

Receiving witness evidence at Medical Practitioners Tribunal hearings

Guidance for Decision Makers, Parties and Representatives

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Introduction

1. This guidance is for parties, representatives and decision makers, and covers the following areas:
 - ▶ When video link and telephone evidence can be used in Medical Practitioners Tribunal (MPT) hearings
 - ▶ Applying for special measures for vulnerable witnesses
 - ▶ Considerations when practitioners wish to appear by video link or telephone
 - ▶ When oral evidence in chief may be received in MPT hearings
2. The aim of this guidance is to promote consistency and transparency in both the making of video link and telephone evidence, vulnerable witness and oral evidence in chief applications and in decision making.
3. References to **rules** are to the GMC Fitness to Practise Rules 2004 (as amended) unless otherwise stated.
4. References in this guidance to **the UK** include Crown Dependencies and British Overseas Territories.
5. If, after considering this guidance, parties or representatives have any queries regarding how the guidance applies to their specific case they should contact the MPTS Case Management Team at MPTSCaseManagementTeam@mpts-uk.org.

How is witness evidence received at MPT hearings?

6. We hold MPT hearings both at the MPTS hearing centre and as virtual hearing using MS Teams. Regardless of where the hearing is held, the rules applicable to MPT hearings stipulate that all witness statements stand as evidence in chief, which means unless certain exceptions apply, no witness should give oral evidence in chief.
7. For hearings being held at the MPTS centre, our starting presumption is that all parties and witnesses will appear at in person. However, our rules allow the use of video link, telephone and other special measures in certain circumstances:

- ▶ an MPTS Case Manager or the tribunal can direct that a vulnerable witness may give evidence by video link, or other special measure set out in Rule 36(3)
 - ▶ an MPTS Case Manager can, where the parties agree, direct that a witness may give evidence by video link or telephone
 - ▶ a tribunal can, at any time during a hearing, direct that a witness may give evidence by video link or telephone.
8. For virtual hearings, our starting presumption is that all oral evidence will be received by video link. However, our rules allow the use of telephone evidence and other special measures:
- ▶ an MPTS Case Manager or the tribunal can direct that a vulnerable witness may give evidence by video link or with other special measures
 - ▶ an MPTS Case Manager can, where the parties agree, direct that a witness may give evidence by video link or telephone
 - ▶ a tribunal can, at any time during a hearing, direct that a witness may give evidence by video link or telephone.

Video link evidence

9. In our experience video link can be an effective way of hearing evidence. It can assist with witness scheduling and the efficient use of hearing time.
10. The MPTS uses MS Teams to receive video link evidence. Any witness wishing to give evidence by video link will need to be able to meet our technical requirements, which are explained in our [virtual hearings guidance: www.mpts-uk.org/virtualhearing](http://www.mpts-uk.org/virtualhearing)
11. Where a witness is located outside of the UK, additional considerations will apply. Guidance is set out at paragraphs 44 to 64.

Telephone evidence

12. Telephone facilities can also allow a witness to give evidence where they would otherwise be unable to do so.

13. For example, if the witness is based in a remote location, does not have access to suitable equipment or where the witness is required at short notice. Telephone evidence may also be suitable in circumstances where a witness has given evidence and been released but the tribunal wishes to seek further clarification from the witness.
14. Where a witness is located outside of the UK, additional considerations will apply. Guidance is set out at paragraphs 44 to 64.

Special measures

15. Special measures are arrangements which can be put in place to help the tribunal receive evidence from a vulnerable witness. Examples of special measures include the use of video link or telephone evidence, screens or an interpreter.

Oral evidence in chief

16. In majority of cases the default position in the rules that a witness' written statement stands as their evidence in chief will be appropriate and will save time and unnecessary duplication. The witness may still be orally cross-examined by the other party, re-examined by the party calling them and questioned by the tribunal.
17. However, in some instances one or both parties may believe it is appropriate for a witness to give oral evidence in chief, instead of their witness statement being received by the tribunal. This is permitted if certain requirements in the rules are met.

What does this mean for parties?

