



Review of Delivery of Northern Ireland Social Care Council's Registration and Fitness to Practise Committees

Introduction and Background

Prior to the Covid-19 pandemic, all of the Social Care Council's Committees and fitness to practise hearings were held in person in the Social Care Council's offices in Belfast. Following Government advice on social distancing and non-essential travel during the pandemic, our offices were closed to staff, registrants and visitors to protect their health and well-being in March 2020. Staff continued to work remotely from home, and business continuity measures were implemented to our fitness to practise procedures to ensure that high risk concerns continued to be taken forward where we believed that anyone working in the sector posed a risk.

In order to ensure continued delivery during the pandemic, we adopted the default position of all proceedings being held online via Zoom, with measures in place to enable registrants to attend and participate. Whilst there was a level of concern initially about this method of delivery, it reflected the approach taken by the Courts and all other health and social care regulators, and did not require any immediate Rule changes. The Social Care Council has continued to maintain the delivery of fitness to practise proceedings mostly using online services. By exception, a small number of cases have been held face-to-face in order to meet specific needs of the people involved, or the circumstances of a case.

In 2023, the Social Care Council engaged with the Centre for Effective Services (CES). A small working group, which attended training with CES on evaluation and implementation, identified the need to review and evaluate Committee and hearing delivery to assess its continued appropriateness in the post-pandemic environment, and to identify a fair, balanced and flexible approach to meet the needs of all stakeholders involved in proceedings. The over-arching considerations must be the public interest alongside fairness for registrants, also taking into account the needs and experiences of Chairs, Committee Members, Legal Advisers, Hearings Officers, other participating Council staff and witnesses. To that end, the review included surveys with stakeholders who had been involved in fitness to practise proceedings between March 2020 and March 2023. These stakeholders included registrants and their representatives, witnesses, Fitness to Practise Committee Chairs and members, Social Care Council legal representatives and Social Care Council staff. All were invited to share their experience of service delivery, and asked to provide their opinion on the appropriateness of online, face-to-face and hybrid proceedings.

The working group recognised that the number of stakeholders involved in Fitness to Practise proceedings for the period is relatively small. To ensure that this review could be informed by a broad evidence base, the team also carried out a literature review of guidance and evaluation reports published by other UK regulators and HM Courts & Tribunals Service. This

literature review provided an external perspective on the delivery of regulatory and legal proceedings across a wide stakeholder base. It also provided examples of 'best-practice' in delivering technology-enabled services to ensure the use of online services occurs only where it is in the best interests of those involved in the proceedings and is also appropriate to the complexity of the case being assessed. Details of the reports included in the literature review and online links to them are included in Appendix 1. In addition, legal advice was sought to ensure that the Social Care Council adopts an approach which is legally sound, proportionate, balanced and fair.

This report sets out our recommendations based on the survey results, desktop research and legal advice, as well as one-to-one meetings held between the Director of Corporate Services and chairs and committee members.

Registration and Fitness to Practise Committee Structure

The Social Care Council has in place the following Committees to discharge its regulatory function. The procedure and constitution for each of these Committees is set out in the Standing Orders and in two sets of Rules: the NISCC (Registration) Rules 2022 and the NISCC Fitness to Practise (Amendment) Rules 2019.

Registration Committee: where the Social Care Council has concerns about an application for registration, it can refer the application to the Registration Committee. After examining the documentary and any oral evidence, the Registration Committee will make one of the following decisions: grant the application for registration; grant the application subject to conditions, refuse the application. Where a registrant has not complied with conditions, the Registration Committee can direct that the registrant's entry be removed from the Register. In 2023/24, the Registration Committee considered 16 applications for registration.

Preliminary Proceedings Committee (PPC): where an allegation of misconduct or lack of competence is made against a registrant, or where a registrant had been convicted of a criminal offence and where the case is not appropriate for consensual disposal, the Social Care Council refers the case to the PPC to determine whether the evidence is such that it should transfer the case to a fitness to practise hearing to test the evidence. Additionally, and more often, the PPC sits to consider applications for Interim Orders and the review of Interim Orders in circumstances where it is necessary for protection of the public, is otherwise in the public interest or is in the interests of the registrant. The PPC may make an Order suspending a registrant's registration, or impose interim conditions on the registrant's registration, until such time as the matter has been concluded. In 2023/24, the PPC considered 42 Interim Order applications and 37 Interim Order review applications, and transferred three cases to the Fitness to Practise Committee.

Fitness to Practise (FtP) Committee: the FtP Committee hears live evidence and considers the Particulars of the Allegation against a registrant, and determines whether the facts in the allegation are proved; whether, if the facts are found proved, the registrant's fitness to practise is impaired; and, where the registrant's fitness to practise is impaired what, if any, sanction to impose. One of the following sanctions may be imposed upon a finding of impaired fitness to practise:

- A Warning for a period of up to five years;
- A Conditions of Practice Order not exceeding three years;
- A Suspension Order not exceeding two years; or
- A Removal Order.

The Social Care Council held 25 fitness to practise hearings in 2023/24, resulting in three Suspension Orders and 20 Removal Orders. In one case, impairment of fitness to practise was not found and the remaining case stands adjourned until 2024/25.

Restoration Committee: where a registrant has been removed from the Register following a finding by the FtP Committee, he / she may make an application for restoration to the Register after a period of five years has elapsed. The Restoration Committee considers such applications.

Applicants and registrants have the right to attend proceedings and to be represented by a solicitor, barrister or union representative. A Legal Adviser is present at the sitting of each Committee, and also at the Committee's private deliberations, to advise the Committee on questions of law and to ensure that proceedings are conducted fairly. Each Committee is managed by a Hearings Officer, who co-ordinates the day, supports the Committee, legal adviser and any registrants and witnesses present, and assists the legal adviser with the drafting of each decision.

