

Response to Health and Care Professions Council consultation on permanent changes to Rules to hold remote hearings

November 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
- 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 Health and Care Professions Council (HCPC) consultation on permanent changes to Rules to hold remote hearings.
- 2.2 We recognise that the HCPC, 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. We provided feedback on amendments to the HCPC Rules in September 2020, and we are pleased that the HCPC is now conducting a full public consultation on the changes.
- 2.3 We note that the consultation is limited to the principle of holding remote hearings, rather than seeking feedback on the specifics of HCPC's Remote Hearing Guidance. Some of our comments may be more pertinent to the content of the guidance itself rather than the general principles consulted on here. With respect to the Guidance, we are pleased to see that it is broadly

reflective of the Professional Standards Authority guidance for regulators on fitness to practise hearings during the COVID-19 pandemic.¹

3. Consultation questions

Q1: We would like to amend our Rules so that we can continue to hold hearings remotely once the emergency period ends, where it is fair and practical to do so. Do you think there are any reasons why we should not be able to hold remote hearings once the emergency period ends?

Yes / No / Don't know. Please explain your answer.

- 3.1 We do not see any reason why the HCPC shouldn't continue to hold virtual hearings once the emergency period ends, where this will not affect the integrity and fairness of the hearing. We note the benefits that the HCPC identifies of remote hearings in terms of flexibility, efficiency, and increased engagement from some registrants.
- 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 are pleased that HCPC has outlined its commitment to holding in-person hearings where necessary.
- 3.3 We support the HCPC's ambition to reach agreement with registrants about the format of any hearing and to make reasonable adjustments to support registrants to participate in remote hearings. We acknowledge that there may be cases where agreement cannot be reached, and the HCPC's policy of asking the Chair to give direction in such cases is in line with our own guidance.
- 3.4 Whilst we support the continued use of remote and hybrid hearings, we believe that the HCPC should consult panellists and those taking part in virtual hearings about their experiences and any challenges they faced. Anecdotally, we have heard both potential benefits but also potential negative unintended consequences of holding hearings in this way. We welcome the inclusion in the HCPC's Remote Hearing Guidance² of 'considerations for scheduling remote hearings' and the list of factors contained therein. However, the HCPC might additionally wish to consider whether there are types or categories of case that are particularly suitable or unsuitable for this type of hearing. The HCPC may also wish to review the General Optical Council's Remote Hearings Protocol³ and in particular the fairly comprehensive 'suitability factors' listed.

¹ 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)

² <https://www.hcpts-uk.org/globalassets/hcpts-site/publications/rules-and-legislation/hcpts-remote-hearing-guidance2.pdf>

³ <https://www.optical.org/download.cfm?docid=8E4ACB61-29DD-4012-A78B15194E08F063>

- 3.5 We welcome the HCPC's intention to keep the processes for remote hearings under review. This should help to identify and mitigate any risks of holding hearings in this way. Learning from ongoing reviews should be used to update the Remote Hearing Guidance as and when appropriate.

Q2: Do you consider there are any equality and diversity implications for groups or individuals as a result of the proposed change to our Rules?

- 3.6 Yes. There is the potential for remote hearings 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. Access to and the ability to use technology is not universal and inadequate equipment or uncertainty about how to use it effectively could be a barrier to a fair hearing.
- 3.7 Some registrants and witnesses may also lack access to appropriate accommodation to enable them to participate effectively. Registrants or witnesses must not be required to participate from public places or where their domestic circumstances militate against participating without distractions.

If yes, please explain what could be done to change this.

- 3.8 We are glad that the HCPC has committed to making reasonable adjustments to ensure participants can engage fairly and fully in remote hearings. However, it does not appear that an equality impact assessment has been conducted. This may hamper the HCPC's ability to fully assess the equality implications of the changes to the Rules.
- 3.9 We note that the HCPC has sometimes struggled to collect feedback from complainants and registrants about their experience of the fitness to practise process and therefore may find it more difficult to assess the impact of these changes on harder to reach groups. The HCPC needs to ensure that the changes are not creating any additional barriers to individuals raising and progressing concerns or to registrants participating fully in the fitness to practise process. This can only be properly assessed by seeking feedback from all those involved in the process.
- 3.10 As the HCPC continues to review and monitor the impact of these changes going forward, we would welcome any further information on efforts to capture as wide a range of views as possible.

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:

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