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GUIDANCE FOR REMOTE ATTENDANCE AT HEARINGS



Background

This guidance has been prepared by the Discipline Board to assist parties involved in proceedings before a Discipline or Appeal Tribunal, where one or more of the parties will be attending the hearing remotely.

The guidance should be read in connection with the Discipline and Appeal Tribunal Regulations (“the Regulations”), a copy of which is available on the ICAS website, or can be requested from the Tribunal Clerk.

What is remote attendance at a Tribunal hearing?

This is where one or more of the parties to a Discipline or Appeal Tribunal hearing participates in the hearing but is not physically in attendance.

In some cases, a hearing may proceed where none of the parties are physically present (including the members of the Discipline or Appeal Tribunal). For the purposes of this guidance, such hearings are referred to as ‘remote hearings’.

When will remote hearings be appropriate?

The Chair of the Discipline or Appeal Tribunal will decide whether a remote hearing is appropriate and will advise the parties accordingly. In taking the decision, the Chair will consider any representations made by the parties.

Whilst it will usually be in the best interests of all parties for a hearing to proceed with the Tribunal members physically present, there may be instances where this is either not possible, not practical, or otherwise unnecessary, including (but not limited to):

- Hearings where the subject matter is not complicated – whilst this will mostly apply to Preliminary Hearings, it might also apply to evidential hearings where the charge(s) have been admitted.
- Government-issued guidance in relation to pandemics which limits social interaction or advises against travel.
- Weather conditions which are likely to make it difficult or dangerous for Tribunal members to travel.

What if the hearing is to take place physically, but a party wishes to attend remotely?

Remote attendance by one of the parties – or by a witness called to give evidence – will only be allowed at the discretion of the Chair of the Discipline or Appeal Tribunal. An application for remote attendance should be submitted to the Tribunal Clerk, providing a full explanation of the circumstances, and supporting reasons.

In assessing whether to allow remote attendance, the Chair of the Tribunal will consider the following factors:

- The public interest.
- The desirability of an expeditious disposal of the case.
- Any inconvenience to the parties, or other third parties.
- The views of other members of the Discipline or Appeal Tribunal.
- The requirement for fairness.

As it should not be assumed that the Chair will grant the application, it is strongly recommended that parties avoid making applications shortly before the date of the hearing.

How do parties attend a hearing remotely?

The default position is that remote attendance at a hearing will take place by videoconference (e.g. using services such as Microsoft Teams or Zoom).

Only in exceptional circumstances – and only at the direction of the Chair of the Tribunal – will attendance by telephone be permitted. This is because it is generally accepted that disciplinary proceedings work best where parties can see each other.

What will happen in advance of a remote hearing?

The Tribunal Clerk will advise the parties in advance of the hearing which videoconferencing service will be used, sending a link, together with information on how to access the service.

If directed by the Clerk – or requested by one of the parties – the service may be tested before the hearing, to ensure that it can be successfully accessed by the parties.

The Clerk will make arrangements to ensure that all parties – including witnesses, where appropriate – will be able to access documentary evidence during the hearing. It will then be the responsibility of the parties to ensure that they are able to access the evidence.

What will happen during a remote hearing?

Parties should click on the meeting link at the time advised by the Tribunal Clerk. This is likely to lead to a 'waiting room'. When the Discipline or Appeal Tribunal is ready, the Clerk will allow parties to join the hearing.

At the beginning of the hearing, the Chair of the Tribunal will ask everyone present to introduce themselves, to confirm their attendance. The Chair will then issue any relevant 'housekeeping' instructions for the remote hearing. At this point, the hearing will proceed in the same way as if all parties were physically present.

If a party to a hearing is not expected to be speaking for any significant length of time, they should mute their microphone to ensure that background noise is minimised.

Where a break in a hearing is required (an 'adjournment'), the Chair or Clerk will ask parties to close the videoconference, confirming how and when to re-enter the hearing.

Parties are asked to bear in mind that remote hearings are still formal proceedings under the Regulations. It is expected that parties will behave appropriately at all times, just as they would if they were attending a hearing in person.

What if the videoconferencing facilities fail during a remote hearing?

It is inevitable that, from time to time, there will be technical issues when holding remote hearings. Similarly, levels of knowledge and experience in dealing with technology of this kind will vary. Parties must be patient and flexible regarding any technical difficulties that may be experienced by another party to proceedings.

A party who is temporarily unable to access a hearing should take all reasonable steps to reconnect to the hearing. If all such steps are unsuccessful, an email should be sent immediately to the Clerk, to advise of the position. The Clerk will then take instructions from the Chair of the Discipline or Appeal Tribunal.

In the unlikely event that the videoconferencing facilities fail for all parties, the hearing will automatically be adjourned until such time as the service works again.

In either of the above circumstances, parties should ensure that they can be contacted by the Clerk and should regularly check their emails.

How does a Discipline or Appeal Tribunal discuss its decision during a remote hearing?

At the conclusion of a hearing – or at any point during a hearing, where a decision is necessary – the Chair will ask parties to leave the hearing, to enable the Tribunal members to deliberate in private.

If the Tribunal expects to be able to make its decision within a reasonably short period of time, the Chair will ask parties to await contact from the Clerk, for the resumption of the hearing.

Can members of the public attend a remote hearing?

Regulation 3.13 of the Regulations confirms the default position that all Tribunal hearings are held in public, which means that members of the public can attend if they wish.

To ensure that remote hearings can operate on a similar basis, the Clerk will publicise the hearing on the ICAS website not less than one week in advance, providing information to members of the public on how they can access the videoconference link for the hearing.

What steps can be taken to maximise the effectiveness of remote hearings?

Parties should carefully consider the setting in which they will access the videoconference. It is recommended that parties sit alone in a well-lit and quiet room, with all external disturbances minimised so far as possible (e.g. mobile phones should be switched to silent mode).

The webcam should be kept stable, ensuring a good image of the user. Ideally, sources of light should be in front of or directly above the user so that their face can be seen clearly. Lighting from behind (such as a window) is to be avoided if possible.

Any physical documents which may be needed during the hearing should be kept close by.

Most videoconference services allow users to blur their backgrounds if they wish, to ensure that personal items (etc) are not visible to other users.

Where possible, surrounding use of Wi-Fi should be minimised, as this is likely to improve the connection to the videoconference.

Further information

Further information in respect of remote hearings can be obtained by contacting the Tribunal Clerk by email as follows: tribunalsclerk@icas.com