Two dates are scheduled in advance each month for a range of registration, Interim Order, Interim Order review, PPC and restoration applications to be heard. This means that the same Committee Members may sit as a Registration Committee, Preliminary Proceedings Committee and / or Restoration Committee in one day, and these meetings are referred to as 'Committees'. Typically, between one and three additional Committees will be required each month, subject to demand, and these are scheduled on an ad-hoc basis as and when required. Whilst we endeavour to list as many cases as possible to a Committee day to ensure efficiency within the process and value for money, the optimum number for online Committees has proved to be two cases per day and the maximum number for in-person Committees is no more than four per day.

The FtP Committee is scheduled to sit to consider the Particulars of the Allegation against one registrant only (although there have been two occasions where allegations against two or more registrants have been considered at a joint hearing). A fitness to practise hearing can be listed for one or multiple days, depending on the circumstances and complexity of the case e.g. if witnesses are being called or if the registrant is contesting the case. The FtP Committee also reviews Conditions of Practice Orders and Suspension Orders before their expiry. This type of Committee will be referred to as a 'hearing' throughout the remainder of this report.

Pre-hearing reviews may be held for cases which have been transferred to the FtP Committee to discuss the administrative arrangements for a hearing. They are attended by a legal adviser, both parties and a Hearings Officer, but are not attended by Committee Members.

In 2023/24, we held 46 Committees, which heard 87 registration, interim order, interim order review and / or PPC applications, with 28 hearing days held to determine the Particulars of the Allegation against 25 registrants.

Of the 46 Committees, 14 were held in person at James House and the remaining 32 were held remotely. Of the 25 hearings, six were held in person, with the remainder being held remotely. All pre-hearings reviews were held remotely.

Stakeholder Surveys

The results from the surveys have been analysed, and a paper drafted which sets out the key findings. This paper summarises the findings, and sets them against the other factors which we consider should be taken into account.

Feedback from the surveys provided varied perspectives on individual experiences of online Social Care Council proceedings. A significant proportion of responses included a view that the Social Care Council should make their decision on a case by case basis when planning whether a hearing should be held online, in person or using a hybrid approach. A range of factors were cited as having an impact on the decision for the type of service used, primarily the support needs of participants, whether the registrant is represented, the likely length of time required to hear a case, and the seriousness or complexity of the allegations being considered.

There was a shared view that in many circumstances, online hearings are preferred, whilst in other circumstances, in person hearings are more appropriate. The factors mostly highlighted in preference for online hearings were convenience, value for money, efficiency and accessibility. Assessing credibility and having the ability to pick up on non-verbal cues were the most quoted reasons for holding an in-person hearing.

Committee Member Annual Review Meetings

Each Chair and Committee Member meets annually with Declan McAllister, Director of Registration & Corporate Services, as part of our governance framework to identify any potential areas for concern and to provide assurance that all members are being held to the highest of standards. As part of the meetings held in 2023, each Chair and Member was asked their views and experiences on online and in-person hearings. It is of note that over half of Chairs and Committee Members were appointed to our regulatory Committees in July 2022, and the majority of our members had never sat on an in-person hearing with the Social Care Council at the time of completing the online survey in May.

Once again, the comments at these meetings indicated that members feel that a range of factors are involved in determining in which forum a hearing should be held, as highlighted below by a sample of comments below:

'It was really good to do a hearing in person as there is so much more interaction and you really get the opportunity to discuss more.'

'where you do not have a registrant present, it should be held on line and this works very well. Where there is hearing, talking about complex issues and competency issues: these are better in person. Better for the witnesses and when someone is upset and or is becoming very upset you can deal with it quickly at a F2F hearing.'

'If something is straightforward and not overly complex and the registrant is happy then I agree with a virtual hearing. If something is really complex, lots of witnesses, reputation on the line, then you need to have a live face to face hearing. In particular when witnesses get distressed, there is a dynamic from a live hearing where this can be managed better. For the legal assessor's role who have to engage with the registrant then F2F is needed.'

'From my personal viewpoint there is a slight loss of communication in a virtual hearing. I have done live hearings and there is a stronger bond with your committee members and it is lost in a virtual hearing. You cannot chat and you cannot have a cup of tea together. You can still work effectively on a virtual hearing and it really is about what is right for the case.'

'I would have sat in on some FTP hearings and decision on paper against someone virtually was different when someone is in the room. The challenge is about trying to get the balance for registrants and committee members. It is convenient to press the button. The survey made me think that it is quite a complex decision to take on the parameters for the way forward with hearings.'

'It also helps I can combine the full committee days and significant breaks – I am able to be at other things and attend other meetings. So really easy to manage virtually.'

'It can be a tough day in front of the computer. I am a firm believer that the best type of hearing is an in person hearing.'

Key Findings

Important Factors to Take into Account

There are a range of important factors which need to be taken into account when assessing the advantages and potential disadvantages of in-person and online Committees and hearings. Factors identified as being important in regards to in-person Committees and hearings being more appropriate in certain circumstances are as follows:

