

## Response to the General Dental Council's consultation on the format of hearings

February 2024

### 1. Introduction

- 1.1 The Professional Standards Authority for Health and Social Care promotes the health, safety and wellbeing of patients, service users and the public by raising standards of regulation and registration of people working in health and care. We are an independent body, accountable to the UK Parliament. More information about our work and the approach we take is available at [www.professionalstandards.org.uk](http://www.professionalstandards.org.uk)
- 1.2 As part of our work we:
- Oversee the ten health and care professional regulators and report annually to Parliament on their performance
  - Accredit registers of healthcare practitioners working in occupations not regulated by law through the Accredited Registers programme
  - Conduct research and advise the four UK governments on improvements in regulation
  - Promote right-touch regulation and publish papers on regulatory policy and practice.

### 2. General comments

- 2.1 We welcome the opportunity to respond to the General Dental Council's (GDC) consultation on the format of hearings.
- 2.2 We recognise that the GDC, along with other regulators, had to make process changes at pace during the Covid-19 pandemic with limited opportunities to engage fully with stakeholders on potential impacts. These changes included introducing remote hearings for cases arranged and held by the Dental Professionals Hearings Service. These changes were initially introduced on a temporary basis but have continued to be used and are now proposed to be made permanent. We therefore welcome the fact that the GDC is now conducting a full public consultation.

### 3. Consultation questions

**Q2. 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)?**

- 3.1 We agree with the GDC's proposal to hold all hearings remotely by default provided that this will not affect the integrity and fairness of the hearing. We note that the GDC has been successfully operating remote hearings since March 2020 and that no appeals have been made on the basis of a hearing having been held remotely. We also note the advantages that have been identified by the GDC and other regulators of holding hearings remotely. These include convenience for panellists, registrants and witnesses as well as time, cost and environmental savings due to a reduction in travel. Scheduling may also be quicker and easier, and hearings conducted with greater efficiency.
- 3.2 Whilst we support the use of virtual hearings where appropriate, it is important that the options of hybrid and in-person hearings remain. We welcome the GDC's recognition 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 evidence'*.
- 3.3 Regardless of whether the hearing is being held in person or virtually, we would expect 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.

**Q3. 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)?**

- 3.4 We agree that it is the role of the Chair or committee members to give direction on whether the hearing should be held remotely or in-person, and this proposal is in line with the PSA's 'Guidance for regulators on fitness to practise hearings during the Covid-19 pandemic.'<sup>1</sup>
- 3.5 However, the GDC may wish to make clear, either in the guidance for panel members or elsewhere, whether any representations from witnesses (as opposed to the registrant) should be taken into account in determining the format of the hearing. The proposed panel guidance refers only to the interests of registrants: *'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.'*
- 3.6 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.

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<sup>1</sup> Professional Standards Authority, September 2020, 'Guidance for regulators on fitness to practice hearings during the Covid-19 pandemic': [https://www.professionalstandards.org.uk/docs/default-source/publications/policy-advice/authority-guidance-for-regulators-on-fitness-to-practise-hearings-during-the-covid-19-pandemic-\(september-2020\).pdf?sfvrsn=78d67620\\_4](https://www.professionalstandards.org.uk/docs/default-source/publications/policy-advice/authority-guidance-for-regulators-on-fitness-to-practise-hearings-during-the-covid-19-pandemic-(september-2020).pdf?sfvrsn=78d67620_4)

**Q4. 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)?**

- 3.7 As above, we agree that the Chair or members of the committee are best placed to reach a decision on the format of hearings.

**Q5. 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)?**

- 3.8 We agree with the proposal that, due to the urgency of the hearings, Interim Orders Committee hearings should be held in person where the registrant requests it.

**Q6. 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)?**

- 3.9 We agree that the factors for panels to consider when determining the format of the hearing are the right ones. The factors identified are in alignment with those set out in the PSA's 'Guidance for regulators on fitness to practise hearings during the Covid-19 pandemic'.<sup>2</sup>
- 3.10 In addition to the factors outlined, the GDC may wish to consider adding 'the risk of witness interference'. This was not covered by the PSA's guidance but has subsequently been identified by other regulators as a factor that should be taken into account. For example, the Health and Care Professions Tribunal Service 'Remote Hearing Protocol' states 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.'*<sup>3</sup>

**Q7. 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 or agree to an in-person hearing (please provide your reasons for your answer)?**

- 3.11 We agree that the factors are clear.

**Q8. We want to understand whether and how our proposals might advantage or disadvantage people. Please consider the characteristics**

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<sup>2</sup> Professional Standards Authority, September 2020, 'Guidance for regulators on fitness to practice hearings during the Covid-19 pandemic': [https://www.professionalstandards.org.uk/docs/default-source/publications/policy-advice/authority-guidance-for-regulators-on-fitness-to-practise-hearings-during-the-covid-19-pandemic-\(september-2020\).pdf?sfvrsn=78d67620\\_4](https://www.professionalstandards.org.uk/docs/default-source/publications/policy-advice/authority-guidance-for-regulators-on-fitness-to-practise-hearings-during-the-covid-19-pandemic-(september-2020).pdf?sfvrsn=78d67620_4)

<sup>3</sup> Health and Care Professions Tribunal Service, November 2020, 'Remote Hearing Guidance' <https://www.hcpts-uk.org/globalassets/hcpts-site/publications/rules-and-legislation/hcpts-remote-hearing-protocol.pdf>

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.)

- 3.12 It is possible that some individuals with protected characteristics may find it more difficult to participate effectively in remote hearings. However, there may also be benefits to remote hearings from an inclusion perspective. Ultimately all decisions will need to be made on a case-by-case basis taking into account the individual circumstances of the participants. It would be useful for the GDC to undertake an Equality Impact Assessment to explore further the potential impacts on groups with protected characteristics. It may also be useful to systematically collect feedback from participants who have attended a virtual hearing.
- 3.13 The GDC may wish to spell out in the guidance what reasonable adjustments can be made to ensure all participants can engage fairly and fully in remote hearings.

**Q9. 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.**

- 3.14 As above, there may be a range of impacts, both positive and negative, in relation to participants with protected characteristics. Where participants require additional support this may more appropriately be delivered in person. We welcome the GDC's statement that they 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.'*

**Q10. Please let us know if there is anything else you would like to raise regarding our proposals**

- 3.15 We have no further comments.

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#### 4. Further information

- 4.1 Please get in touch if you would like to discuss any aspect of this response in further detail. You can contact us at:

**Professional Standards Authority for Health and Social Care**  
16-18 New Bridge St, Blackfriars,  
London, EC4V 6AG

Email: [policy@professionalstandards.org.uk](mailto:policy@professionalstandards.org.uk)

Website: [www.professionalstandards.org.uk](http://www.professionalstandards.org.uk)

Telephone: 020 7389 8030