

DRAFT response to NMC consultation on future use of emergency powers

Fitness to practise and registration appeal and hearings

We'd like to continue holding hearings virtually once the emergency period ends, so long as we can do so in a way which is practical and fair for everyone involved

- 1 Do you think there are any reasons why we shouldn't continue to hold hearings virtually, once the emergency period ends?

Yes / No / ~~Don't know~~

Please explain your answer.

We have experienced many benefits from the greater use of virtual hearings as a result of the pandemic. We feel that virtual hearings should continue to be an option for regulators so long as the needs of participants can be met, and the circumstances of the case make it suitable for a virtual hearing. However, there may be some circumstances in which a remote hearing is not appropriate at all, for example if an individual cannot access a computer or internet. The MPTS is currently running both virtual and in-person hearings to meet our statutory duty to protect the public by holding hearings where it is fair and safe to do so. The MPTS guidance on [Deciding how to hold hearings from August 2020](#) sets out the factors that will be taken into account when making decisions on whether to hold virtual or in-person hearings.

Public Access

Our rules say that our hearings must be open to the public except in certain circumstances, such as when someone's health is being discussed. Our current approach to virtual hearings is to allow observers to have audio access from their own private setting. We don't currently allow observers to have remote visual access to our virtual hearings. If observers want to view a virtual hearing, they can attend our hearings centre and we will display the virtual hearing on a screen where we have capacity to do so.

- 2 How do you think that members of the public should have access to our virtual hearings?

Please explain the reasons for your answer.

Yes, transparency is an important feature of regulation and fitness to practise hearings. During the pandemic the MPTS has also moved to holding some hearings virtually where this has been possible within our legal restrictions. However, holding hearings virtually has created new challenges for balancing transparency for the public and proportionality for those involved in hearings which do not arise for hearings at the hearing centre. We support greater flexibility in the legislation to allow regulators to provide a wider range of options for public access to hearings that meet data protection and information security requirements.

In terms of balancing transparency for the public and proportionality for those involved in hearings we have facilitated public access to virtual hearings, and hearings at the St James's Building (SJB), where hearings can be observed by members of the press and public at the hearing centre, via prior arrangement. Upon receipt of a request to observe a virtual hearing a viewing gallery is set up at SJB. It contains socially distanced seating and a screen to allow the hearing to be observed via video link.

Constitution of panels

The changes to our rules allow us to hold meetings and hearings where:

- we do not have a panel member who is a nurse, midwife or nursing associate
 - we have panels of two panel members rather than three
- 3 We don't intend to use our power to have a panel without a nurse, midwife or nursing associate member, outside of a national emergency.

3(a). Do you agree with this approach?

Yes / No / ~~Don't know~~

3(b). Please tell us if you think there are any other circumstances where it would be reasonable for us to have a panel without a registrant member.

Under the [General Medical Council \(Constitution of Panels and Investigation Committee\) Rules 2004](#), the quorum of a panel must be three panellists (including the chair) and there must be one medical and one lay member of the panel. This has been maintained during the pandemic. We support greater flexibility in the legislative framework to allow regulators to adapt and innovate. Greater flexibility in this area would also mean that regulators would be able to respond quicker to exceptional circumstances, such as national emergencies.

We would use our power to have a panel of two members (ie one lay member and one nurse, midwife or nursing associate) in exceptional circumstances only. Our current

approach where a panel has started hearing a matter and one panel member is unable to continue (for example, due to illness or incapacity), is to carry on with the hearing with a new panel member. We intend to continue with our current approach, however we are interested in hearing your views as to whether there are circumstances where we could have panels with two members.

3(c). What do you think the exceptional circumstances should be where we would have a panel with two members?

It is difficult to identify categories of exceptional circumstances where proceeding with a two member panel would be appropriate as the decision on applying exceptional circumstances should be made on a case by case basis with knowledge of all the circumstances and any implications. However, suggestions could include an assessment of other possible alternatives, and if there are no other alternatives whether it is necessary in order to protect the public. We would suggest that any consideration should be discussed and ideally agreed with all parties to the hearing.

Sending notices of meetings and hearings

The changes to our rules allow us to send notices of our hearings and meeting by email.

4 Do you think we should continue to send notices of our hearings and meetings by secure email?

Yes / No / ~~Don't know~~

Please explain the reasons for your answer.