- **Fairness to registrants** – fairness must be uppermost in our minds when determining whether a case should be held in person or online. Registrants have the right to attend and to give evidence to the Committee if they wish to do so, and unrepresented registrants must be afforded every opportunity to be able to represent themselves to the best of their ability. This can be a very daunting experience and hearings officers find it difficult to provide adequate support to unrepresented registrants during online proceedings. Part of their role is to ensure that a registrant understands the procedure, and feedback from our hearings officers is that, in their experience, registrants are more likely to approach them for further clarification on issues which they do not fully understand before, during and after in person Committees and hearings, and are less likely to interrupt proceedings if unsure when being held online, potentially resulting in registrants not fully understanding what is happening to them but not feeling able to seek guidance due to the barrier of the screen. Hearings officers report that they are unable to provide upset registrants with any degree of assurance and comfort during online proceedings, nor can they catch their eye during proceedings to ask in a non-verbal way if they are ok. Committees will always take a break to allow a distressed registrant some time to compose themselves, and during an in-person hearing the Hearings Officer will accompany a registrant to their private room, provide support and compassion and stay with them until they are ready to return to the hearing. The lack of direct human contact online, and the inability to reach out to distressed registrants due to the flatness of the environment, can be uncomfortable for all participants, and can result in a registrant participating in a process which they do not fully understand. It is very important for hearings officers to be able to build rapport with registrants to ensure that registrants feel as supported as possible through what can be a very daunting process. Hearings officers find it very difficult to establish this rapport with registrants online, and are unable to provide the same level of support, particularly when distressed.
- **Ease of communication with all parties during adjournments:** the Parties, legal adviser and hearings officer meet at various points throughout a hearing day, particularly if a registrant is present and unrepresented, for a range of reasons e.g. to discuss the next stage of the process, to ensure understanding, to enable submissions to be prepared, to take advice and guidance. These adjournments can be lengthy and, despite every effort being made to keep them updated, a registrant is quite often isolated in a virtual waiting room for a long period of time, which can result in them being in a state of uncertainty about the situation, or questioning whether a technology problem has occurred. Being in the same physical location means that a registrant can see what is happening during these adjournments. Additionally, these conversations can benefit from

everyone being together in person as, without the barrier of a Zoom call, a registrant can feel more supported and able to ask questions.

- **Oral evidence:** the survey results were clear that the ability to assess the credibility of oral evidence is a very important factor to take into account when determining method of delivery due to the gravity of the issues, the decisions to be made and the potential severity of a sanction. Respondents reported that it is easier to put registrants and witnesses at ease in person, with the objective of obtaining clear, cohesive responses during the hearing. Respondents commented that in-person hearings are more appropriate to enable Committee Members to pick up on all verbal and non-verbal cues, and that it is difficult to assess credibility and body language over Zoom. It was also noted that there can be situations involving witnesses where the only way to manage them effectively, and therefore to ensure the smooth running and fairness of the hearing, is to have it in person e.g. ensuring that witnesses are in separate rooms, that they do not discuss the case with anyone else prior to the hearing or whilst still under oath and that, following the conclusion of their evidence, they do not have any contact with other witnesses yet to give evidence to the Committee.
- **Formality:** it was reported in the survey results that the formality of in-person Committees is 'lost' in online hearings, and that unrepresented registrants often do not grasp the seriousness of the situation. It was felt that in-person hearings and Committees with an engaged registrant are more impactful, with registrants better appreciating the gravity and importance of the proceedings and generally giving more thought to their submissions. It was felt that this provides the registrant and the Committee Members with a better opportunity to engage more meaningfully with one another, resulting in a more natural dynamic and, in turn, being more likely to achieve fairer outcomes for registrants.
- **Complexity:** complex cases involving witnesses and / or in-depth documentary evidence e.g. where a case may involve the Committee being taken through and cross-referencing complicated documentary records throughout the course of a hearing, are better accommodated by an in-person hearing. Members find it difficult to use the screen both to be present in the hearing and to access all of the documentation unless they have the facility to use two devices. In addition, it is potentially unfair to expect a registrant to be able to listen and communicate effectively to the Committee, whilst also having to read and refer to complex documents off the same device.
- **Learning and development:** in person Committees and hearings provide organic learning and development opportunities to take place in a way that is not possible with online hearings. Members are together in the same physical location and, throughout the course of the day, find themselves naturally discussing issues which have arisen in other cases and in other relevant arenas. They share their experiences – regulatory, personal and professional – enriching each others' learning in an informal way. Members report more satisfaction following an in-person Committee / hearing day, leaving with a sense of purpose and enhanced knowledge. It is also essential that hearings officers keep their skills up to date with the very different format and style of in-person Committees.
- **Private deliberations:** Committee Members report that private deliberations can feel more natural in an in-person environment. Everyone is fully present, actively engaged and immersed in the discussions. They can be easier to manage, with communication more effective as the conversations are able to flow more freely and members feel more able to debate challenging issues.

- **Focus:** when participating in online meetings, it can be easy to get distracted by other tasks or emails, leading to multi-tasking and limited focus. Whilst attending in-person Committees and hearings, all Parties and Committee Members, who need to be entirely focused on the issues at hand to ensure complete fairness in the process, cannot be interrupted by emails or take other meetings during the course of the day. There can be no suggestion that a Member may have been distracted by other commitments during the course of an in-person Committee or hearing. In addition, concentration levels are less likely to dip in-person than on a lengthy Zoom call. It is also beneficial for a registrant to be in an environment where they cannot be disturbed.
- **Building and maintaining relationships:** building and maintaining strong, professional relationships with our Chairs, Committee Members and Legal Advisers is an important element in the successful delivery of our Committee and hearings service. Meeting in person is a key factor in maintaining the excellent working relationships which we have fostered with our members. In addition, many registrants undergoing fitness to practise proceedings find it a distressing process and, as a compassionate regulator, we feel that it is important that our hearings officers are able to build relationships with non-represented registrants so that they can feel a sense of human connection, can feel able to ask as many questions as they need to in order to understand what is happening to them, and to feel that they are being supported through the process with empathy and understanding. Experience shows that this cannot be achieved to the same degree via online conversations.
- **‘Zoom fatigue’:** with an average Committee or hearing lasting for between six and seven hours per day, the 51 remote hearing days in 2023/24 equate to around 357 hours of Zoom time between our two Hearings Officers within the past year. Spending excess, prolonged hours on Zoom calls leads to mental and physical exhaustion, headaches and very limited movement throughout the course of a Committee / hearing day, and our hearings officers also report that they feel drained after a full day on Zoom. When balancing the competing criteria, the Social Care Council has a duty of care to be cognisant of the health and well-being of our staff, to support our staff, and to recognise that staff retention may be affected by regular continued use of lengthy Zoom calls.

