



## Use of Electronic Communications in Hearings Practice Statement

### Introduction

The General Teaching Council for Scotland (“GTCS”) conducts all of its Fitness to Teach Panel hearings in its dedicated Hearings Suite at its offices in Edinburgh. However, a Fitness to Teach Panel may permit any participant to take part in a hearing from outside the hearing room (the “remote location”) via electronic communications. This would most commonly be used for witnesses giving evidence, but could be used for any hearing participant (including the Teacher). A Panel may also decide to use electronic communications as a special measure for a vulnerable witness.

Reference to “remote participant” within this document includes any individual participating from a remote location.

This practice statement provides guidance to parties and Panels about the use of electronic communications in hearings and should be read alongside the Fitness to Teach Rules.

### Available Options

The Rules permit electronic communications to be used provided the method adopted allows everyone in attendance at the hearing and at the remote location to hear each other (which includes members of the public if it is a public hearing). This means that video linking and teleconferencing may be used but what is appropriate will depend on the particular circumstances (see below for further information on this).

### General Principles

The use of electronic communications has a number of potential benefits such as:

- increasing accessibility and flexibility which may consequently encourage and facilitate participation
- reducing costs associated with travelling to a hearing
- avoiding delay

However, the best form of evidence is generally regarded to be witness evidence given in person at a hearing. As a result, convenience alone should not usually dictate the use of electronic communications: it should be used when it is just, equitable, proportionate, and fair to do so and when it is in the interests of efficient and effective adjudication.

### Relevant Case Law

Case law, including *Polanski v Conde Nast* [2005] UKHL 10 and *Dr Lawrence v GMC* [2012] EWHC 464, provide assurances that video link provides a) an efficient and effective way of conducting evidence in chief and cross examination; b) that evidence taken by video link is usually of good quality and allows an assessment of demeanour and body language to be made.

### Making an Application

Electronic communications may be used only on the direction of a Panel. An application should be made by the party (either the Teacher or the Presenting Officer) that wants to use electronic communications (the “requesting party”) either for him/herself or for his/her witness(es) following the below procedure.

- 1 As soon possible the requesting party must inform the Servicing Officer of his/her intention to apply for electronic communications to be used.
- 2 The Servicing Officer will provide the requesting party with an application form to complete and return.

- 3 The Servicing Officer will provide the completed form to the other party (where applicable).
- 4 The other party will provide the Servicing Officer with his/her position in response to the application (where applicable).
- 5 In complaint cases, the Servicing Officer will usually arrange a procedural hearing to consider the application in advance of the full hearing. In probationary service cases, the written application will be provided to the Panel for a decision in advance of the probationary service hearing or a decision will be made at the outset of the probationary service hearing, depending on the individual circumstances of the case.

### **Last Minute Applications**

Where electronic communications are proposed as a last minute solution to a particular situation (e.g. when a participant has been unable to get to the hearing due to inclement weather) the Panel will hear submissions from both parties (where applicable) and consider the application as described below. Where, having considered the factors described below, the Panel determines that the use of electronic communications to facilitate the participation of the particular individual is not appropriate in the circumstances; the hearing may need to be adjourned. Note: if that happens, before adjourning, consideration should always be given to amending/altering the hearing running order to maximise the use of hearing time: for example, by hearing witnesses in a different order.

### **Considering an Application**

Before making a decision, a Panel must carefully consider the representations that have been made and seek the advice of the Legal Assessor and/or Servicing Officer as appropriate. A number of factors which are likely to be relevant are set out below in order to ensure a consistency of approach. However, a Panel must use its own judgement in the particular circumstances of each case.

Where the proposed remote participant is a witness, consideration should be given to the content of his/her evidence and the centrality of his/her evidence to the matters at issue when weighing up the below factors.

- Is the Panel confident that the proposed method would be successful?
  - Has an appropriate remote location been proposed (e.g. is it private)?
  - Has/will the equipment be tested?
  - What is the likelihood of technical issues occurring and how will any technical issues be resolved?
  - What documents will the remote participant require and how will these be provided to him/her?
  - Is the Panel satisfied (based on its own experience/knowledge and the circumstances of the case) that it would be able to sufficiently assess the evidence (including credibility and reliability)?
- Is the Panel convinced of the potential benefits?
  - Will the use of electronic communications overcome a significant issue affecting the hearing e.g. lengthy travel (or any other difficulty associated with travel to GTCS' offices in Edinburgh), ill-health, limited availability?
  - Will the use of electronic communications save money?
  - Will the use of electronic communications save time?
  - Is it the most effective way of facilitating participation/would participation be impossible by any other means?
- Are there any perceived drawbacks?
  - Has any unfairness been identified to either party? If so, to what extent and what is the impact? [Note: reference to the section below on Assessing Evidence provided via electronic communications will be appropriate at this point]
  - Are there concerns about control of the witness in the remote location?
  - Are there alternative methods of participation which would be better?

