

Changes to the preliminary meeting guidance

Consultation outcome report

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Published February 2022

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1. Introduction

The GDC has committed to ensuring that our policy framework aligns with our strategic aims and objectives, and that the way we explain that policy in the guidance we issue to decision makers, professionals, and the public is clear and accessible. The Preliminary Meeting Guidance was identified for review, and the work was undertaken during the latter part of 2020.

Background to the consultation

We sought views on updated Guidance on the constitution and conduct of Preliminary Meetings convened as part of the GDC Fitness to Practise process.

We identified a need to modernise the Guidance to help ensure Preliminary Meetings (and any directions that result) narrow, refine or resolve issues ahead of a full hearing. The need to hold all, or most, hearings' activity (including Preliminary Meetings) remotely also prompted an update. The changes made should ensure that all parties have clear guidance on the issues that might be raised and the types of information that may assist with the resolution of matters at a Preliminary Meeting.

The revisions to the Guidance will affect those involved in our Fitness to Practise processes, particularly in cases where the investigation has resulted in a referral to a substantive hearing.

The draft Guidance

As outlined in the draft Guidance, the GDC's hearings processes have been substantially impacted by the COVID-19 pandemic and this has necessitated consideration of listing hearings remotely. This situation applies to other healthcare regulators and the Professional Standards Authority for Health and Social Care has issued [guidance](#) for regulators on fitness to practise hearings during the COVID-19 pandemic. We have referenced this in the Guidance, as it assists parties and Committees to consider how a hearing should be held.

The issue regarding remote or in person hearings remains of significance beyond the consultation timeframe. The Guidance also addresses a number of other case management directions which could be given at a Preliminary Meeting, including narrowing the issues between parties, resolving issues relating to disclosure, and providing a specific timetable of actions required.

The Preliminary Meeting Guidance will be kept under review while the coronavirus pandemic persists, during which time stakeholders are invited to raise any issues they encounter with us. When the situation normalises, the Guidance will be subject to periodic reviews in line with our ongoing review processes.

2. Proposed changes

The consultation invited comments on the proposed changes outlined below, noting that there was an overriding need to modernise and update the Guidance. In the absence of a formal change to the legislative framework to improve case management powers, the GDC is keen to improve the use of Preliminary Meetings as a tool in the pre-hearing case management process.

The changes to the Guidance aim to achieve the following:

- Clarify the power of the Practice Committee to give directions.
- Clarify the use of Preliminary Meetings to allow the Practice Committee to give directions which narrow issues between parties prior to the hearing date.
- Clarify the factors and likely considerations of the Practice Committee in consideration of giving directions on cases.
- Make more effective use of the Legal Adviser in providing an opinion in relation to matters concerning disputed issues of the admissibility of evidence.
- Set out and clarify both process and practice including (permissions) for requesting and listing a Preliminary Meeting.
- Set out process and practice (persons involved) within the Preliminary Meeting.
- Draw attention to the non-exhaustive list of typical directions that can be given to meet the GDC's overarching objectives (Rule 51.4).
- Reference considerations as they may apply to the giving of directions on a hearing in person, as a hybrid or held remotely.

3. Response summary

The consultation was published on 27 January 2021 and was closed on 21 February 2021.

The consultation was carried out online via Bristol Online Survey submissions, although a number of direct submissions were also received via email.

The GDC contacted stakeholders, including indemnifiers and Fitness to Practise Panel Chairs, to alert them to the consultation. A full list of respondents can be found at Appendix A.

14 completed responses were received via the online survey.

Three discrete emailed responses were received, although two of these were duplicated in survey responses.

10 responses received have been made on behalf of organisations.

Seven responses were made on behalf of individuals, including Fitness to Practise Chairs.

Prior to the end of the consultation period, consultees were invited to attend a stakeholder meeting on 17 February 2021 in which the GDC encouraged discussion on the drafted Guidance. In total, 17 stakeholders attended this meeting and the points raised in this meeting were captured and considered along with the submitted responses.

The consultation took a broad approach, asking the following two questions.

1. Please provide us with your comments on the updated GDC Preliminary Meeting Guidance.
2. Please review the draft Equalities Impact Assessment and consider those with protected characteristics.

The GDC would like to thank all those who provided their views and feedback to assist in the review of this Guidance. It provided us with considerations to incorporate into the Guidance, as well as raising matters to be kept under review while the coronavirus pandemic persists.

