



## Response

### **GPhC consultation Consultation on remote hearings**

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Respond via email: [consultations@pharmacyregulation.org](mailto:consultations@pharmacyregulation.org)

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## About the Company Chemists' Association (CCA)

Established in 1898, the CCA is the trade association for large pharmacy operators in England, Scotland and Wales. The CCA membership includes ASDA, Boots, LloydsPharmacy, Morrisons, Rowlands Pharmacy, Superdrug, Tesco, and Well, who between them own and operate around 6,000 pharmacies, which represents nearly half the market. CCA members deliver a broad range of healthcare and wellbeing services, from a variety of locations and settings, as well as dispensing almost 500 million NHS prescription items every year. The CCA represents the interests of its members and brings together their unique skills, knowledge, and scale for the benefit of community pharmacy, the NHS, patients and the public.

## Questions

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

Yes, we agree with this in principle. We suggest that the GPhC defines 'fair' and 'practical' and add principles around when cases should and should not be referred for a remote hearing. However, this can only be a guide and it must be decided on a case-by-case basis. The consultation also refers to the complexity of the case and it would be helpful to define what is meant by this. It could suggest that cases are multi-factorial or that there is a dispute or lack of insight demonstrated by the registrant. Clear guidance around this may help registrants engage with the allegations at an earlier stage in the process.

The process for making these decisions should be consistent across regulators. The consultation mentions that some health regulators have already gone down the process of formalising the emergency powers and putting this into legislation. It may be helpful for the GPhC to review the powers being put into place by these bodies for any learnings and, because there is a wider agenda to embed consistency in approach across regulators as part of regulation reform, they should seek to emulate their approach.

Furthermore, it risks more generally to holding hearings online could be evaluated. For example, have the outcomes changed since the regulator moved to online, and are there concerns that professionals could be led by their legal counsel remotely instead of demonstrating candour and insight? Therefore, the overall principle must be that an online hearing must have parity with an in-person hearing. However, the presence of additional risks with remote hearings must be acknowledged and managed accordingly.

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

Remote hearings would make processes more efficient in circumstances where hearings are straightforward. However, it is hoped that the majority of non-complex cases would be handled in new ways, such as accepted outcomes, once the GPhC embeds case examiners and the new processes arising from the fitness to strategy reforms and the regulatory reform.

There are benefits to registrants in these cases who may not have been through a tribunal process before and may find it daunting to attend a hearings centre in London. The consultation document notes that registrants are more likely to attend remote hearings, this is likely because hearings can

cause stress and anxiety for individuals. However, the contrary side to this is that registrants may not have legal representation, and therefore without the advice and support of Counsel advising them, they may not realise the seriousness of the process or have support in presenting evidence and cross examination. Additionally, where registrants do have legal counsel, it will be important to provide opportunities for the registrant to take a break and discuss matters with their counsel, as they arise. This is a process in place for medics undergoing tribunal service with the Medical Practitioner's Tribunal Service (MPTS).

There are benefits to witnesses being given the opportunity to provide evidence via remote hearings. In pharmacy, witnesses are often other members of the pharmacy team and therefore cover is needed for them to take a day off. Employers may also send a 'buddy' to travel with this person to London, and again this is usually another member of the pharmacy team who needs to be covered on this day. Therefore, an in-person hearing is a massive undertaking for the witness and their team – emotionally, financially and practically. Additionally, we have fed back concerns about hearings being cancelled on the day of the hearing, so that the provisions for staff to take time off to travel to London and obtaining backfill for their roles has already been undertaken. We would hope that remote hearings would give the regulator more flexibility around how they schedule hearings, but we also believe that remote hearings need to be treated the same as 'in-person' and the appropriate notice given to registrants and witnesses.

Furthermore, witnesses (whether team members or members of the public) may be vulnerable and require extra support. This may be possible via video conference, but it may be that the nature of the concerns (e.g. sexual misconduct) mean that it is not appropriate or sufficiently adequate to support this person remotely.

Overall, we believe that there are many advantages to remote hearings, but they also need to be weighed up with the risks, on a case by case basis.

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

- Access to Required Technology – not all stakeholders may have access to appropriate technology
- Connectivity Issues – problems connecting to the hearing / disconnection / frozen screen all resulting in a lack of clarity from the speaker
- Technology Competence – in addition to potential limited access to the required technology and connectivity challenges, some stakeholders may have limited technological competence to participate in the hearing
- Confidentiality – some stakeholders may be trying to participate in the hearing from an unsuitable location. More difficult to control who has access to the hearing – potential use of technology to record the hearing / share content to third parties
- People with Disabilities May be Disadvantaged – sight, hearing and dexterity problems will present particular challenges
- English Language Competence – participating in remote hearings may be a challenge for some individuals as the clarity of voice projection through a computer is not as clear as face to face contact

- Loss of Non-Verbal Communication – more difficult to read body language using video technology
- Lack of Participant Consent to Attend a Remote Hearing – do all stakeholders have to consent to a Remote Hearing? Is it a binary option of a remote hearing or in person or could there be a blended option to support witness participation?
- Uncomfortable Posture for Stakeholders – for example, eye and neck strain from maintaining a fixed body position for prolonged periods of time
- Lack of Engagement / External Distractions – greater challenge to keep all stakeholders engaged due to external distractions and it may be more challenging to follow evidence bundles

4. **Do you think there are any circumstances when a hearing should not be held remotely? a If 'yes', please describe the circumstances.**

Yes.

There will be many circumstances where remote hearings may not be appropriate, they include (but are not limited to):

- Vulnerability of the registrant or witness
- Lack of insight into allegations or dispute about evidence
- Issues around honesty and conduct
- Sexual misconduct allegations
- Allegations of discrimination

5. **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.

**Patients and the public:** The greatest benefit to both patients and the public will be convenience. It is also hoped that using remote hearings will result in a swifter conclusion to the FtP process. Cases that have been referred to a hearing are likely to pose significant risks to patients and users of the pharmaceutical services provided by the registrants concerned. The flexibility provided by remote hearings should remove any logistical challenges and facilitate hearing schedules. This will ensure any immediate risks to the public are addressed by determining an appropriate outcome is reached

**Pharmacy Professionals:** It is in the interests of the registrant from a Mental Health and Wellbeing perspective that a concern is concluded as quickly as possible. In addition to the registrant at the center of the concern, the FtP process and attendance at a hearing in London can also cause anxiety and stress for witnesses involved in the case. Participation remotely from a more familiar environment may help to reduce the distress caused to registrants and witnesses involved in the case.

It is important that an assessment of needs is completed that records the needs of any person involved in the concern to ensure no individual is disadvantaged by the use of a remote

hearing. Examples of people who may be disadvantaged are those with a disability which prohibits their contribution to the case where required.

**6. 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

**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.**

There may be positive and negative impacts on all groups listed above. As mentioned before, clear guidance and robust principles will be key to ensuring that groups are shielded from negative impacts. However, there are many positives for the groups outlined above including for those with reduced mobility due to age, pregnancy or disability.

An assessment of needs should be provided and provisions made to meet the stated need of the participant on a case by case basis.