

FA Good Practice Guidelines – Virtual Personal Hearings

A. Introduction

1. These Guidelines are intended for use in conjunction with any existing governmental advice applicable during the COVID-19 pandemic which prevent physical FA personal hearings from taking place.
2. A fundamental principal of virtual hearings should be to replicate a face-to-face hearing as much as reasonably possible, with it being just and fair to the parties without any detrimental effect. These Guidelines aim to assist with that process but are in no way exhaustive.
3. Further, they are not intended to supersede any regulatory requirement within the Handbook. It is ultimately a matter for each individual Disciplinary Commission & Appeal Board (DC & AB) to use these Guidelines as appropriate.
4. The Guidelines are formulated on the basis that all attendees will have, at a minimum, reliable Information Technology (IT) equipment and a stable & secure internet connection. Before accepting appointments, Panel Members should ensure they have the necessary IT requirements applicable to sitting on that specific case.
5. It is highly unlikely that the CFAs or The FA National Panels will be able to facilitate personal hearings for some time, other than over video link. Given the success to date of carrying out some DCs and ABs virtually, in conjunction with travel time of attendees being removed from the equation, it is possible we might see a rise in personal hearing requests for a while longer. Discipline Sub-Committee have agreed for some personal hearings to be heard over electronic means providing that these Guidelines are followed, and they assist DC & AB with the challenges and considerations that can arise during such hearings.

B. Preliminary Considerations

6. **Applications** – Where a Participant in response to a charge has requested a personal hearing, considering the current restrictions, the intention will be for the Personal hearing to take place over a video link.

In exceptional circumstances the County FA may take the position that it would be more appropriate for the case to wait until the lifting of restrictions to allow a face-to-face hearing. Such exceptional circumstances may include lack of access to suitable technology for Participants, excessive numbers of witnesses to be considered. This list is not exhaustive and the decision to refer the matter to a face to face meeting will be at the absolute discretion of the County FA.

In terms of numbers of witnesses, it is strongly recommended that where there are more than three witnesses per side, (CFA witnesses and defence witnesses) plus the person charged, the matter should be referred to a face to face hearing.

7. **Testing (DC or AB)** – the exact equipment being used at the hearing must be used during testing. The evidence file types (e.g. PDF, MP4 etc.) should be replicated during testing. A private lobby/holding virtual room, if used, running concurrent to the hearing link, should be tested by Members in terms of safely leaving one and joining the other (for example, to ensure the microphone/audio is still not connected to the substantive hearing room during deliberations). Note: it is not essential to have a holding lobby in all cases.
8. **Testing (parties/witnesses)** – the County FA should also carry out testing with all attendees in advance of the hearing. The parties should provide the Secretary with an email address and contact number for each attendee based at an individual location. The exact equipment being used for hearing must be used during testing. The evidence file types should be replicated during testing. The attendee must be reminded of the requirement of being in a private location. CFA emergency contact details are to be provided in case the attendee needs technical support at any point during the hearing.
9. **Location** – attendees should locate themselves in a private area that, where possible, will have minimal background noise. Attendees’ images will appear clearest if they are positioned facing towards natural light. If this is not possible, blinds/curtains should be closed if an attendee is positioned with natural light behind or to the side of them.
10. **Hardware** – it is a personal preference, and subject to equipment access, but many Panel Members will have multiple devices active during a hearing. For example, using a laptop primarily for the video conferencing software, while having the bundle on another device such as a tablet. If you have access to multiple devices but are not yet using them during hearings, you may find this method beneficial.
11. **Audio** – if using a battery powered headset device, or similar, consider the estimated duration of the hearing and the standard battery life of your headset when on an active call. It may be helpful to have a backup headset nearby if there are any concerns about your primary headset battery lasting the entire hearing.
12. **Software** – the Secretary may use either Microsoft Teams or WebEx for video conference hearings. Panel Members may find it useful to familiarise themselves with the software’s functionality, at their own leisure, in advance of any hearing.
13. **Preliminary discussions** – it is good practice for a DC or AB to privately meet in advance of the substantive hearing and discuss the case. Where appropriate, Members should seek to agree a time in advance of the hearing for such discussions. Generally, 15-30 minutes before the hearing start time is enough, subject to the case complexities. Ideally these discussions would occur using the same link but with the Conference room locked.
14. **Timetable** – where a case has many witnesses or might have lengthy examination of one or more witnesses, it is sensible for the DC or AB to direct that the parties submit an agreed timetable in advance of the hearing. As mentioned above there should be no more than 3 witnesses per side plus the person charged.

15. **Attendees** – the CFA shall provide a list of confirmed attendees in advance of the hearing. The list should indicate if any attendees will be in the same location and using the same device and it should contain their contact details.
16. **Confirmation to join** – notwithstanding a specific hearing start time, delays can occur and the DC or AB may wish to issue a direction in advance of the hearing that no attendee should attempt to join the substantive hearing link until the Secretary has issued an email confirming it is okay to do so.
17. **Monitoring attendees once joined** – prior to the hearing, the Chairperson should indicate to the Secretary how they wish to be notified should an attendee inadvertently drop out (or join) the meeting. The Secretary should actively monitor for this potential occurrence throughout proceedings and raise the matter as directed by the Chairperson.