4. General feedback

A number of stakeholders, in particular Fitness to Practise Chairs, welcomed the updated Guidance.

A general point of concern raised by a number of the indemnifiers was that the inclusion of more information on the topic of remote hearings could be interpreted as a means to implement a more permanent change, away from holding hearings in person.

In particular, one respondent expressed a view that remote hearings could become business as usual in the pursuit of expediency or cost benefits, but that this had the potential to compromise the fairness of the proceedings. One organisation commented that while they accepted that many hearings had been conducted successfully by remote hearing during the pandemic period, and that it could provide a helpful blueprint for the future particularly in interim order hearings - they strongly believed the starting point should always be an assumption that a substantive hearing would be held in person, rather than remotely.

Further assurance was requested that the mode of hearing should not be weighed against the registrant's right to a fair hearing, with one respondent referencing "high stakes" hearings at which witness evidence in person was needed.

GDC response:

The GDC understands these concerns and emphasises that the starting point for our Fitness to Practise hearings continues to be that they take place in public. The COVID-19 pandemic has resulted in a temporary shift to hearings being held remotely rather than in person and this position remains under review. We will continue to hear cases remotely where the Practice Committee deems it appropriate, but the GDC takes the view that there are cases that are most properly heard, in part or in full, in person.

Further, the Guidance clarifies that it is the Practice Committee that holds the power to make any direction as to how a case is managed and heard.

The GDC fully recognises the importance, for all parties concerned, of the question of whether hearings are held remotely or in person and, as such, the Guidance encourages any disagreements to be decided by a direction at a Preliminary Meeting. This allows the determination of the issues surrounding the manner of hearing to be taken by the independent Practice Committee on consideration of all relevant information and factors.

5. Specific feedback

A more detailed analysis of consultation responses is provided below.

Question 1: Please provide us with your comments on the updated GDC Preliminary Meeting Guidance here. Please reference the clause number alongside the points you wish to raise.

One respondent wanted explicit time frames to be set, either for notification or for service, and provision of pre-reading or skeleton arguments at Preliminary Meetings.

GDC response:

The GDC notes that the Rules and Act do not have specific requirements regarding the notification and service of materials for a Preliminary Meeting. However, the Guidance is clear that parties have the ability to make representations or submit skeleton arguments. To maintain flexibility and allow arrangements to be made on a case-by-case basis, we will not, at this stage, set prescriptive time frames for provision of materials. Any issues can be addressed via operational arrangements with the Hearings Case Management Officers. This is an issue we intend to keep under review while the coronavirus pandemic persists.

One respondent noted that the Guidance should specify that the attendance of any persons (as well as the parties and their representatives) should be flagged to the Committee consenting for the meeting to be held.

GDC response:

Individuals not linked to the Preliminary Meeting would need to be formally invited, as the meetings are held in private. This is not a common occurrence and would always be managed by seeking permission from the other party prior to the meeting.

One respondent wanted clarification on who could request a Preliminary Meeting. This comment was amplified by discussion in the consultation meeting about ways of making guidance, communication, and learning more accessible to non-legal audiences.

GDC response:

We have amended the wording of the Guidance to clarify that Preliminary Meetings can be requested by any party or by any other participant, including the Practice Committee.

We acknowledge the technical nature of the Guidance, and work is underway to ensure that our guidance is accessible to a wide variety of audiences.

A number of respondents and speakers at the consultation meeting suggested alternative means of streamlining case management discussions. They were keen to explore alternative ways to minimise disruption and adjournment prior to a hearing listing date, including early resolution of preliminary procedural issues and resolution of conflicting expert opinions.

GDC response:

The GDC welcomes suggestions for improved case management processes alongside the use of Preliminary Meetings, and this is an area we will continue to work on with stakeholders. We have noted the helpful recommendations, and these will be considered as part of the ongoing review process.

One respondent noted that it was their view that directions were not binding or considered so by any party, not least because they were often conducted in a vacuum with a separately constituted Committee membership.

GDC response:

We note the comment that the GDC's Rules do not include powers for Practice Committees to address non-compliance of case management directions given at a Preliminary Meeting and so are not binding or considered so by any party. As set out in the purpose, we wish to utilise Preliminary Meetings as a form of effective case management to address, resolve, or narrow issues without causing further delays to the hearing. It is in the interest of all parties that hearings should be dealt with expeditiously and fairly. We would expect parties to abide with all case management directions in accordance with their professional obligations.

