, and to add a definition of and examples to “heightened risk”; and adding “practical” before “other matters” in paragraph 5(vii) to “distinguish it from the other factors”.

### GDC response

The Dental Professionals Hearings Service (the Hearings Service) provides [detailed guidance and advice for registrants and witnesses attending a hearing](#).

Most guidance to FtP decision makers including on preliminary meetings, of which the current guidance on format of a hearing forms part of, is published in the [guidance and resources section](#) of the Hearings Service’s website.

The guidance on the format of hearings will be updated with the changes we have made in response to consultation feedback and published in the Preliminary Meetings Guidance.

Among the key changes will be:

- making clearer that the panel must ascertain that participants have access to and understanding of technology, before considering the matter further, and
- the removal of references to the wish to assess the demeanour of a witness, to government guidance on public safety, and to remote hearings being the ‘default’ and to in-person hearings being the ‘exception’.



We have committed to monitoring the impacts of remote hearings on participants and to use any learning from it to improve the experience of participants. As part of this we will engage with panel chairs and members to monitor their experience.

## Impacts on people who participate

**Question 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. Please provide your response here.**

**Question 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 above (question 8), please provide your reasons here.**

In this section, we asked about advantages and disadvantages of our proposals on participants with different protected characteristics, professional roles, and access to resources. The protected characteristics and factors we listed were:

- 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.)

We received 54 responses to question 8, with around 30 of them referencing a specific protected characteristic. 42 respondents answered question 9, with many of them referencing or directing us to their answer to question 8.

We analysed responses to these two questions together.

### **Benefits for older, disabled and participants who are pregnant or have children**

Reduced travel and accommodation costs and not having to travel were the most mentioned specific advantages of remote hearings, with many noting that this benefit would be particularly felt by participants who were pregnant or had children, were of old age or had disabilities. Many noted that for participants with the latter two characteristics a remote hearing could offer both advantages and disadvantages.



One respondent noted:

“Age – if any of the parties are too old to travel, remote hearings could be an advantage. However, the ability of elderly people to correctly operate technical equipment is not universal. Disability - similar considerations apply depending upon the type and severity of the disability.”

Another said:

“Age – remote means less travel problems but probably not as IT savvy so remote is more of a problem”.

Many of those who commented on specific characteristics or impacts made connections between some characteristics, professional role and resources. CFC Underwriting gave an example of interconnected impacts:

“The ease at which people can access appropriate technology and space in which to attend a remote hearing needs to be carefully considered for older people or people with disabilities. Registrants on low incomes (such as dental nurses), particularly those with childcare responsibilities could be compromised but they are similarly disadvantaged by having to attend hearings in person.”

The DLA shared its insight: “dental technology profession has a higher-than-average age workforce, and this may disadvantage them when it comes to a remote hearing”. The SBDN similarly pointed out that dental nurses as a profession were majority female.

When discussing resources beyond the cost of travel, one mentioned “individual’s living circumstances, if they have good internet access, if they are in an appropriate setting to be heard without outside distractions”. Another cited “digital poverty”.

Another noted that “appropriate equipment” was dependent on “disposable income”, and that “WiFi availability”, “availability of ‘private space’” and of “available and suitable room” were also impacted by “socioeconomic factors”. The GMC also noted that: “a person from a low socio-economic background may not be able to fully participate in the hearing due to a lack of technology or necessary equipment, or due to an inappropriate home environment”.

Few or no specific comments were made about the impact on characteristics of gender reassignment, marriage and civil partnership, race, religion or belief, sex, and sexual orientation, although one commentator noted that panels should be guided on how to treat with dignity and respect any participants who have had a gender reassignment when referring to them for example in patient records.

### **Impact on participants with disabilities and additional needs**

Echoing comments in other parts of their submissions, several respondents commented that those with mental health illness, depression or extreme anxiety could find remote hearings disadvantageous, specifically pointing to the need for adequate in person support if such support is required. However, as noted earlier, in response to question 2, several commented that the stress and anxiety of attending a meeting could be reduced by being able to attend remotely from familiar surroundings.

Some noted that special equipment would be required to support participation of those with visual or auditory impairment. The GMC mentioned participants with English as a foreign language, it said: “Registrants and witnesses who speak English as a second language may find it harder to pick up on body language and non-verbal cues at a remote hearing”.

Both the PSA and GMC advised the GDC to conduct a full impact assessment as part of this work, suggested expanding guidance to include examples of adjustments, and to build on its understanding of impacts by collecting feedback from participants.

## **GDC response**

These comments have provided invaluable insight into the many and diverse ways in which participants with certain protected characteristics, professional roles and access to resources could be impacted by holding hearings remotely.

We collect data and [report](#) regularly on how diverse groups of registrants come into our FtP processes and progress through them. We know that some groups of registrants are over-represented in FtP, and that this is something that happens across different regulators and industries. One of the objectives of the GDC's Equality, Diversity and Inclusion (EDI) Strategy 2024 to 2025 is to improve analysis and monitoring of FtP data on over-representation. This needs to include any links between characteristics of participants and the format of the hearing.

Internal review of available evidence demonstrates that we do consider needs of diverse groups of registrants and are able to provide mitigations and adjustments to ensure that the format of a hearing does not disadvantage anyone. However, there is a gap in our understanding of consistency of EDI considerations.

We have committed to monitoring and evaluating the impact of this policy with particular focus on disadvantages that relate to protected characteristics, or other personal circumstances, and the need for any changes or adjustments. We will use these insights to further refine the process and to feedback to panel chairs and members.

## 5. Next steps

The starting assumption that all hearings are remote will remain. Parties will retain the option to request that the hearing be heard fully or in part in person, by agreement. The GDC will normally agree to requests, but if a case arises where there are compelling reasons for the hearing to be held fully or in part remotely, and the parties cannot agree to this, the decision may be referred to a panel.

Amended guidance will be issued to panel members and chairs and published on the Hearings Service's website. It will be subject to regular review. We will monitor the impact on registrants and witnesses, with particular focus on any disadvantages that relate to protected characteristics or other personal circumstances.

Where indicated, we will use insight as part of regular training for panel chairs and members. As we monitor the impact of this policy, we will engage with panel chairs and members to monitor their experience.

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