



Use of Electronic Communications in Hearings Practice Statement August 2020

Introduction

By default, the General Teaching Council for Scotland (“GTCS”) conducts all its Fitness to Teach Panel hearings in person in its dedicated Hearings Suite at its offices in Edinburgh. However, a Fitness to Teach Panel may order that all or any part of a hearing may be conducted by use of electronic communications.

Accordingly, a 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.

In addition, an entire hearing may be conducted via electronic communications (a ‘virtual hearing’). For the avoidance of doubt, a virtual hearing will involve all participants attending the hearing by electronic means.

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. There will also be separate documents providing practical advice to participants regarding the use of electronic communications.

Available Options

The Rules permit electronic communications to be used provided the method adopted allows the parties, the Panel and any witnesses to hear each other (and, where the hearing is in public, allows the public to hear proceedings). This means that videolink and teleconference may be used.

General Principles

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

- increasing accessibility and flexibility
- encouraging and facilitating participation
- reducing costs associated with travelling to a hearing
- avoiding delay
- environmental benefits (e.g. fewer cars on the road)

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, and in the interests of efficient and effective adjudication.

It should be noted that the use of teleconference is likely to be a less effective medium than using video.

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”) following the below procedure.

- 1 As soon as possible, the requesting party must complete and return the relevant application form (Appendix A for remote participants and Appendix B for virtual hearings) or a written application, along with supporting evidence, to the Servicing Officer. The application should be copied to the other party.
- 2 GTCS Tech Support will conduct a test of the electronic communications to be used and provide any relevant information regarding the suitability of the remote location/technology to be used to the Servicing Officer. This information will be passed on to the parties.
- 3 The Servicing Officer will ask the other party to provide a response to the application, along with any supporting evidence, within a specified timescale. .
- 4 The other party will provide the Servicing Officer with his/her position in response to the application (where applicable) and copy this to the other party.
- 5 The application will be determined as a preliminary matter by a Panel in accordance with Rule 2.5 or 3.4 as appropriate.

Last Minute Applications

Where the use of electronic communications is 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.

Considering an Application

Rule 1.7.6 states that:

All or any part of a hearing may be conducted by use of electronic communications provided that –

- (a) the Panel has given the parties an opportunity to make representations on the matter and the Panel considers it just and equitable for electronic communications to be used;*
- (b) the method used allows the parties, the Panel and any witnesses to hear each other; and*
- (c) where all or any part of the hearing is to be held in public, the method used also allows the public to hear proceedings.*

As well as Rule 1.7.6, the Panel should consider the general objective of the Rules, which is to deal with cases fairly and justly. This involves dealing with cases in ways which:

- are proportionate to the complexity of the issues;
- seek informality and flexibility in proceedings;
- ensure that parties are able to participate fully in proceedings; and
- avoid delay, so far as compatible with the proper consideration of the issues.

In deciding whether or not to grant the application, the Panel should balance all of the relevant factors outlined below and the interests of the parties. The Panel must carefully consider the representations that have been made, the reasons for the application and seek the advice of the Legal Assessor and/or Servicing Officer as appropriate. However, a Panel must also use its own judgement in the particular circumstances of each case.

1. Remote participants

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 will 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 will 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?

2. Virtual Hearings

A Panel will have to carefully consider whether it is appropriate for a hearing to take place virtually, taking account of the specific circumstances of the case and the factors listed below. It is anticipated that a virtual hearing would be appropriate for most procedural or temporary restriction order hearings. Greater consideration will require to be given to whether a full hearing should proceed virtually. For the avoidance of doubt, a hearing may commence in person and continue virtually and vice versa.

- Is the Teacher represented?
 - This factor alone is not determinative of whether or not a virtual hearing is appropriate; it should be considered along with other factors.
 - If the Teacher is unrepresented, does he/she have any particular needs or vulnerabilities?
 - It may be more challenging for a Teacher who is unrepresented to participate in a virtual hearing without being physically present with the Panel, Servicing Officer and Legal Assessor. Conversely, an unrepresented Teacher may find it less daunting to take part in a hearing from an environment in which they are comfortable.
 - For those who are represented, consideration should be given as to how the Teacher and representative will communicate with each other during the hearing itself e.g. through email or by way of adjourning the hearing and speaking by telephone.
- The nature of the issue(s) to be determined e.g. procedural or final outcome? Where the application is in relation to a full hearing, the Panel should also consider the stages of the hearing to be considered (in general, it should be easier to conduct a full hearing from stage 2: fitness to teach onwards than a full hearing also requiring to consider stage 1: the allegations)
- The length of the hearing
- The extent and complexity of the issues remaining in dispute
- The length of time witnesses are expected to give evidence for
- Nature of the witnesses (vulnerable; professional; expert); and the needs of those witnesses
 - The Panel should take account of any special measures required for witnesses e.g. with respect to

