

Response to General Pharmaceutical Council consultation on remote hearings

February 2022

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 General Pharmaceutical Council's (GPhC) consultation on remote hearings.
- 2.2 We recognise that the GPhC, 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 changes to procedural rules in June 2020 and again in February 2021, and we are pleased that the GPhC 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 the GPhC'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.

3. Consultation questions

Q1. Do you agree or disagree that hearings should continue to be held remotely when it is fair and practical to do so?

- 3.1 We do not see any reason why the GPhC shouldn't continue to hold virtual hearings where this will not affect the integrity and fairness of the hearing. We note that the GPhC and other regulators have been successfully holding remote hearings throughout the pandemic and that most regulators are now moving to enshrine these changes into law.
- 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 GPhC has outlined its commitment to holding in-person hearings where necessary.
- 3.3 Whilst we support the continued use of remote and hybrid hearings, we believe that the GPhC should consult with panellists, registrants and complaints who have been involved in the process to ensure they have a clear understanding of their experiences and any potential unintended consequences which may require mitigation.

Q2. What do you think the advantages would be (if any) of remote hearings?

- 3.4 Advantages of remote hearings can include greater 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.
- 3.5 We also note that the consultation document states that 'registrants seem more likely to attend a hearing that is held remotely than they are to attend one in person'¹ and that GPhC has had 'mostly positive feedback from everyone involved' with virtual hearings. We would be interested to know what statistics GPhC has collected on registrant attendance for remote versus in person hearings and whether feedback on participant satisfaction has been systematically collected.

Q3. What do you think the disadvantages would be (if any) of remote hearings?

- 3.6 As outlined in response to question 4 (below), there are some cases that are unsuitable for a remote hearing due to technological or practical reasons. In addition, some participants may prefer to attend an in-person hearing even where they have the capability to attend remotely. In our view, all participants should be consulted about the mode of the hearing and their views given careful consideration. However, as outlined in our 'Guidance for regulators on

¹ General Pharmaceutical Council, November 2021, 'Consultation on remote hearings': <https://www.pharmacyregulation.org/sites/default/files/document/consultation-on-remote-hearings-november-2021.pdf>

fitness to practise hearings during the Covid-19 pandemic'², the final decision on whether to hold a remote or in-person hearing is ultimately one for the panel.

- 3.7 In considering potential disadvantages more broadly, it would be helpful to understand what steps the GPhC has taken to fully assess any unintended consequences of these process changes, and to consider any potential mitigations required.

Q4. Do you think there are any circumstances when a hearing should not be held remotely? If 'yes', please describe the circumstances. We want to know if our proposals will have a positive or negative impact on patients and the public and on the pharmacy professionals we regulate.

- 3.8 There are clearly some cases that are unsuitable for a remote hearing, most obviously where any of the participants lack the technological equipment or expertise to enable them to take part in this way. Further, there may be participants whose support needs preclude them from participating remotely, and others who lack suitable private accommodation. These factors are explored in more details in the Professional Standards Authority's 'Guidance for regulators on fitness to practise hearings during the Covid-19 pandemic'.³
- 3.9 The risk of witness interference should also be taken into consideration, and we note is not currently covered by the GPhC's remote hearings guidance.⁴ This is a risk identified in the Health and Care Professions Tribunal Service 'Remote Hearing Protocol' which 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.'⁵ The GPhC may also draw useful learning from the General Optical Council's 'Remote Hearings Protocol'⁶ which includes a fairly comprehensive list of suitability factors for remote hearings.