C. Practical matters during the hearing

18. **Introduction** – the Chairperson should outline the usual general introductions. In addition, the following paragraphs (20-28) could be summarised, as per the Chairperson’s preference, so all attendees are clear on how the DC or AB wishes for the hearing to proceed. This may be a Participant’s first hearing in any format. Therefore, it is important that clear procedural instructions are laid out by the Chairperson at the beginning. Parties should be regularly reminded throughout the hearing that if they are uncertain how to proceed and/or have any queries/clarification requests to raise them at the earliest suitable opportunity.
19. **Camera** – only those that may be speaking at some point in proceedings (i.e. the DC or AB, the Participant, the Participant’s representative & all witnesses) should use their camera. So not to impact on the internet bandwidth, observers and the Secretary do not need to use their cameras once the hearing has commenced.
20. **Muting, virtual hand raising & chat** – generally, apart from someone asking a question and the person answering that question, all attendees should have their microphone on mute throughout proceedings in order to minimise background noise. Subject to the preference of the Chairperson, either simply unmute your device if you need to speak, waiting for an appropriate natural pause or break, and mute again when done. Alternatively, a Chair may prefer attendees to raise their virtual hand (if you have that facility) or to use the chat functionality, so not to interrupt the flow of a speaker, and unmute themselves when prompted by the Chair. This is down to personal preference with the important point being all attendees are clear on the process from the beginning of proceedings.
21. **Dealing with Young People** – The policy and procedures in dealing with young people remain in force as normal. Any young person must have an appropriate adult with them and be in a suitable location.
22. **IT disruption (minor)** – if at any point any speaker’s audio connection is not being received clearly, or a video did not play correctly, the matter should be immediately highlighted so it can be rectified at the earliest opportunity. The Chair should then ensure that any areas affected are repeated to ensure the person charged has not be adversely affected.

23. **IT disruption (major)** – it is sensible to be prepared for major IT issues and have some contingency ideas available. For instance, the laptop of a witness may crash mid-evidence, you or another attendee could experience a power cut and so on. All major video conference platforms (such as Microsoft Teams or Cisco WebEx) have smartphone apps – it may be possible to finish evidence over the mobile app instead of via a laptop. There might be a situation where a witness does not have a smart phone – is it a suitable hearing to complete their evidence via telephone only? Before the DC or AB decides how to proceed, it is important the parties have been afforded the opportunity to express a view on the DC’s or AB’s preliminary thoughts on how to proceed. This is an alien environment to some and any mechanism that can be used to put parties at ease should be deployed. If the disruption remains critical the hearing may need to be adjourned until later that day or until a future date, though this should be a last resort. As mentioned earlier, consideration of fairness is of paramount importance.
24. **Bundle & evidence** – the Secretary should have the electronic hearing bundle along with any video and/or audio evidence readily available to share on screen when directed to do so. If possible, a witness will also have their statement or the bundle on a separate device as appropriate where they can access it directly should there be any technical issues via share screen.
25. **Participant/Legal Representative Discussions** – it is imperative that the Participant charged has the same opportunity to confer with their representative throughout the hearing as they would if it had been physically in person. Particularly when all attendees are in separate locations. Please be mindful to query with the Participant/representative, at appropriate stages of proceedings, if they need the opportunity to have a private discussion.
26. **Witnesses** – establish at the outset whether there will be any unavoidable interruptions, for instance deliveries; childcare issues; pet noises. If using a handheld device, witnesses should be requested to place it on a secure structure and not to hold it in their hand whilst giving evidence. It is good practice for the Chairperson to ask each witness at the commencement of their evidence whether they are alone in their room and, if so, whether that will remain the case for the duration of their evidence. It is also worth clarifying with each witness that they will not record the hearing at any stage and in any format. Participants and their representatives should be reminded they are not to privately contact a witness in any manner when they are providing their evidence. Once witnesses have concluded their evidence, they should be permitted to leave the hearing. Before leaving, they should be reminded that they are not to contact any other witnesses whilst the Commission is ongoing.
27. **Conclusion of evidence and/or sanction submissions** – before breaking for initial (and possibly the only) deliberations, it is good practice for the Chairperson to seek clarification from the parties if they have anything further to add, any queries or if they have any observations/concerns they wish to raise and whether they feel they have had a fair hearing under the circumstances online.

28. **Handbook** – the DC or AB should have a copy of the Handbook accessible, whether hardcopy or electronic together with any sanction guidelines documentation.
29. **Deliberations** – the DC or AB should ensure all parties are ejected from the room whilst deliberations are carried out. The Secretary will arrange for them to be reconnected at the appropriate time by calling the mobile phones of the relevant personnel.
30. **Announcement of decision** – The Chairperson will determine whether sanctions, where appropriate, will be sent electronically or parties called back to the room to receive the sanction in person.

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13 July 2020