The main factors identified as being important in terms of online Committees and hearings are as follows:

- **Convenience:** attending hearings online involves no travel time or travel costs for participants. They are afforded the ability to log in remotely from any suitable private space and therefore they are a convenient way for all participants to attend, particularly those who would have to travel a considerable distance to attend in person.
- **Non-attendance / non-engagement of registrants:** where a case is more straightforward, e.g. an Interim Order review hearing, and / or where a registrant is not engaged with the process or decides not to attend, it may be more practical to hold the hearing online.
- **Type of case:** where a fitness to practise hearing is based on a criminal conviction (currently constituting the majority of our fitness to practise hearings), it can be managed very effectively online as there are no witnesses called and limited documentary evidence.

Registrant Attendance

Some respondents in the survey indicated that they felt that registrants may be more likely to attend their proceedings if they were held online.

As outlined above, the Social Care Council held 46 Committees in 2023/24, involving 82 registrants. 14 Committees were held in-person at James House and the remaining 32 were held remotely. 13 registrants attended their in-person hearing, while 15 attended online.

Of the 25 fitness to practise hearings held in 2023/24, six were held in person and 19 were held online. Four registrants (66%) attended their in-person hearing, while none of the registrants whose hearings were held online attended.

There are a wide range of reasons why a registrant will decide not to attend their hearing, and the figures above, by themselves, cannot take these reasons into account. However, the figures would indicate that holding online hearings does not necessarily increase the likelihood of a registrant attending.

Every effort is made to contact registrants by telephone following service of their proceedings to encourage their engagement and / or attendance, and to provide support and guidance in advance of their hearing. However, many registrants do not wish to engage in Social Care Council proceedings, and this should be taken into account when deciding whether each hearing should be online or in-person. Prior knowledge of a registrant's engagement with the Council and with previous proceedings is usually a good indicator to inform the Council of the likelihood of future engagement. However, the Registrant will be encouraged to attend all proceedings regardless of any previous non-engagement.

Costs

Respondents in the survey indicated that online hearings and Committees may be a more cost-effective method of service delivery.

Each date, whether it is a Committee day considering a number of cases or a fitness to practise hearing considering one case only, incurs a flat fee of £1435.00 in chair, committee member and legal adviser fees. This remains the same whether the delivery method is online or in person.

In-person Committees incur the additional cost of members' travel, parking (if appropriate) and provision of lunch for four people at a cost of £33.60. Travel expenses, depending on each member's home location, can range from £6.70 to £91.50. Additionally, three chairs are based outside of the jurisdiction, and all three require hotel accommodation, with two also requiring air travel.

It is without doubt that a straightforward fitness to practise hearing delivered online is a less expensive method of delivery.

Cost-effectiveness and value for money is more complex to assess with Committee dates, as the Committee is required to consider a number of cases on each date. The length of each case will depend on a variety of factors e.g. is the registrant in attendance, does the registrant intend to make oral submissions, is the registrant represented, is the registrant contesting the case, is the case more complex etc. Analysis of the number of cases which Committees have been able to deal with online, paired with the feedback from committee members, legal advisers and our hearings officers, indicates that fewer cases can be considered online on one day due to the mental fatigue of participating in a Zoom call for such a lengthy period of

time. Legal advisers, in particular, report that they find more than two cases on an online Committee excessive and unrealistic, and have requested that we limit the number of cases to two. As in-person Committees, again subject to the factors above, will usually have no difficulty concluding three cases per day, the perceived cost benefit of online Committees can be negated by the need to schedule additional dates to accommodate cases.

Literature Review Summary

The literature review found that the Professional Standards Authority (PSA) responded to a number of consultations carried out by regulators into online delivery of regulatory hearings during 2021 and 2022. This included the General Optical Council, General Pharmaceutical Council, Health & Care Professions Council and Social Work England. In these consultation responses, the PSA advocated for health regulators to be flexible in their approach when assessing the best method of delivering hearings and committees in order to meet the needs of stakeholders. PSA has consistently referenced the need to have a strong assessment tool to ensure that the decision on whether to use online, face-to-face or hybrid services is robust, transparent and does not disadvantage those participating. PSA also commends the guidance published by the General Optical Council, advising other regulators to refer to this approach as a model for good practice in planning and delivering hearings post-pandemic. The Social Care Council will review the protocols set out by other regulators, in particular the GOC, and incorporate the practices that best align with the organisation's strategic vision and values.

The literature review also considered research carried out by HM Courts & Tribunals Service (HMC&TS) to evaluate remote hearing delivery during the pandemic. This research report is based on feedback from over 8,000 people, including 4,808 members of the public. Although specifically focused on the delivery of court proceedings and those participating in them at that time, feedback from the stakeholder groups i.e. members of the public, solicitors, court staff etc, again points to using a consistent tool to assess the most appropriate delivery method for the circumstances e.g. shorter, less serious cases may appropriate to be delivered using online services. This HMC&TS report also focuses heavily on the need to assess the support needs of all participants to ensure that there are no barriers to meaningful participation.

Highlights from the Literature Review

Professional Standards Authority Response to Social Work England consultation on amendments to rules, electronic service and remote hearings February 2022

3.2 The **Authority supports the use of virtual hearings where this will not affect the integrity or fairness of the process**. We note that SWE and other regulators have been successfully holding remote hearings throughout the pandemic and that most regulators are intending to continue to hold hearings remotely following the end of the pandemic restrictions.

3.3 However, the consultation doesn't appear to address the fact that **there are, and will remain, circumstances in which there are clear benefits to holding an in-person hearing**.

3.4 The Professional Standards Authority believes that the options of hybrid and in-person hearings must remain. Our 'Guidance for regulators on fitness to practise hearings during the Covid-19 pandemic'² sets out that "**in each case, the regulator should consider whether a case is most suitable to be heard physically, virtually or as a hybrid. The appropriate approach will need to be determined on a case by case basis weighing the advantages and risks in each case**". The guidance goes on to outline certain circumstances in which a

remote hearing would not be appropriate. These include where participants' support needs preclude them from taking part remotely, or where participants lack suitable equipment or private accommodation.