In deciding whether or not to grant the application, the Panel should balance all of the above factors, the interests of the parties and the general principles described above. As a starting point, if the Panel is not satisfied that the proposed arrangements are likely to be successful then the application should be refused.

## **Decision**

A fully reasoned decision should be provided by the Panel in response to applications for the use of electronic communications at hearings. As a general rule, the decision should follow the structure set out in the preceding section and cover the general principles highlighted.

## **Practical Arrangements**

The default position is that remote participants will participate from the remote location on their own.

The remote location must be appropriate for the purpose and steps should usually be taken to identify the remote location before an application for the use of electronic communications is made. The remote location may be any appropriate location such as the remote participant's home/office, a solicitor's office or a school. The remote participant must be able to take part privately and undisturbed.

The responsibility for identifying and arranging a suitable remote location lies with the requesting party. Any costs associated with the use of electronic communications must be met by the requesting party (or as otherwise agreed between the parties).

The Convener's Notes contained in Appendix A set out a number of practical points to be considered when dealing with evidence provided via electronic communication.

### Video link

Information about the technical requirements for using video link can be obtained by contacting the Servicing Officer.

At GTCS' offices there is a room separate from the hearing room which can be used as the remote location from which to video link to the hearing. If this facility is required, this should be indicated by the requesting party on the application form.

Video link can be prone to minor difficulties such as sound interference and low image quality. Also, on occasion, there may be a time delay between the sound and picture. These problems are normal with these types of technology and, unfortunately, are beyond our control.

### Teleconference

GTCS uses a teleconference system accessible from any landline or mobile.

Where teleconference is to be used, GTCS will provide a number for the remote participant to dial and a pass code for him/her to enter in order to access the teleconference.

GTCS will meet the cost of the teleconference provided the remote participant dials in from a landline or a mobile with 'free' minutes, but will not meet any costs associated with the remote location (e.g. room booking).

### Documents

It must be identified in advance what documents the remote participant requires access to and at what point he/she should have access to them. Where possible this will be agreed between the parties. If agreement is not possible, the Panel will decide what documents should be provided and at what stage. The remote location must have the facility for documents to be transmitted during the course of the hearing if required (e.g. by email or fax).

### Testing

A test of the link should be carried out around 7 days before the hearing. Legal and Adjudication Services will liaise with the remote location to conduct a test.

### Link failures

If the video link/teleconference fails, the options available are to:

- (a) use an alternative means of participation
- (b) adjourn the hearing to a later date/time so that the issues can be resolved or the witness can attend
- (c) exclude the witness' evidence (only in exceptional circumstances)

Before deciding, submissions should be heard from both parties (where applicable) and advice sought from the Servicing Officer and/or Legal Assessor as appropriate.

### **Assessing Evidence Provided Via Electronic Communications**

The method by which evidence is given electronically will also be a factor to be considered and may ultimately impact upon the weight that the Panel can attribute to that evidence, depending on the particular circumstances.

For example, it may be that evidence received via teleconference is given less weight than evidence received via video link, as the Panel cannot see how the witness gives his/her evidence (including demeanour), which may then impact upon the assessment of his/her credibility and reliability. In relation to evidence received via video link, the quality of the link/connection may similarly impact upon a Panel's ability to assess the credibility and reliability of the witness. Having said that, it must be emphasised that this is entirely dependent on the particular circumstances and the nature of the evidence to be given: it may be entirely possible for a Panel to reach the same end conclusions on credibility and reliability as it would have had the evidence been given in person at the hearing.

Advice should be sought from the Legal Assessor and/or Servicing Officer as appropriate in the circumstances. In addition, other helpful and relevant information about assessing evidence (including the relative weighting of evidence) is also contained within the Fact-finding in Fitness to Teach Panel Complaint Hearings Practice Statement.

