

# **A consultation on permanent changes to our Rules to hold remote hearings**

## **About the HCPC**

We are a regulator of health and care professionals. It is our job to protect, promote and maintain the health and safety of the public; promote and maintain public confidence in the professions we regulate; and promote and maintain proper professional standards and conduct for members of those professions<sup>1</sup>.

To do this, we keep a Register of professionals who meet our Standards for their professional skills, knowledge and character. Individuals on our Register are called 'registrants'. We also investigate concerns about registered professionals who may not meet those Standards, and therefore may not be fit to practise, and take action where necessary to protect the public.

We currently regulate 15 professions:

- Arts therapists
- Biomedical scientists
- Chiropodists / podiatrists
- Clinical scientists
- Dietitians
- Hearing aid dispensers
- Occupational therapists
- Operating department practitioners
- Orthoptists
- Paramedics
- Physiotherapists
- Practitioner Psychologists
- Prosthetists / orthotists
- Radiographers
- Speech and language therapists

## **1. Introduction**

The measures introduced by the government and devolved administrations to respond to Coronavirus in March 2020 meant that we could no longer continue to work in the same way as before the pandemic. We therefore had to adapt some aspects of our fitness to practice and registrations appeals processes, particularly those which had previously been dependent on staff, parties to a case or other stakeholders having a physical presence in our offices or hearings centres.

Our aim in making these changes was to ensure that we were able to continue to fulfil our statutory duty to protect the public, progress fitness to practise investigations without unnecessary delay and conclude hearings as efficiently and

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<sup>1</sup> Article 3(4) and (4A) of the Health Professions Order (2001) states that the HCPC's over-arching objective is to protect the public, and sets out how this objective should be pursued.

safely as possible. A major part of our pandemic response was the introduction of remote hearings to ensure fitness to practise and registrations appeals cases could be heard expeditiously.

On 4 March 2021, the HCPC was granted an amendment to our existing Rules by the Department of Health and Social Care, which gave us the express provision to hold hearings remotely during an emergency<sup>2</sup>. Currently, the Coronavirus emergency provisions are due to expire on 30 September 2021<sup>3</sup>.

We would like to continue to hold hearings remotely once the emergency period ends, where it is fair and practical to do so. We are therefore seeking an amendment to our Rules to give us permanent powers to hold hearings remotely.

Due to the circumstances in which our emergency powers were introduced we were unable to undertake a full consultation at that time. We did, however, conduct a stakeholder engagement survey to seek people's views on the changes to our rules during the emergency and on the impact of those changes on equality, inclusion and diversity. We engaged with relevant trade unions, representative and professional bodies, patient groups, charities and the Professional Standards Authority (PSA).

We are now conducting a full public consultation on our proposal to permanently amend our Rules to give us the express power to hold hearings remotely. The consultation will run from 31 August 2021 to 23 November 2021.

## **2. Background**

The emergency rules that were introduced on 4 March 2021 gave us express provisions allowing us to:

- Hold a meeting or hearing fully by audio or video conferencing facilities.
- Serve notice or send documents by email rather than by post.

The changes in relation to the electronic service of notices or documents were permanent changes to our Rules and so we are not consulting further on these particular provisions.

### **Remote hearings**

Prior to the pandemic, fitness to practise and registration appeal hearings were held in-person at one of our hearings centres across the UK. Social distancing and other measures introduced by the government and devolved administrations in March 2020 meant that we could no longer continue to hold hearings in the same way. The pandemic has necessitated that hearings should be undertaken in such a way as to minimise the risk of transmission of COVID-19, avoid any unnecessary delays and ensure that public protection is upheld. The use of remote hearings, where

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<sup>2</sup> Our Rules are made under the Health Professions Order (2001) and set out the detailed procedures and requirements for several key HCPC functions. On 4 March 2021 we were given emergency powers: The Health and Care Professions Council (Coronavirus) (Amendment) Rules Order of Council 2021.

<sup>3</sup> In the event that the Coronavirus emergency period lasts beyond the end of September 2021, we'll continue to use our powers under the emergency rules.

appropriate, has been critical to our ability to continue to hold hearings in a safe and efficient manner.

We initially published guidance on our approach to holding remote hearings in July 2020. This has been regularly reviewed and updated throughout the pandemic. A copy of the guidance can be found on our Tribunal Services [website](#). We are committed to keeping the guidance under review and updating it, so that it ensures remote hearings take place only where it is fair and appropriate to do so.