3.10 *Some individuals with protected characteristics may find it more difficult to participate effectively in virtual hearings.* This may be the case in relation to participants with particular support needs (in some cases support may more appropriately be delivered in person), or participants who find it difficult to use the technology required to participate remotely. SWE should provide information to participants on what reasonable adjustments can be made to ensure they can engage fairly and fully in remote hearings.

3.11 *There may also be benefits to remote hearings from an inclusion perspective.* Decisions about the most appropriate form of hearing will need to be made on a case-by-case basis, taking into account the individual circumstances of the participants.

Professional Standards Authority Response to Health and Care Professions Council consultation on permanent changes to Rules to hold remote hearings November 2021

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***

3.6 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.

Professional Standards Authority Response to General Pharmaceutical Council consultation on remote hearings February 2022

3.9 This is a risk identified in the Health and Care Professions Tribunal Service 'Remote Hearing Protocol' which states that 'The GPhC may also draw useful learning from the General Optical Council's 'Remote Hearings Protocol' which includes a fairly comprehensive list of suitability factors for remote hearings.

3.13 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.***

HM Courts & Tribunals Service - Evaluation of remote hearings during the COVID 19 pandemic – December 2021

Table 4.1 shows from the judicial survey that when deciding whether a hearing should be held remotely, perceived vulnerability of parties was by far the most important factor in judicial decision-making, followed by hearing type, case type, and parties not having representation.

Table 4.1 Significance of factors when deciding whether to hold a hearing remotely

	Very significant	Fairly significant	Not very significant	Not at all significant	Base
Perceived vulnerability of parties	67%	25%	5%	2%	1,052
Type of hearing	45%	33%	16%	6%	1,030
Type of case	40%	36%	18%	6%	1,042
Parties without representation	36%	35%	23%	6%	1,038
Length of hearing/trial	33%	35%	25%	7%	1,028
Number of parties involved	32%	38%	24%	6%	1,023
Expected need for cross examination	31%	34%	26%	9%	967
Presence of witnesses	30%	36%	27%	7%	1,010

Percentages exclude responses of 'not applicable'.

Wellbeing Overall, 42% of public users felt they were able to get sufficient breaks during their hearing, but a quarter (24%) felt they did not. Remote users who accessed their hearing via audio were particularly likely to feel they were given insufficient breaks (28% compared to 19% of those who accessed via video) although they typically had shorter hearings.

In interviews, public users with shorter hearings (of less than an hour) confirmed they did not feel any need for a break. Some welcomed not having many breaks or not having breaks at all as it meant that the hearing would take less time, therefore enabling them to resolve the matter quicker and spend less time away from work or other responsibilities. However, some users with limiting health conditions reported that more breaks would have made it easier for them to concentrate and contribute.

"With hindsight, I'd have made my disability (depression) known and asked for breaks - just a few minutes to recover would make it easier for me to better contribute." [Public user, Claimant, Queen's Bench, Video]

Interviews found that whilst remote hearings freed up time from less travel to allow judges to catch up on paperwork and prepare for cases, judges reported feeling more pressured and tired. More established judges reported the lack of human contact while their caseload was primarily remote hearings, adversely impacted their job satisfaction raising some concerns about impact on judicial retention in the long term.

"It is a flat experience. Normal human behaviour gives an energy transfer, so it is energy draining because you aren't receiving anything." [Judge, Family]

Similarly, some magistrates felt remote hearings were more tiring and require greater levels of concentration. They felt it was particularly challenging when the legal adviser was not in the same room and this also reduced their confidence with decision making.

Legal representatives felt that remote hearings impacted on their health and wellbeing. Reduction in travel and waiting times was significant for many but some said that they found them more tiring, and they miss the interaction in court. Some highlighted that working from home had made managing work/home boundaries more challenging as there was increasing pressure to respond to emails out of working hours. Some legal representatives felt that whilst remote hearings were preferable for them, they were not beneficial for their clients.

HMCTS staff were least likely of the professional groups to report that remote hearings impacted on their health and wellbeing. They were most likely to cite increased workload and stress, closely followed by less breaks and fatigue as the main challenging. Interviews with HMCTS staff revealed a split between those that preferred remote hearings and those that found them more stressful and the workload higher.

Support professionals interviewed generally said that they found remote hearings both physically and mentally more draining and some reported physical challenges that they face working from home such as neck strain and one talked about depression along with other health issues.

Looking Forward - HM Courts & Tribunals Service continued

There was a much wider range of views about the use of remote hearings in a post-pandemic environment. It is important to emphasise that listing is, and will remain, a judicial decision for every hearing. Many were in favour of hearings continuing but some felt that they should only be used for certain types of case and others felt they should not be used for certain types of groups. A small number of participants felt that remote hearings were totally unacceptable in a post-pandemic context. (The surveys found that 23% of judicial respondents, 13% of public users, 9% of legal representative respondents and 13% of HMCTS staff respondents *strongly* disagreed that remote hearings were a suitable alternative post pandemic).

There were some who were in favour of remote hearings being used in the future only a last resort whilst others considered they should be offered as a choice and only be used where parties were in agreement that a remote hearing would be acceptable. There was however some concern about presenting remote hearings as an option since it was felt it might be difficult for unrepresented parties to make the right choice as they may not have enough contextual information to fully understand the implications of the choice they are being given.

Many stakeholders felt that remote hearings should continue to be used for procedural and case management type hearings. Specific example of the types of hearings considered acceptable for remote hearings included:

- directions hearings
- case management hearings
- short application hearings of up to two hours
- straightforward claims
- reviews
- injunctions (although some felt injunctions are not suitable for remote hearings).