We support the continued sending of hearing and meeting notices by email. Our standard process for notifying a doctor of a hearing or meeting allows this to be sent by email where the doctor has provided an email address for FTP purposes. In order to prove service, it must be possible to demonstrate that the email has been read by the doctor. This can be done by providing a 'read receipt' or by providing some other confirmation that the doctor has had the email (for example, a reply directly in the same email chain, or the doctor referring to the email in another piece of correspondence). In addition to email, we support regulators having greater flexibility in the legislative framework to be able to send notices by a range of means, including by adding the notice to the registrant's online account with the regulator. We note that rules 44 to 46 of Social Work England Fitness to Practise Rules 2020 provide a useful basis from which to consider this further.

Revalidation and fee payment

We only grant revalidation and fee payment extensions in limited circumstances. This may be, for example, where there has been an unforeseen event such as illness or a recent bereavement that has prevented a nurse, midwife or nurses associate from completing their revalidation application or paying their fee on time.

5 Do you think we should continue to grant revalidation and fee payment extensions in limited circumstances such as those outlined above?

Yes / No / Don't know [yes to revalidation extensions](#), [no to fee extensions](#)

Please explain the reasons for your answer.

Revalidation extensions

We support a continued flexibility around revalidation dates. As the medical profession and providers face considerable challenges at the moment, it has also been our approach to provide extensions to revalidation dates. In March 2020 we moved the revalidation date of all doctors, with a submission date before 1 October 2020, back by 12 months. We also put these doctors under statutory notice for revalidation so that Responsible Officers (RO) could submit a recommendation for them at any time up to the new due date.

Medical revalidation has an inbuilt flexibility which provides ROs the option to defer a doctor's revalidation date in circumstances where there are legitimate reasons why the RO does not have all of the information they need to make a recommendation. A RO can submit a deferral recommendation of 4-12 months for a doctor up to four months before their submission date. The doctor's licence and registration is not affected during a deferral and they can continue to practise.

We feel it is important to draw a distinction between offering maximum flexibility to individuals who are unable to revalidate because of pandemic pressures and suspending the requirement to revalidate altogether. The former recognises difficulties faced by registrants, the latter implies a relaxation in standards which we do not think is what the public would expect from us.

Fee extensions

Our approach has not been to grant payment extensions and we feel this has the potential to cause issues should the pandemic draw out over a long period of time or other similar circumstance arise where precedent has set expectations in the view of registrants.

Though we recognise that this has been an unprecedented and extremely difficult time for doctors (and other healthcare professionals), it has been important that doctors still pay their annual retention fee as it allows us to perform our statutory functions. We do however offer a 50% discount on fees for doctors whose annual income falls below £32,000 (and haven't already received a fixed term discount for doctors new to the register). We also offer flexibility on when a doctor's fee is taken from their account and the opportunity to spread the fee over quarterly or ten monthly instalments.

Doctors who were given a temporary emergency licence to practice as part of the response to the pandemic haven't been charged a fee for their licence. But if they already

held registration, they're being charged their usual fee to remain on the register. This means their registration won't be removed once the emergency is over.

- 6 If there is anything else you would like to comment on in relation to whether and how we should use our powers under the rules after the emergency period ends, please do so here.

Our experience of using our emergency powers is positive. We welcome the flexibility that the framework gave us, which allowed us to develop a responsive and agile policy approach. We recognise and support the need for comparable arrangements for other healthcare regulators.

About you

- 7 Are you responding as an individual or on behalf of an organisation (select only one)

- ~~Individual (go to Responding as an individual section)~~
- Organisation (go to Responding as an organisation section)
- ~~Other (please give details)~~

Responding as an organisation

- 8 Does your organisation officially represent the views of nurses, midwives or nursing associates and/or the public that share any of the following protected characteristics? (select all that apply)

- ~~Older (e.g. 65 years and over)~~
- ~~Younger (e.g. under 18 years of age)~~
- ~~Disabled (including mental health)~~
- ~~Ethnic minorities~~
- ~~Gender-based difference~~
- ~~Lesbian, Gay and/or Bisexual~~
- ~~Trans/gender diversity~~
- ~~Pregnancy/maternity~~
- ~~Religion or belief~~

9 Please select the options that best describes the type of organisation you are representing (select all that apply)

- ~~Government department or public body~~
- ~~Local authority~~
- Regulatory body**
- ~~Professional organisation or trade union~~
- ~~Employer of nurses, midwives and/or nursing associates~~
- ~~Agency for nurses, midwives and/or nursing associates~~
- ~~Education provider~~
- ~~Consumer or patient organisation~~
- ~~Other (give details)~~

10 Does your organisation represent/work any of the countries/regions below (select all that apply)

- England**
- Wales**
- Scotland**
- Northern Ireland**
- UK wide**
- ~~EEA~~
- ~~Outside EEA~~

11 Please tell us the name of your organisation

General Medical Council