A number of respondents queried, or suggested, alternative means for managing the "consent" process, including removing the need for a full Committee to consent and/or devolving the decision to the GDC Hearings team. One respondent expressed the view that it should always be "the" Practice Committee listed that makes any decision on preliminary matters in respect of their interpretation of Rule 51.1.

GDC response:

We are content that the Guidance is clear on the process used to request and arrange a Preliminary Meeting, including where the Practice Committee provide consent for another Committee or Chair to consider a matter.

In situations where a decision is needed on whether the hearing is remote or in person, we agree that it is desirable to have the Chair of the Committee decide a direction and, wherever possible, we will look to have this determined by the Chair or Practice Committee who is/are due to hear the substantive hearing.

One respondent noted, in respect of paragraph 14 of the Guidance, that the Consent Meeting does not take place with a Committee Secretary or Legal Adviser present, and wanted clarity on the means of providing a record of the meeting. The same respondent queried whether the Guidance should address the situation where there may be a disagreement between parties over the need for a Preliminary Meeting to take place.

GDC response:

We note the comments with regard to the Consent Meeting. We confirm that a form is completed by the Chair as a record of the meeting. It is not our experience that parties disagree about the need for a Preliminary Meeting to resolve an outstanding issue between them, and such discussion would initially be managed operationally between the parties. We are of the view that the process, as drafted, should not give rise to any concerns about the fairness of the proceedings.

As stated, the Guidance sets out the position to be adopted to meet the overarching objective and to ensure cases are dealt with fairly and expeditiously. This allows the use of Preliminary Meetings as an effective case management tool - to address, resolve, or narrow issues and reduce delays at substantive hearings, which ultimately impacts the public and the registrant's interests.

One respondent queried whether the Guidance explained how the requirements would be met where a Consent Meeting had been held by the substantive panel, but the hearing was subsequently rescheduled with a different panel.

GDC response:

The Guidance sets out the manner in which the Practice Committee, who are intending to hear the charges against the registrant, can consider whether they would be assisted by the consideration of matters, including directions at a Preliminary Meeting. Therefore, it is intended that directions made at that Preliminary Meeting (as consented to, and/or set out by Committee members who subsequently do not go on to hear the case), should remain in place, unless otherwise decided by a Practice Committee.

It is fairly usual in most legal proceedings that case management directions are binding on parties unless otherwise determined. It is not our experience that the change of Committee members following the Preliminary Meeting is a common occurrence, or one which gives rise to any concerns about the fairness of the proceedings. However, we accept that there are occasions when either an individual Committee member or an entire Committee may need replacing for reasons beyond the GDC's control, and this is a matter that would be brought to the attention of, or flagged, with parties.

One respondent queried the policy adopted by the GDC in respect of disclosure and asked for distribution of our policy.

GDC response:

We note the request for distribution of the policy regarding the test for disclosure applied by the legal teams preparing cases for Practice Committee hearings. We confirm that the term was used in the context of the adopted practice, and there is no policy document to disseminate. To clarify, we have revised the wording of the paragraph in question to reflect this position i.e. the practice adopted by the GDC.

Two respondents commented on the wording regarding the assessment of registrant demeanour, with reference to the case law of Dutta, quoted in the Guidance.

GDC response:

We have considered the comments made and amended the wording of this paragraph within the Guidance.

One respondent commented that the text, as written, moved to a default position towards remote hearings, particularly in regard to discussion on delay.

GDC response:

We have noted the concerns in respect of this paragraph and the impact on Article 6 rights and the careful balance that the Committee must strike to ensure the fairness of proceedings. We have amended the text to address this concern.

In respect of Interim Orders Committee (IOC), IOC review and unattended Professional Conduct Committee review hearings, we expect to continue with remote hearings as a default. We will maintain this position going forward due to the clear benefits in expediting these hearings and the lack of demand for them to be held in person.

With regard to substantive hearings, once any pandemic-related concerns dissipate, we would wish, wherever possible, to agree the format of hearings by consensus between parties. We accept that there are cogent reasons why some hearings should proceed in person and we will facilitate this when possible. Only when no consensus between parties exists, or specific operational constraints make a hearing difficult to list in person, will we take this to a Preliminary Meeting for a Committee to resolve any differences.

One respondent commented on the GDC's Standard Directions set out in Appendix 1 (of the Preliminary Meeting Guidance) with respect to timescales.