² 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)

³ 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)

⁴ General Pharmaceutical Council, March 2021, 'Remote hearings during the pandemic: guidance on how to ensure a case is suitable for a remote hearing' <https://www.pharmacyregulation.org/sites/default/files/document/remote-hearings-covid-pandemic-guidance-case-suitable-for-remote-hearing-march-2021.pdf>

⁵ 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>

⁶ General Optical Council, December 2021, 'Remote Hearings Protocol' https://optical.org/media/3qhjcycd/remote-hearings-protocol-dec-21-final_.pdf

- 3.10 In terms of the GPhC's guidance document on ensuing a case is suitable for a remote hearing⁷ and the 'factors to take into consideration' contained therein, we believe there is scope for some important clarifications.
- 3.11 Whilst the GPhC's remote hearings guidance covers many of the relevant factors to be taken into consideration when determining whether a case is suitable to be held remotely, these are not always spelled out as clearly as they could be. For example, under the heading 'the type of allegation' it is noted that cases focussed on a single or limited factual issue are likely to be shorter than a misconduct allegation involving a range of factual issues. Presumably the implication is that more complex cases are less likely to be suitable for a remote hearing, but this is not made explicit.
- 3.12 Similarly, the section of the guidance titled 'witnesses' may benefit from further expansion. It states that 'where the witness is vulnerable further consideration should be given to how any support will be provided... the specific vulnerability might in itself make a remote hearing more stressful and difficult to manage than in a fully supported in-person hearing'. Whilst this is true, the vulnerability of the witness may also be a factor tending towards the use of a remote hearing, hence the fact that vulnerable and intimidated witnesses are eligible for special measures in criminal trials, including the option of giving evidence via live link.⁸
- 3.13 The 'witnesses' section also states that 'where the witness is a member of the public or a patient, consideration will include whether their credibility is in issue'. This seems to imply that credibility may be more difficult to assess in a remote hearing. We would be interested to know whether the GPhC has collected, or is aware of, any evidence to suggest that this is the case. The suggestion that giving evidence remotely may be detrimental to a witnesses' perceived credibility (or make it difficult to assess either way) may not be helpful. If remote hearings are likely to remain the norm, participants need to have confidence that their perceived credibility won't be affected if they give evidence in this way. Should panel members report that they are having difficulty assessing witness credibility in remote hearings the GPhC may wish to consider providing further training or guidance in this area.

⁷ General Pharmaceutical Council, March 2021, 'Remote hearings during the pandemic: guidance on how to ensure a case is suitable for a remote hearing' <https://www.pharmacyregulation.org/sites/default/files/document/remote-hearings-covid-pandemic-guidance-case-suitable-for-remote-hearing-march-2021.pdf>

⁸ Crown Prosecution Service, July 2021, 'Special Measures' <https://www.cps.gov.uk/legal-guidance/special-measures>

Q5. Do you think our proposals will have a positive or negative impact on each of these groups?

- Patients and the public
- Pharmacy professionals

Please give comments explaining your answer. Please describe the individuals or groups concerned and the impact you think our proposals would have.

- 3.14 Whether the impact of remote hearings on patients, the public, or pharmacy professionals is positive or negative will depend on the particular circumstances of the individual concerned. Whilst many will no doubt welcome the convenience of a remote hearing, others will be more comfortable attending in person.
- 3.15 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. In light of this, we welcome the fact that GPhC includes information on upcoming hearings and how the public can observe these on its website.

We also want to understand whether our proposals may have a positive or negative impact on any individuals or groups sharing any of the protected characteristics in the Equality Act 2010:

- Age
- Disability
- Gender reassignment
- Marriage and civil partnership
- Pregnancy and maternity
- Race
- Religion or belief
- Sex
- Sexual orientation.

Q6. Do you think our proposals will have a positive or negative impact on individuals or groups who share any of the protected characteristics?

Please give comments explaining your answer.

Please describe the individuals or groups concerned and the impact you think our proposals would have.

- 3.16 It is possible that some individuals with protected characteristics may find it more difficult to participate effectively in virtual 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.

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

- 3.17 The GPhC may wish to conduct an impact assessment to explore further the potential impacts on groups with protected characteristics.
- 3.18 The GPhC may also wish to spell out to participants in more detail what reasonable adjustments can be made to ensure they can engage fairly and fully in remote hearings. Our performance review of GPhC for 2020/21 noted that the guidance for remote hearings contains limited information about how parties will be supported to attend hearings remotely. This information may be especially pertinent to some individuals with protected characteristics.
- 3.19 Further, GPhC should continue to keep this policy under review and systematically collect feedback from participants who have attended a virtual hearing.

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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