

## Response to General Optical Council consultations on remote hearings protocol and policy on service of statutory notices by email

September 2021

### 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 Optical Council's (GOC's) consultations on a revised protocol on remote hearings and policy on service of notices by email.
- 2.2 We recognise that the GOC, along with other regulators had to put in place a number of process changes at pace during the Covid-19 pandemic with limited opportunities to engage fully with stakeholders on potential impacts. We provided some feedback on the initial protocol on remote hearings in June 2020. It is good that the GOC are now consulting on embedding some of these changes more permanently and how such processes should operate. We have set out our answers to the questions from both consultations below.

### 3. Remote hearings protocol

#### General

- 3.1 Generally, the guidance seems clear and well laid out. We welcome the reference to the Professional Standards Authority guidance for regulators on fitness to practise hearings during the COVID-19 pandemic.<sup>1</sup>
- 3.2 We welcome the factors outlined to help guide decisions on whether a hearing should be in person or remote. We recognise that in a scenario with limited/no restrictions the view of the registrant is likely to be a key factor in deciding what format a hearing should take. We suggest that factor 4.2.1 ('Whether the registrant and other participants have sufficient access to and understanding of technology, and access to an appropriate environment to enable them to take part effectively in a remote hearing...') may also be relevant in this situation.
- 3.3 We are glad to see that the GOC propose to continue to support the public to observe remote hearings in line with the approach for physical hearings. This should promote transparency and public confidence in the GOC's processes.

#### **To what extent do you agree that the updated protocol achieves our aim of balancing fairness to registrants while maintaining the focus on public protection?**

- 3.4 b) Agree

#### **If you answered 'disagree' or 'strongly disagree', please explain your reasons.**

- 3.5 See comments above regarding factors to consider.

#### **To what extent do you agree with our expectations that most non-substantive events should be conducted remotely?**

- 3.6 b) Agree

#### **If you answered 'disagree' or 'strongly disagree', please explain your reasons.**

- 3.7 N/A

#### **Is there anything unclear or missing in the updated protocol?**

- 3.8 a) Yes

#### **If you answered 'yes', please give details.**

- 3.9 At 2.1 the protocol states that it applies to new interim order applications and interim order reviews however at 5.10 it states: 'We expect all non-substantive

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<sup>1</sup> Professional Standards Authority 2020, *Guidance for regulators on fitness to practise hearings during the Covid-19 pandemic*. Available at: [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)

hearings, including interim order applications and reviews, to take place remotely regardless of the status of any restrictions in place.'

- 3.10 It may be helpful to clarify this at an earlier stage in the protocol as much of the information within the protocol will not apply to non-substantive hearings.

**Are there any aspects of the updated protocol that could negatively impact on stakeholders or users with specific characteristics? (Please consider age, sex, race, religion or belief, disability, sexual orientation, gender reassignment, pregnancy or maternity, caring responsibilities or any other personal characteristic(s).)**

- 3.11 a) Yes

**If you answered 'yes', please give details.**

- 3.12 There is the potential for remote hearings in certain circumstances to negatively impact witnesses or registrants who find it more difficult to participate effectively, for example due to lack of access to or familiarity with ICT.

- 3.13 We welcome the GOC's detailed analysis of the potential issues and mitigations within the impact assessment accompanying the consultation. We note that the GOC have sometimes struggled to collect feedback from complainants and registrants about their experience of the FtP process and therefore may find it more difficult to assess the impact of these changes on harder to reach groups. We note the commitment to keep these impacts under review and would welcome any further information on efforts to capture as wide a range of views as possible.

**Are there any aspects of the updated protocol that could have a positive impact on stakeholders or users with specific characteristics? (Please consider age, sex, race, religion or belief, disability, sexual orientation, gender reassignment, pregnancy or maternity, caring responsibilities or any other personal characteristic(s).)**

- 3.14 a) Yes

**If you answered 'yes', please give details.**

- 3.15 It is equally possible that remote hearings may prove more accessible to participants from some groups. They may also increase transparency by allowing a wider range of public observers than may be the case with a physical hearing.

**Is there any other feedback about the updated protocol that you would like to tell us about?**

- 3.16 b) No

**If you answered 'yes', please give details.**

- 3.17 N/A

## 4. Service of statutory notices by email

### General

- 4.1 On service of notices, it seems entirely appropriate that the GOC use email more routinely and we recognise the potential benefits. However, we welcome the safeguards outlined to ensure that registrants consent to this and that adjustments can be put in place if required.
- 4.2 We suggest the policy may wish to cover communicating with others such as complainants and witnesses and consider any mitigations or safeguards that might be needed.

### To what extent do you agree with the content of the policy?

- 4.3 b) Agree

### If you answered 'disagree' or 'strongly disagree', please explain your reasons.

- 4.4 N/A

### Is there anything unclear or missing in the policy?

- 4.5 a) Yes

### If you answered 'yes', please give details.

- 4.6 It may be helpful for the policy to cover what approach the GOC will take to communicating with other parties, for examples complainants or witnesses in the context of fitness to practise proceedings and any adjustments or mitigations that will be made if needed.

### Are there any aspects of the policy that could discriminate against stakeholders with specific characteristics? (Please consider age, sex, race, religion or belief, disability, sexual orientation, gender reassignment, pregnancy or maternity, caring responsibilities or any other characteristics.)

- 4.7 a) Yes

### If you answered 'yes', please give details.

- 4.8 The GOC has recognised that serving notices by email could discriminate against certain registrant groups who may be less likely to have access to or habitually use email. Their policy lays out clearly the approach that the GOC will take to ensure that registrants are happy to receive notices in this way and the alternatives that will be used if they are not.
- 4.9 We refer to our comments at 4.6 that it may be helpful for the policy to cover the approach to communicating with groups other than registrants (complainants or witnesses). The GOC should ensure that their approach takes into account the potential impacts and allows sufficient flexibility based on different needs, for example access to technology/ability to receive electronic communications.

**Are there any aspects of the policy that could have a positive impact on stakeholders with specific characteristics? (Please consider age, sex, race, religion or belief, disability, sexual orientation, gender reassignment, pregnancy or maternity, caring responsibilities or any other characteristics.)**

4.10 a) Yes

**If you answered 'yes', please give details.**

4.11 As with remote hearings, there is the potential for service of documents by email to be more convenient for those that prefer to receive communications in this way. This may include stakeholder with protected characteristics such as those with disabilities.

**Are there any other impacts (including financial) of the policy that you would like to tell us about?**

4.12 b) No

**If you answered 'yes', please give details.**

4.13 N/A

## **5. Further information**

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

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