

Remote Hearings Protocol

1. Owing to COVID19, and the requirements to socially distance and stay at home where possible, hearings in person before the Hearing Panel of the British Psychoanalytic Council ('BPC') are not currently possible.
2. The BPC remains aware of its overarching responsibility to ensure public protection and has paid due regard to the Lord Chief Justice's statement to the Civil & Family Courts dated 19 March 2020 stating that "*The default position now in all jurisdictions must be that a hearing should be conducted with one, more than one, or all participants attending remotely*"<sup>1</sup>.
3. Therefore, and until Government advice changes, or the BPC advises registrants otherwise, the BPC will be holding hearings remotely, also known as virtual hearings, going forward.
4. The Courts have already considered whether cases should be heard remotely and in *Municipio de Mariana v BHP Group PLC*<sup>2</sup>, the Court gave the following guidance on considering applications to extend time for complying with directions or adjourning hearings during the coronavirus emergency:
  - a. Regard must be had to the importance of the continued administration of justice. Justice delayed is justice denied even when the delay results from a response to the currently prevailing circumstances.
  - b. There is to be a recognition of the extent to which disputes can in fact be resolved fairly by way of remote hearings.
  - c. The courts must be prepared to hold remote hearings in circumstances where such a move would have been inconceivable only a matter of weeks ago.
  - d. There is to be rigorous examination of the possibility of a remote hearing and of the ways in which such a hearing could be achieved consistent with justice, before the court should accept that a just determination cannot be achieved in such a hearing.
  - e. Inevitably the question of whether there can be a fair resolution is possible by way of a remote hearing will be case-specific. A multiplicity of factors will come into play, and the issue of whether, and if so to what extent, live evidence and cross-examination will be necessary is likely to be important in many cases. There will be cases where the court cannot be satisfied that a fair resolution can be achieved by way of a remote hearing.

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<sup>1</sup> [Coronavirus \(COVID-19\): Message from the Lord Chief Justice to judges in the Civil and Family Courts | Courts and Tribunals Judiciary](#)

<sup>2</sup> *Municipio de Mariana & Ors v BHP Group PLC & Ors* [2020] EWHC 928 (TCC)

5. Further, and in the case of *Re P*<sup>3</sup>, the Court identified the following factors to be considered when deciding to proceed with a family case hearing remotely which are relevant, and directly applicable to Fitness to Practise proceedings:
  - a. Available local facilities and technology.
  - b. Personalities and expectations of key participants.
  - c. Category of case or impact of its outcome.
6. Whilst the BPC accepts that most cases scheduled to be heard by the Hearing Panel will be suitable for a remote hearing, there remains some cases which may not be suitable for a remote hearing.
7. If the registrant and/or registrant's legal representative believe a case unsuitable for a remote hearing, the registrant and/or the registrant's legal representative should liaise with the Head of Regulation at first instance and confirm the reason(s) why they believe a remote hearing is not deemed appropriate. The Head of Regulation will then consider the reasons cited and if not agreed, the decision regarding whether to proceed with a remote hearing will be determined by the BPC's Hearing Panel at a preliminary hearing.
8. This Protocol will be reviewed in six months' time although the BPC does not expect the position to change until the Lord Chief Justice's guidance changes.

**August 2021**

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<sup>3</sup> Re P (A child: remote hearing) [2020] EWFC 32

# BRITISH/ PSYCHOANALYTIC /COUNCIL

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## Remote Hearings Guidance

### Remote Hearing Process

1. The BPC will conduct remote hearings via the virtual platform Microsoft Teams and the registrant will receive the hearing link at least 48 hours in advance of the scheduled hearing date. The registrant does not need to have a Microsoft Teams account to enter the hearing although they can do should they wish. Microsoft Teams is free to download to a computer/tablet or smartphone.
2. If the registrant wishes to conduct a Microsoft Teams test call prior to the hearing, please let the BPC know as soon as possible.
3. On the day of the hearing, and at the relevant time, the registrant will enter the hearing via the link and join the hearing. Once all parties are present on the link; these being the 3 Panel members, the Legal Adviser, Transcriber, BPC Counsel and relevant BPC staff members, the hearing will begin.
4. At the beginning of the hearing, the Chair will introduce the parties present and explain that all microphones should be muted unless the relevant party is speaking and confirm that that the hearing is being recorded. The Chair will ask the registrant to introduce themselves and confirm their registration number.
5. The Chair will ask if there are any preliminary matters to be discussed and if so, these will be discussed at first instance. If not, the hearing will commence and follow the same process as a registrant would experience in person at a physical hearing (see [Microsoft Word - Complaints Procedure amended 2018 \(bpc.org.uk\)](https://www.bpc.org.uk), paragraphs 5.19 to 5.50 and Appendix 3, for further detail regarding the hearing process).
6. The hearing will be held in private throughout and a transcriber will be present to log the hearing should a transcript be required.
7. When the Hearing Panel break or convene to discuss the case at each stage of the hearing process, the Hearing Panel will join a separate, private Microsoft Teams link emailed to them in advance of the hearing. Only the Panel, Legal Adviser and BPC administrative staff member will be able to join this link.

### Regular Breaks

8. The BPC are mindful that time spent in front of a computer/tablet/smart phone can be tiring and/or uncomfortable for all parties involved and the Hearing Panel will schedule regular comfort breaks throughout the hearing.
9. If, at any point during the hearing, the parties wish to take a break they should notify the Chair either via raising their hand physically, or via the 'raise a hand' button on Microsoft Teams, or ask for a break.

### Registrant participation

10. The BPC does not envisage remote hearings to cause detriment to registrants and often, remote hearings can be easier and less stressful given the ability to attend hearings from the comfort of their own home and without the need to travel.
11. The registrant will remain able to fully engage and participate in the hearing and provide documents to the Hearing Panel, be legally represented, and give evidence should they wish to do so. If a registrant decides to give evidence, they will be asked to repeat the General Affirmation prior to giving evidence. The General Affirmation is as follows *"I do solemnly, sincerely and truly declare and affirm that the evidence I shall give shall be the truth the whole truth and nothing but the truth."*
12. If a registrant is legally represented, and they wish to consult with their legal representative during the hearing, please notify the Chair by either raising your hand physically, or via the 'raise a hand' button on Microsoft Teams, or by asking the Chair to speak with their legal representative.
13. If the Hearing Panel take a comfort break whilst the registrant is giving evidence, the Chair will remind the registrant they remain under oath and cannot discuss their evidence with anyone, including their legal representative during the break.

### Witnesses giving evidence

14. If called to give evidence at a hearing, the witness will be emailed the hearing link prior to the hearing.
15. When joining the link, the witness will be introduced to the relevant parties on the link and will be asked to repeat the General Affirmation prior to giving evidence. The General Affirmation is as follows *"I do solemnly, sincerely and truly declare and affirm that the evidence I shall give shall be the truth the whole truth and nothing but the truth."*
16. The witness will be asked questions by the relevant party who asked them to attend the hearing and the witness will then be asked questions by the other party. The Hearing Panel may also have questions for the witness. Once the witness' evidence is complete, the witness can leave the hearing.

17. During hearing breaks, the Hearing Panel will have due regard to the risk of witness interference when a witness is giving evidence and the Chair will remind the witness that they remain under oath and cannot discuss their evidence with anyone during the break.

**January 2021**