HM Courts & Tribunals Service continued

Do remote hearings work for all jurisdictions?

Overall, across all jurisdictions and key demographic groups, public users who attended hearings remotely had an equal or better experience with their hearing than those who attended in-person. Across all jurisdiction types (where sample sizes are sufficient for comparison) there is no evidence of remote public users being less satisfied than their in-person counterparts. Satisfaction levels are comparable amongst those who attended civil or family courts and Crown courts or magistrates' courts. Those who attended employment tribunals remotely were more likely than those who attended them in-person to have been satisfied with the overall experience.

Public users attending remote tribunals - employment, SSCS and SEND - were particularly likely to think remote hearings were acceptable (both during and after the pandemic).

Judges and other professionals felt that more complex cases and those with potentially life altering outcomes, like custodial sentences and child custody decisions, were less appropriate to be conducted remotely.

Areas identified for development include:

- It may be useful for HMCTS to consider issuing guidance for public users and their representatives on how they can provide relevant information to inform judicial decisions on whether the hearing will be held remotely.
- Given video users' views are more positive than audio users' views overall, where a hearing is deemed suitable for remote participation, video hearings should take precedence over audio hearings in most contexts wherever possible unless there are specific support requests or technical issues. While inevitably some users will need to access by audio because of lack of access to equipment, it will be worth emphasising the advantages of accessing by video to encourage users to join this way wherever possible.
- Whilst extensive guidance on running remote hearings has been issued along with overviews and summaries, some HMCTS staff felt overwhelmed by the information. It is important to reinforce a culture that supports staff time to attend training and absorb and contribute to guidance.
- Training and guidance gaps were identified amongst some groups including management of interpreters and intermediaries, set up and use of platforms, how to lock remote hearings rooms, the management of e-bundles for legal representatives, use of some CVP functions for HMCTS staff and management and storage of documentation for magistrates working at home on their personal computers.
- It may be useful to standardise practice to ensure that legal representatives have details of the clerk, the prosecutor and probation representatives ahead of the hearing in criminal cases to support necessary pre-hearing communication.
- Ensure that there is guidance for HMCTS staff for high profile cases with significant public interest and requests to join the hearing to raise awareness that central support can be requested.

Legal advice

The Social Care Council has also sought legal advice from Conor Heaney, a qualified solicitor who has extensive experience of acting as a Legal Adviser to the Social Care Council, Social Work England, the Nursing and Midwifery Council and a range of other professional workforce regulators.

The legal advice received from Mr Heaney is summarised in this section and is included in full at Appendix 2.

The legal advice recommends that the Social Care Council adopt a 'default position' as to the format of proceedings going forward in order to set out a clear and transparent approach for all stakeholders. The legal advice sets out the author's recommendations in this regard, as follows:

In-person hearings for

- Substantive fitness to practise hearings where there is an important factual dispute between the parties;
- Contested interim order applications;
- Substantive order reviews where a registrant wishes to give evidence/make submissions;
- Registration hearings where an applicant wishes to give evidence/make submissions; and
- Restoration hearings.

Online hearings for

- Substantive FtP hearings where there is no important factual dispute between the parties; and
- Uncontested interim order applications.

The legal advice also sets out a recommendation that the relevant Committee determine the issue at a preliminary hearing where either Party wishes to stray from the default position and it becomes the matter of a dispute.

The Social Care Council should develop a case management form, with clearly set out criteria, to provide clear guidance and an audit record of decisions made, and relevant amendments will need to be made to both sets of Rules.

Recommendations

The Social Care Council vision is to improve standards in social work and social care, with a commitment to partnership working based on respect, integrity, partnership and excellence. The evidence gathered in this review strongly recommends that the Social Care Council take cognisance of the messaging from all sources that future fitness to practise hearings and committees should be assessed individually in order to plan the most suitable for delivery using online, in-person or hybrid options as required.

In line with best practice cited by the Professional Standards Authority and referenced in the General Optical Council guidance, the Social Care Council proposes to put in place a structured but flexible approach to assess the most appropriate hearing format, with the right to a fair hearing as a fundamental requirement. This will include application of a proportionate approach that identifies and defines non-substantive events which could be managed effectively online without detriment to the parties involved.

Therefore, taking into account the feedback from stakeholders, the findings of the PSA and the HMCTS reviews, the Social Care Council's in-house expertise and experiences and the

legal advice obtained, the Social Care Council proposes to introduce a **default** position as follows:

- **Online hearings** for interim order review applications, fitness to practise hearings which occur as a result of criminal convictions or DBS barrings, **uncontested** interim order applications, preliminary proceedings which are considering allegations to make a decision on whether to transfer a case to the Fitness to Practise Committee and pre-hearing reviews.
- **In-person hearings** for fitness to practise hearings other than criminal conviction or DBS barring cases, **contested** interim order applications, substantive order reviews where the registrant wishes to give evidence / make submissions, registration hearings where an applicant wishes to give evidence or make submissions, and restoration hearings.

Notwithstanding the default positions set out above, a registrant will have the right to request a change of format and, if a dispute ensues, a final decision will be taken at a preliminary hearing (which may take place online at the discretion of the Chair). Additionally, to provide further flexibility and to ensure value for public money, a default position in-person hearing with no registrant engagement may be converted to an online hearing on a case by case basis. Furthermore, a multiple day in-person fitness to practise hearing may convert to an online hearing, subject to the Parties' agreement, once any contested issues have been concluded.

A case management form for fitness to practise hearings will enable the process to be documented on a case by case basis. This approach will provide a clear, unambiguous process for registrants and all other stakeholders.

In order to manage the process administratively, all interim order applications and registration hearings will be listed in-person in the first instance, as it is not normally known at that stage if they will be contested or if the applicant / registrant concerned will engage in the hearing.

We propose to amend the Registration and Fitness to Practise Rules to provide coverage for the proposed arrangements.