GDC response:

We have noted the concerns in respect of the content of the GDC's Standard Directions as repeated, in part, in the Guidance. To confirm, the Standard Directions have not formed part of this review, so remain unchanged from its agreement in 2014. As set out in the Guidance, should matters not be agreed between parties following non-compliance with the Standard Directions, a Preliminary Meeting is an opportunity to resolve those issues prior to the substantive hearing.

One organisation highlighted the potential difficulties it envisages for some of its members in engaging in both Preliminary Meetings and hearings.

GDC response:

The GDC recognises that engagement and effective participation of registrants is vitally important to the fairness of fitness to practise proceedings. As such, it is a matter which is kept under constant review, and the observations of parties and participants are welcomed in terms of adjustments and improvements. For those involved in proceedings, members of the GDC Hearings team liaise with parties and participants to encourage and make arrangements to facilitate the best possible engagement.

It is intended that the discussions between parties and the GDC Hearings team will continue to encourage participation, and on many occasions, arrangements can be made without the need for a direction at a Preliminary Meeting. For example, arrangements have been made in the past for witnesses or registrants to provide their evidence remotely in circumstances where travel, work commitments, or childcare arrangements made attendance in person challenging. In situations where a witness is unable to access video conferencing, we have facilitated physical attendance at a local venue.

The GDC, therefore, actively encourages participants to come forward and make their requests for consideration by the GDC's Hearings team and where possible, reasonable adjustments will be made.

Where parties are unable to agree on arrangements, or there are issues which require the decision of the Practice Committee, the Guidance sets out the process in which a Preliminary Meeting can be asked to consider particular directions.

For clarification areas of amended text in the Guidance are noted as follows:

Paragraph 29: text added to include that wherever possible Preliminary Meetings to decide the mode of hearing will be put before the Chair or Committee for the substantive listing.

Paragraph 30: footnote 11 updated to reflect the statement of the Lord Chief Justice from January 2021.

Paragraph 33(ii): typographical correction.

Paragraph 34: a replacement paragraph and amendment to the footnote made with reference to the topic of demeanour.

Paragraph 35: amended to clarify GDC legal team's position in relation to unused material.

Paragraph 54: addition made to the clause to expand upon the matter of fairness in relation to delay and to add a footnote reference to the case of Adeogba.

Question 2: Please review the draft Equalities Impact Assessment (EIA) and consider those with protected characteristics – are there any aspects of the proposed approach that you believe are likely to have a differential impact? If so, please explain who might be affected and how, and please include any ideas of how you think these issues might be addressed.

The comment about difficulty in engagement for some registrant groups was echoed in the responses to the question about the EIA.

GDC response:

We recognise the challenges this process can present particularly to those with a disability or medical condition. As mentioned earlier in this response, the GDC's Hearings team has experience of supporting individuals that may require reasonable adjustments to enable full participation. Additionally, we have access to in-house expertise, as well as relationships with external partners that can offer further advice.

Stakeholders are invited to provide information that would lead to equitable treatment throughout this process. We are aware that the protected characteristic of disability is not limited to physical inhibitory conditions but also mental health, neurodivergence, and other conditions including long term health conditions.

We acknowledge the comments made on the EIA about the impact that may be had on dental care professionals, specifically those who are women. We have updated the EIA (Appendix B) and will further assess these potential impacts with a view to minimising any disadvantages that are identified.

Where possible, we will always endeavour to arrange a Preliminary Meeting in agreeable circumstances for all.

6. Next steps

We remain committed to working in an open, collaborative and transparent way when seeking to make improvements within our Fitness to Practise process. As outlined above, this Guidance will be kept under review while the coronavirus pandemic persists and will then be subject to periodical reviews.

Appendix A

A consultation meeting was held, and the following organisations took part:

- Association of Dental Groups
- British Association of Dental Nurses
- British Association of Dental Therapists
- British Dental Association
- BDA Indemnity
- British Orthodontic Society
- British Society of Dental Hygiene and Therapy
- CFC Underwriting
- Dental Protection
- Dental Partners
- Medical Defence Union
- Medical Defence Union of Scotland
- Simplyhealth
- Society of British Dental Nurses

Written responses were received from the following organisations:

- Ambridge Ceramics Ltd.
- Association of Dental Groups
- British Association of Dental Nurses
- BDA Indemnity
- DenPlan
- Medical and Defence Union of Scotland
- Society of British Dental Nurses
- Dental Defence Union

There were two responses from individuals.

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