The PSA has also published guidance on the use of remote hearings in fitness to practice proceedings during the pandemic<sup>4</sup>.

### **3. Our experience of holding remote hearings**

From 23 March 2020, we started holding interim order application and reviews and substantive review hearings remotely. That was because these matters present an immediate risk to the public. From July 2020, we expanded our use of remote hearings to include all hearing types. We continue to keep our processes for remote hearings under review as our experience of holding hearings this way develops.

Between 23 March 2020 and 31 July 2021 we have held 1,110 remote hearings. This is made up of the following different types of hearing:

- Interim Order applications - 110
- Interim order reviews - 463
- Substantive reviews - 144
- Final hearings - 318
- Other hearings - 75

During this period, we have also held hybrid hearings where it has not been appropriate to hold a fully remote hearing, for example where a participant has required a reasonable adjustment. A hybrid hearing is where some participants attend by telephone or video link, and other participants attend in person at a physical venue.

If we obtain the proposed change to our rules, we will continue to make reasonable adjustments to support remote hearings, as required, to ensure participants can engage fairly and fully in the fitness to practise and registration appeal processes. We will also retain the ability to hold in-person hearings.

Since 23 March 2020, there have been 16 instances where we have not been able to reach agreement with a registrant about the format of the hearing. In these circumstances we have asked a Chair of the relevant practice committee to give directions on how the case should proceed. A Chair has decided that the hearing should proceed remotely in 12 of these cases. In the remaining four cases, the Chair has directed that a hybrid hearing should be held, and we have arranged for the registrant and/or other participants to attend the hearing from our Tribunal centre or another venue. There have been no challenges to the outcome of a case on the ground that a remote hearing was held when it should not have been. The decision

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<sup>4</sup> [Guidance for regulators on fitness to practise during Covid-19 | PSA \(professionalstandards.org.uk\)](#)

about whether a hearing should be held remotely will continue to be at the discretion of a committee Chair should remote hearings become a permanent feature of our rules.

We have seen benefits to holding our hearings remotely. In line with our corporate strategy to continuously improve and innovate, we want to embrace new ways of working where it can bring advantages to us and those involved in the process. We would like to continue to hold remote hearings, where it is fair and practical to do so.

Our learning from holding remote hearings over the last year or so, is that remote hearings can offer greater flexibility when listing hearings and makes the process more efficient. There have been advantages for all those involved in a hearing in not having to incur the time and financial costs associated with travelling to hearings and staying away from home. Our Tribunal Services team have also reported increased engagement from registrants who have been supported to participate in the process by the remote nature of the event.

We recognise that other people may not share our views on remote hearings and that for some the technology involved may act as a barrier to participation. We are keen to hear all opinions and experiences so that we can take a range of views into account in planning for how we might proceed with remote hearings, should we receive our permanent Rule change.

#### **4. Questions**

We welcome your response to this consultation. We have listed below the questions we're asking in this consultation.

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.

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?

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

The consultation will run from 31 August 2021 to 23 November 2021.

#### **5. How to respond to the consultation**

The consultation closes on 23 November 2021. We look forward to receiving your comments.

You can respond to this consultation in one of the following ways:

Online:

You can provide your response to the questions by completing our easy-to-use online survey: <https://hcpc-survey.onlinesurveys.ac.uk/hcpc-consultation-on-permanent-changes-to-our-rules>.

By email:

[consultation@hcpc-uk.org](mailto:consultation@hcpc-uk.org)

In writing:

Consultation on Remote Hearings  
Policy and Standards Department  
The Health and Care Professions Council  
Park House  
184-186 Kennington Park Road  
London, SE11 4BU

### **Contacting us**

To request a copy of this documentation in an alternative format or in Welsh, or if you require any reasonable adjustment, please contact us by emailing [consultation@hcpc-uk.org](mailto:consultation@hcpc-uk.org).

Please note, due to COVID-19, the organisation is partly working from home and so post is not checked frequently. If you are able to respond by email or online survey, we would encourage you to do so.

We do not normally accept responses by telephone or in person. We ask that consultation responses are made in writing to ensure that we can accurately record what the respondent would like to say. However, if you are unable to respond in this way please contact us at [consultation@hcpc-uk.org](mailto:consultation@hcpc-uk.org) or on +44 (0)20 7840 9815 to discuss any reasonable adjustments which would help you to respond.

Please note that, due to COVID-19, this telephone line is not staffed. However, you will be able to leave a message for the team to review and get back to you as soon as possible.