

Fitness to practise hearing format guidance

Deciding whether a fitness to practise hearing is remote or in person



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Introduction

The General Pharmaceutical Council (GPhC) is the regulator for pharmacists, pharmacy technicians and registered pharmacies in England, Scotland and Wales.

As part of our role, we set the standards that pharmacy professionals have to meet throughout their careers, as well as the standards that pharmacy owners are responsible for meeting, to ensure the safe and effective provision of pharmacy services at or from a registered pharmacy.

1. General Pharmaceutical Council (GPhC) legislation allows for fitness to practise hearings to take place either remotely or in person. Fitness to practise hearings are part of the GPhC's work to protect the public. Their aim is for a committee to hear evidence, consider a case, and arrive at a fair outcome to ensure 'regulatory justice'.
2. The GPhC's managing concerns strategy focuses on a 'person-centred' approach to pharmacy regulation. Therefore, the decision on the format of a fitness to practise hearing will need to be taken on a case-by-case basis. This means:
 - Parties must be able to take part in the fitness to practise hearing.
 - The format of the fitness to practise hearing must allow the parties to present their case as best they can.
 - Fitness to practise hearings should be scheduled and completed as efficiently and effectively as possible.
3. This document explains what to consider when deciding the format for a fitness to practise hearing – remote or in person.

Who this guidance is for

4. The Adjudications Team must take this guidance into account when scheduling a fitness to practise hearing. The committee chair must take this guidance into account when deciding on the format of a fitness to practise hearing. Under the legislation the final decision on the format is for a committee chair to take.

Factors to consider

5. There are a number of factors to consider when deciding whether a remote or an in-person fitness to practise hearing would be most effective. The list that follows does not cover every situation. The format of a fitness to practise hearing should be considered on a case-by-case basis.

The pharmacy professional's view

6. When we schedule a fitness to practise hearing we will ask the professional whether they think it should be remote or in person, and to give brief reasons for their choice. Professionals will be able to read this guidance, which includes the list of things they may want to consider. Although we will take the professional's view into account, there may be reasons for us not to opt for the professional's preferred format. In any case, we will let the professional know what the format of the fitness to practise hearing will be, and the reasons why.

The complexity of the case

7. Complex cases are ones where:
 - there is more than one type of allegation
 - there is a large volume of documentary evidence
 - there are multiple witnesses, and
 - the fitness to practise hearing is expected to last at least five days

Complexity in itself should not rule out a remote hearing, but should be considered alongside other factors.

Equality, diversity and inclusion (EDI)

8. The GPhC is committed to EDI, and as part of this the format of a fitness to practise hearing must take into account the needs of each participant. To make sure the hearing is fair, we will gather information to find out the needs of individuals. This will include the impact of any disabilities or vulnerability they may have, and how best they can take part in the proceedings. Other things we will consider include language or learning needs, wider health issues, caring responsibilities and cultural factors
9. For all EDI information we gather, we will assess:
 - the ability of an individual to take part in proceedings, or
 - how effectively they can take partWe will take this information into account when deciding on the format of a fitness to practise hearing. We will also put in place any special measures that are needed.

Health cases

10. With health cases we need to consider very carefully how the format of the hearing will affect the professional and their ability to cope with the fitness to practise hearing. The professional might find it difficult to attend a fitness to practise hearing in person because of their health issues. However, it could be more stressful for them to deal with the technology involved

in having a remote hearing. Their health issues might in themselves create challenges in picking up on visual cues if having to communicate through a computer or phone screen.

The type of allegation

11. In some conviction, caution or health cases, the allegation is focused on a single or limited factual issue (the conviction or the health condition). These are usually shorter cases, where key factual issues are not in dispute and where any witness evidence is likely to be limited. On the other hand, a misconduct or Deficient Professional Practice (DPP) allegation might well involve a range of factual issues and therefore be more complex. This could mean an in-person fitness to practise hearing is more suitable.

The extent to which any facts are in dispute or agreed

12. The decision about any impairment and the most appropriate outcome is a question of judgement for the committee. However, for decisions on disputed facts the level of proof needs to be to a 'civil standard'. That is, the committee needs to consider 'the balance of probabilities'. This in turn might involve considering complex witness, documentary and other evidence.

Whether the pharmacy professional is represented or not

13. There are challenges for a professional who is unrepresented. These can be managed, and the professional can be supported, by the committee, the committee secretary

and the case presenter. Some professionals might find in-person support more helpful. However, others may feel more comfortable taking part in a familiar setting such as at home.

Witnesses

14. If any issues are disputed and witness evidence needs to be considered, the background of the witness should be taken into account. Professional witnesses – for example, superintendent pharmacists, pharmacy inspectors, or expert witnesses – should be in a better position than members of the public to manage the challenges of giving evidence remotely. If the witness is a member of the public or a patient, we will need to consider:
 - the length and complexity of their evidence, and
 - how much of their evidence is linked to other documentary evidence which they will need to be taken through
15. If the witness is a vulnerable witness we will also need to consider how any support will be provided. As with health cases, the specific vulnerability might make a remote hearing more stressful and difficult to manage than an in-person hearing. On the other hand, some witnesses might feel more comfortable giving their evidence remotely. In some cases GPhC staff may be able to travel to help a vulnerable witness give evidence remotely.



Access to information technology (IT)

16. For remote fitness to practise hearings we need to be sure that all parties have the equipment they need to take part effectively. We need to consider the IT equipment the parties have and also their internet access. This should also include considering their physical environment, for example:

- Are they in shared accommodation?
- Will they have enough privacy, and freedom from noise and other distractions?

Not all professionals or witnesses will have the necessary IT equipment, or confidence in using IT, to be able to take part meaningfully in a fitness to practise hearing. In some situations, the GPhC may be able to provide equipment and an appropriate location to join from. For remote participants the Adjudications Team will offer video-link tests

Types of hearings

Principal hearings

17. Principal hearings are when the Fitness to Practise Committee has the first opportunity to consider evidence about a professional's current fitness to practise. The case presenter, the pharmacy professional and their representative (if they have one) will be sent a 'listings questionnaire'. This covers issues like witnesses, the number of days the hearing is expected to last, and the format the hearing will take, with reasons for this. The listings questionnaire will need to be filled in and sent back by a certain date. If the parties agree on the suggested format, the Adjudications Team will confirm this and the hearing will be listed as that type. If the chair who will take the hearing disagrees with the format, they can ask for a case management meeting (CMM).
18. If parties don't agree about the format, the Adjudications Team will write a recommendation based on the information in the listings questionnaires. This recommendation, and the completed listings questionnaires, will go to the chair so they can make the final decision on the format – either on paper or at a CMM. We will then confirm the format with all the parties and send out a Notice of Hearing confirming the location at least 28 days before the start date.
19. At the start of each hearing the chair will confirm the format and that parties are content with this.

'Non-principal' hearings

20. Non-principal hearings are all other types of hearings such as interim orders, reviews, restorations and appeals. These will be scheduled remotely as these hearings are shorter and less complex. Interim order application hearings must be scheduled quickly to deal with public-protection concerns.
21. For all these types of fitness to practise hearings the pharmacy professional, their representative, the case presenter or committee members can ask for them to take place in person, giving reasons for the request. The request will then be considered by the chair

'Hybrid' hearings

22. In some cases, it may be that most parties attend the hearing in person, but others – for example, a witness – attend remotely. The format of these hybrid hearings is also decided case by case

Changing the format mid-hearing

23. The format of a fitness to practise hearing, remote or in person, will be decided in advance. But it could be considered at the end of each day and each stage, how best to go ahead with the next day or stage.