Conclusion

Holding all Committees and hearings online during the pandemic worked extremely well, and allowed the Social Care Council to continue to fulfil its public protection duties. However, in the longer term, and with restrictions no longer in place, it is necessary to review those emergency procedures and identify a transparent and proportionate way forward for all stakeholders. The Social Care Council is proud to be a systems leader within healthcare regulation, and while it is very cognisant of the approaches taken by other regulators, it is keen to ensure that the approach taken going forward is right for us as a compassionate regulator.

Feedback from stakeholders has shown confidence in the high standard of service provided by the Social Care Council. We will continue to retain the positive actions which were introduced as a result of the pandemic e.g. telephone contacts with every registrant following service of proceedings to encourage engagement and attendance, and the introduction of Zoom calls to provide guidance to witnesses in advance of hearings. Additionally, we have been very responsive to changes in preferences between online and face-to-face proceedings.

Whilst we propose the default positions as outlined above, we would intend to continue to be proactive in our communications with participants to ensure that they are aware of the options available to them for engaging in proceedings. Formalising these processes and documenting the assessments of services will provide a good evidence base to support regular review and improvement of services. We will continue to keep the arrangements under review, and will seek stakeholder views at regular intervals.

Appendix 1 – Literature review

1. Northern Ireland Social Care Council Fitness to Practise Rules 2019 [THE GENERAL SOCIAL CARE COUNCIL \(niscc.info\)](https://www.niscc.info)
2. 'Learning from COVID-19 A case-study review of the initial crisis response of 10 UK health and social care professional regulators in 2020'; Professional Standards Authority, April 2021 [learning-from-covid-19-case-studies.pdf \(professionalstandards.org.uk\)](https://www.professionalstandards.org.uk/learning-from-covid-19-case-studies.pdf)
3. 'Evaluation of remote hearings during the COVID 19 pandemic – Research report': HM Courts & Tribunals Service, December 2021 [HMCTS remote hearing evaluation - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/research-reports/hmcts-remote-hearing-evaluation)
4. 'Remote hearings protocol – To support the Fitness to Practise Committee hearing process as we exit the COVID-19 emergency'; General Optical Council, 20 December 2021 [Guidance on remote hearings | GeneralOpticalCouncil](https://www.gocouncil.org.uk/guidance-on-remote-hearings)
5. 'Response to General Optical Council consultations on remote hearings protocol and policy on service of statutory notices by email': Professional Standards Authority, September 2021 [GOC consultations on remote hearings and email policies | PSA response \(professionalstandards.org.uk\)](https://www.professionalstandards.org.uk/goc-consultations-on-remote-hearings-and-email-policies)
6. 'Response to Health and Care Professions Council consultation on permanent changes to Rules to hold remote hearings'; Professional Standards Authority, November 2021 [PSA response to HCPC consultation on remote hearings \(professionalstandards.org.uk\)](https://www.professionalstandards.org.uk/psa-response-to-hcpc-consultation-on-remote-hearings)
7. 'Response to General Pharmaceutical Council consultation on remote hearings'; Professional Standards Authority, February 2022 [PSA response to GPhC consultation on remote hearings \(professionalstandards.org.uk\)](https://www.professionalstandards.org.uk/psa-response-to-gphc-consultation-on-remote-hearings)
8. 'Response to Social Work England consultation on amendments to rules, electronic service and remote hearings' Professional Standards Authority, February 2022 [PSA response to SWE consultation on remote hearings \(professionalstandards.org.uk\)](https://www.professionalstandards.org.uk/psa-response-to-swe-consultation-on-remote-hearings)

Appendix 2 – Legal advice

THE FORMAT OF NISCC HEARINGS ADVICE

Introduction

I have been asked to advise the Northern Ireland Social Care Council ('NISCC'), taking account of developments in other fora, on the relative advantages and disadvantages of conducting hearings before the NISCC's regulatory committees on an in-person, remote and hybrid basis.

Overview

Prior to the coronavirus (COVID-19) pandemic, NISCC conducted all hearings on an in-person basis at NISCC's Offices in Belfast. Following the introduction of public health restrictions brought about as a result of the pandemic, NISCC, in common with the courts generally and other healthcare regulatory bodies, implemented remote hearings for all its regulatory proceedings. The change from physical to remote hearings, having regard to the public health emergency, occurred at pace.

In September 2020, the Professional Standards Agency ('PSA')¹ published: *'Guidance for regulators on fitness to practise hearings during the Covid-19 pandemic'*. The purpose of the guidance was to present an overview of the factors to be considered by regulators in respect of hearings following the pandemic and consequent public health restrictions. The guidance stated:

'There is a strong public interest in fitness to practise cases being heard expeditiously and that it should be possible for members of the public to observe such hearings, whether by attending a physical hearing in person or by observing virtual hearings online.'

We have seen no evidence to suggest that regulators should not use online hearings as a major part of their approach to address the challenges posed by the pandemic.'

However, the concerns will carry greater weight in some cases than others and in some cases may suggest about an online hearing is inappropriate for all or part of the proceedings. The regulators should assess the concerns in each case and should do so with reference to defined criteria and guidance.'

We expect the regulators to work in collaboration with each other, registrants and registrant and patient bodies as well as the [PSA], to develop a fair, robust and, subject to their different powers and resources, consistent system for listing and holding hearings. They should also pay careful regard to the findings of the research by Community Research, and that of recent public inquiries and investigations in considering how patients and the public will be informed, involved and supported as appropriate.'

It is important that concerns raised by registrants and others are addressed with flexibility, sensitivity and cooperation.'

¹ The PSA does not have an oversight function in respect of NISCC

In more recent times, and particularly with the ending of the pandemic, there has been discussion in the healthcare regulatory field as to the future format of hearings. Should there be a wholesale return to in person hearings, as was largely the case prior to March 2020? Should the radically changed landscape brought about after March 2020 now remain the norm? Some regulators have been more opaque in their approach than others. The best current guidance which the author has been able to find is that provided by Social Work England².