any health concerns or language barriers

- Witnesses must be able to follow the questions and any documents being referred to
- It is the responsibility of each party to provide GTCS with information about the needs of witnesses at an early stage.
- How easily the Panel will be able to assess the credibility and reliability of witnesses
- Will the hearing take place in public or (partly in) private?
 - Consideration should be given to whether members of the public/press may be in attendance and the practical difficulties in managing a large number of participants joining and leaving the hearing
- The volume of documentation to be referred to during the hearing and how documents will be provided to witnesses for reference, if required
- Do all participants:
 - Have access to a suitable electronic device?
 - Have suitable internet connection? Wi-Fi strength and bandwidth should be capable of coping with the requirements for a virtual hearing.
 - Have an appropriate location from where they can participate alone and undisturbed?

The following should generally not be taken into account as relevant factors in terms of whether or not to hold a virtual hearing:-

- The possibility of or the known extent of press or public interest
- The nature of the allegation

Practical Arrangements

If an application is being made for a participant to take part at the hearing from a remote location, that location must be appropriate for the purpose and must be identified before an application for the use of electronic communications is made. The remote participant must be able to take part privately and undisturbed and locations with IT support should be sought where possible (e.g. local authority offices, other regulators offices or solicitor/union offices).

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).

Video link

At GTCS' offices, there is a room separate from the hearing room which can be used for video link. If this facility is required, this should be indicated by the requesting party in their application.

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 a 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).

Testing

Testing will be carried out by GTCS Tech Support prior to an application being considered by a Panel. Where the application is being made last-minute due to unforeseen circumstances and where there has been no test carried out, the likelihood of issues being encountered is higher and this should be borne in mind by Panels.

Link failures

If the video link/teleconference fails, or it is considered that the use of electronic communications is no longer appropriate taking into account the factors noted under the section 'Considering an Application', 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 a witness can attend in person
- (c) exclude a witness' evidence (only in exceptional circumstances)

Before a decision is reached, 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, 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 Conduct Cases Practice Statement.

Application Form for the Use of Video Link or Teleconference in a Fitness to Teach Panel Hearing

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 and, where applicable, to the other party to proceedings.

Part A – Details

Teacher name	
Registration Number	
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?	Y/N
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?	Y/N
Do you intend to apply for him/her to be designated as a vulnerable witness?	Y/N
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"> • how will he/she connect? • will he/she be able to receive documents at the location during the hearing? • will he/she be undisturbed for the period required?

[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]

Part D – Testing

GTCS Tech Support will conduct a test of the link prior to the application being considered by a Panel. 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	

This application form is to request that a Fitness to Teach Hearing takes place virtually. The form should be completed and then submitted to the Servicing Officer and, where applicable, to the other party to proceedings.

Part A – Details

Teacher name	
Registration Number	
Application submitted by	
Application submitted on	

Part B – Teacher/Hearing/Paperwork

Is the Teacher represented?	
Does the Teacher have any particular needs or vulnerabilities related to the hearing?	
If applicable, how will the Teacher and representative communicate during the hearing? E.g. email, speaking on the telephone	
Type of hearing e.g. full, procedural, subsequent registration application	
If known, how long is the hearing estimated to last? (note: if a running order has been prepared, an estimation of how many days is required should be outlined in that document)	
Is the hearing taking place in public or (partly) in private?	
How large is the hearing paperwork?	

Part C - Witnesses (if witnesses are to be called at the hearing, please complete the table below)

How long is each witness estimated to give evidence for? (Note: if a running order has been prepared, estimated timings should be included within that document)	
What is the nature of the witnesses (are they teachers; expert witnesses; been given vulnerable witness status)?	
Do any of the witnesses have any particular needs? If so, please explain what they are (e.g. health issues that will impact on giving evidence; language barriers).	
Are you confident that, in terms of a virtual hearing, each witness will be able to follow questions easily and any documents being referred to?	

