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# PRACTICE NOTE

## Preliminary Hearings

This Practice Note has been issued jointly by the HPC Practice Committees for the guidance of Panels and to assist those appearing before them.

### Introduction

Panels have the power to hold preliminary hearings in private with the parties for the purpose of case management. In most fitness to practise cases such a hearing will not be required, but they are of assistance in the small number of cases where substantial evidential or procedural issues need to be resolved prior to a full hearing taking place.

### Background

The procedural rules<sup>1</sup> for fitness to practise proceedings provide that, for the purpose of assisting them in carrying out their functions, Panels may hold a preliminary hearing<sup>2</sup> in private with the parties, their representatives and any other person it considers appropriate if, in the Panel's opinion, such a meeting would assist it to perform its functions.

A hearing may be held by the Panel Chair alone, acting on behalf of the Panel, and that is the procedure which is normally adopted. As the primary purpose of a preliminary hearing is to assist the Panel in regulating the proceedings at a subsequent hearing, substantive decisions about the disposal of cases should not be dealt with by the Panel (or Panel Chair alone) at a preliminary hearing.

### Procedure

The Panel may decide to hold a preliminary hearing of its own motion or at the request of one of the parties. Where a party requests that a preliminary hearing is held, before arranging to do so the Panel should ask that party to outline the reasons for the request and the issues which will be raised if the hearing is held.

As many preliminary issues can be resolved by correspondence, a Panel should normally only agree to a preliminary hearing being held where it is satisfied that there are substantial procedural or evidential issues which need to be resolved.

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<sup>1</sup> HPC (Investigating Committee) (Procedure) Rules 2003 (SI 2003/1574), r.7; HPC (Conduct and Competence Committee) (Procedure) Rules 2003 (SI 2003/1575), r. 7; HPC (Health Committee) (Procedure) Rules 2003 (SI 2003/1576), r.7.

<sup>2</sup> The legislation refers to "preliminary meetings" but that term has been found to mislead some parties as to the nature of the proceedings and the term "preliminary hearing" has therefore been adopted

Normally the parties should be given at least fourteen days notice of a preliminary hearing and, in setting the time and place for that hearing, Panels must take account of Article 22(7) of the Health Professions Order 2001<sup>3</sup>, which requires preliminary hearings to be held in the UK country in which the registrant concerned is registered.

At a preliminary hearing the Panel should verify compliance to date with all requirements relating to the proceedings, including any standard directions which apply to those proceedings and may;

- consider issues relating to the hearing of the case including:
  - the extent to which any evidence is agreed,
  - the need for Witness Orders,
  - whether any party is seeking to introduce expert evidence,
  - the needs of vulnerable witnesses,
  - whether any facilities are required for particular evidence, such as videos or other exhibits, and
  - any special requirements for the hearing (e.g. interpreters);
- make arrangements for any further investigation which the Panel has agreed to have conducted and which the registrant has requested or consented to (e.g. a medical examination or test of competence);
- set a date for (or the arrangements for setting the date for) the hearing or, if it is considered more appropriate, a further preliminary hearing; and
- give any special directions for the exchange of documents prior to the hearing.

However, Panels should not agree to hold a preliminary hearing simply because a party is asking the Panel to deal with one or more of the matters listed above if those matters can be adequately resolved by correspondence.

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<sup>3</sup> SI 2002/254