An interesting development in this area at the moment is the recent announcement, in November 2023, by the General Dental Council ('GDC') that it intends to change its 2006 Rules to embed remote hearings as the default means by which the hearings before Practice Committees are conducted. The consultation process, which is open for 12 weeks, is due to close on 15 February 2024. One of the main dentist defence organisations, the MMDUS, has strongly criticised the proposed change³. The MMDUS warned that the proposal, '*could severely limit many registrants' ability to engage in the [hearing] process.*'

Time will tell as to whether the GDC decides to press on with its proposal. If it does, and no challenge or no successful legal challenge is brought, other healthcare regulators might well follow suit in relation to bringing in changes to their governing legislative provisions.

In recent times, anecdotal information to hand suggests more of a trend on NISCC's part to hold in person hearings. This information further suggests that NISCC will grant a request made by a registrant for an in person hearing. Typically, this will arise where the registrant is engaged in the regulatory proceedings. In all other scenarios - where there is no, or no meaningful engagement, by a registrant - the proceedings will be conducted remotely. It seems that an *ad hoc* approach is adopted with the decision being made on a case-by-case basis.

As far as the author is aware, there is no publicly available guidance on NISCC's website or elsewhere which sets out NISCC's approach to the format by which its hearings are conducted. This may be viewed as a matter of considerable concern. It may be felt not to be desirable or fair for hearings to be decided on a case-by-case basis and with a lack of consistency as to approach. A further concern is the feeling that a significant onus is placed on a registrant, in the absence of clear guidance, to make an important decision as to whether to request the hearing to proceed on in person or remotely.

It is the author's understanding that, up to this point, no appeal has been brought by a registrant to the Care Tribunal in respect of a decision of a NISCC committee which has challenged the fairness of the proceedings on grounds they were conducted remotely rather than in-person.

Default position?

The first issue that might be addressed is whether NISCC should, as a matter of first principles, adopt a default position as to the format by which future hearings will be conducted. This could be either an in person or remote option depending on the type of proceedings contemplated. Alternatively, NISCC could adopt an approach whereby the format of the hearing could be left entirely at the option of the registrant. On balance, choosing a default position, from which, in

² <https://www.socialworkengland.org.uk/concerns/hearings-guidance-for-social-workers/#:~:text=The%20location%20of%20the%20hearing,direct%20us%20to%20do%20so>

³ <https://dentistry.co.uk/2024/01/31/remote-gdc-hearings-registrants-have-the-right-to-see-accuser-face-to-face/>

certain circumstances there can be a departure, might be considered the preferred option. Such an approach provides certainty both for NISCC, registrants, panel members and witnesses.

In-person or remote?

While in theory there is a third option - a hybrid model of both in person and remote participation in the proceedings – in reality, NISCC might well find that the choice of a default position will be between in person or remote hearings. Neither is a perfect solution. Both have significant benefits and disadvantages.

From experience gained in similar fora, some of the benefits of in-person hearings can be summarised as follows:

- Effective method by which to assess the credibility of witnesses' evidence, especially if there are important factual disputes between them;
- Ability to ensure that proceedings are not being recorded other than by the means approved of by NISCC; and
- Effective method by which to develop and enhance the skills of committee members and build effective working relationships.

Cost and inconvenience to participants in the proceedings in having to travel some distance to the hearing might be considered to be most obvious disadvantages.

Conversely, remote hearings have the benefit of saving money and convenience. They are also well suited to hearings where there is an absence of any significant factual dispute between the parties. Disadvantages often manifest themselves when the technology is suboptimal.

Which format?

While it is accepted that each case will often turn on its own facts, in general terms, it might be considered that the following types of hearing might benefit from a default in-person hearing:

- Substantive FtP hearings where there is an important factual dispute between the parties;
- Contested interim order applications;
- Substantive order reviews where an applicant wishes to give evidence/make submissions;
- Registration hearings where an applicant wishes to give evidence/make submissions; and
- Restoration hearings.

The following types of hearing might benefit from a default remote hearing:

- Substantive FtP hearings where there is no important factual dispute between the parties; and
- Uncontested interim order applications.

In order to ensure flexibility while maintaining fairness in the process, with reasonable notice in advance of the hearing, either party should be at liberty to request a change to the default position eg. where the Council requests a remote hearing in preference to an in person hearing where there is a failure to engage in the proceedings by a registrant or, conversely, where a registrant requests an in person hearing in preference to a remote hearing on grounds that he wishes to present 'live' evidence before the committee rather than have the evidence given remotely.

Ultimately, if there is a dispute, it would be for the relevant committee to determine the issue as a preliminary matter. If it upholds the request to depart from the default format, an adjournment of the proceedings would likely ensue. If the request is refused, the hearing would proceed by means of the default format. As a matter of natural justice, the committee's decision on the refusal would need to be dealt with in its written reasons which, in the ordinary course, could be the subject of a challenge to the Care Tribunal.

Discussion

If NISCC considered that there is a need to better clarify its position in relation to the format of future hearings, there will be a need for a change in the Rules to provide for that process. In the interim, there would be a requirement to introduce clear guidance and easily accessible case management forms. Further guidance would need to be developed to support the amended Rules.

Guidance and the amended Rules will need to set out in detail the factors to be taken into account when considering the format of the hearing. When the default position is set out, there needs to be clearly set out criteria which can be referred to when a request for another type of hearing, other than the default, is requested. This document containing the criteria also needs to be accessible both to the public and registrants.

Conclusion

There is clearly a need for a flexible approach. Fairness is key. In the short term, fundamental requirements in that regard include the need to consider the interests of registrants and the formulation of clear guidance which is publicly available. A Rule change in the medium term will also likely be needed.

Conor Heaney

Legal Adviser to NISCC

5 March 2024