## Convener's Notes for Witness Evidence Via Video Link or Teleconference (Appendix A)

### Establishing the Link

When evidence is to be given via video link or teleconference, the time of the video link or teleconference should have been confirmed in advance. It is important that you ensure that the hearing day is managed taking account of those arrangements where possible. When it is time for the video link/teleconference, the Servicing Officer or other member of Legal and Adjudication Services staff will set up the link/teleconference.

When the witness is connected, it is important that the process mirrors as closely as possible the normal process as if he/she was in the hearing room in person.

### Start of Evidence

As the evidence is being taken via video link/teleconference, some additional points should be covered with the witness at the outset. The following should be adapted to suit the particular circumstances of the case.

- Welcome the witness and ask him/her to confirm his/her name
- Check that the witness can hear/see you
- Ask witness to take oath/affirmation (if the witness does not have the oath/affirmation in front of him/her, ask the witness to repeat the words after you)
- Introduce everyone in the hearing room to the witness and explain the layout of the room
- Ensure the witness is alone at the remote location (unless it has been agreed that there is a need for another person to be present, in this case the other person should be identified and visible/audible). If another person is in the room, identify the person and decide whether that person should leave the room (you may wish to seek the views of parties)
- Check that everyone in both locations can see/hear and be seen/heard
- Point out that there can be minor time delays between the picture and sound, and that everyone should keep movements to a minimum where possible in order to preserve picture quality
- Check what documents the witness has in front of them
- Check that the witness has a means of receiving additional documentation (if required)
- Explain the process in relation to questions, breaks, link failures and timing
- Remind everyone that they should inform you immediately if they experience difficulties with picture/sound
- Follow the usual format. When evidence from the hearing papers is referred to, ensure that witness has the same item before him/her e.g. by confirming the title of document, page number and/or author
- If discussion with parties is required during the witness evidence, ensure the link is off before discussion commences
- If a break is required during evidence, remind the witness that they remain on oath/affirmation and he/she cannot discuss his/her evidence.

### End of Evidence

- Release the witness from oath/affirmation
- Request that the witness return the hearing papers to GTCS or dispose of it securely
- Ensure that the link is correctly disconnected at the end of the evidence before proceedings continue.

## Application Form for the Use of Video Link or Teleconference in a Fitness to Teach Panel Hearing (Appendix B)

This application form is to request the use of video link or teleconference during a Fitness to Teach Panel hearing and should be submitted to the Servicing Officer. Where applicable, this application and any accompanying documentation will be provided to the other party to proceedings.

### Part A – Details

Teacher/Applicant/Probationer's name	
Registration Number	
Date/time and duration of link (if known)	
Application submitted by	
Application submitted on	

### Application for:

Video link  Teleconference

### Part B – Purpose of Request

Who is the remote participant?	
Will he/she be giving evidence?	<b>Y/N</b>
Describe what part(s) of the hearing the participant will be participating via teleconference/video link. Could any other measures facilitate attendance (e.g. shorter hearing days/more breaks etc)?	
[this box will automatically re-size]	
Has he/she been designated as a vulnerable witness?	<b>Y/N</b>
Do you intend to apply for him/her to be designated as a vulnerable witness?	<b>Y/N</b>
If yes, please provide an explanation of on what grounds you intend to make this application and list and provide any supporting evidence	
[this box will automatically re-size]	
Explain <u>fully</u> the reasons for the request covering the factors set out in the Practice Statement where possible.	
Please also list and provide any supporting documentation (e.g. medical evidence)	
[this box will automatically re-size]	

### Part C – Proposed arrangements

Where is the remote location?
[this box will automatically re-size]
Describe the facilities at the remote location <ul style="list-style-type: none"> <li>• how will he/she connect?</li> <li>• will he/she be able to receive documents at the location during the hearing?</li> <li>• will he/she be undisturbed for the period required?</li> </ul>
[this box will automatically re-size]
List the documents the remote participant would need to see/be referred to during the hearing
[this box will automatically re-size]
Is it proposed that anyone will attend with the remote participant? If so, explain who and why.

[this box will automatically re-size]
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### Part D – Testing

If the application is granted, Legal and Adjudication Services will conduct a test of the link in advance of the hearing. Usually this should take place around 7 days before the hearing. The following information is required in order for a test to be arranged:

Remote participant's name	
Telephone number	
Email address	
Name of contact at remote location (if different from remote participant)	
Telephone number	
Email address	
Please indicate in the box to the right that you have discussed this application with the remote participant and that he/she is fully aware of the proposed arrangements and that a test will be required in advance	