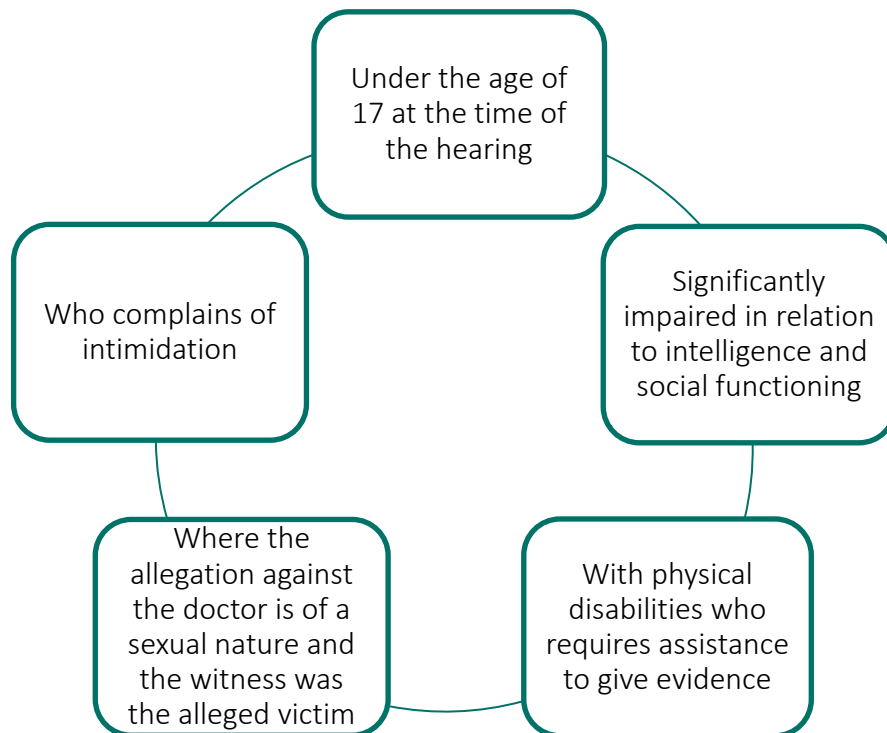
18. The use of video link or telephone evidence, special measures and/or oral evidence in chief at MPT hearings usually requires permission, but this depends on the circumstances. The table below sets out the options available to parties:

| Type of witness/issue | What options are there? | How do I obtain permission? | Does the other party need to agree? |
|--|---|--|---|
| <p>Vulnerable witness: a witness is a vulnerable witness if they fall within one of the categories in Rule 36(1). See paragraphs 19 to 31 of this guidance and Form W2 for making an application.</p> | <p>A vulnerable witness can give evidence by video link, telephone or using other special measures.</p> | <p>The party calling the witness can apply either:</p> <ul style="list-style-type: none"> ▶ To an MPTS Case Manager in advance of the hearing - we strongly recommend this option to save time at the hearing. ▶ To the tribunal at the hearing. | <p>No.</p> |
| <p>Other witnesses: any other factual or expert witness. For witnesses located in the UK see paragraphs 32 to 43 and Form W1 for making an application. For witnesses located outside the UK see paragraphs 44 to 64 and Form W1 for making an application.</p> | <p>Witnesses in this category can give evidence by video link or telephone.</p> <p>Please note permission is not required for a witness located in the UK to give evidence by video link in a virtual hearing.</p> | <p>In all other circumstances, the party calling the witness can apply either:</p> <ul style="list-style-type: none"> ▶ To an MPTS Case Manager before the hearing – we strongly recommend this option to save time at the hearing ▶ To the tribunal at the hearing. | <p>Yes, if the application is being made to an MPTS Case Manager before the hearing. No, if the application is being made to the tribunal at the hearing.</p> |

| Type of witness/issue | What options are there? | How do I obtain permission? | Does the other party need to agree? |
|---|--|--|-------------------------------------|
| <p>Oral evidence in chief: any factual witness who has provided a signed witness statement where a party wishes them to give oral evidence in chief. See paragraphs 90 to 101 and Form W3 for making an application.</p> | <p>A witness can be required to give oral evidence in chief instead of their witness statement being received by the tribunal.</p> <p>Please note permission is not required where the parties have reached agreement that oral evidence in chief is required, but parties may still prefer to apply for a binding case management direction on the issue.</p> | <p>The party wishing the witness to give oral evidence in chief can apply either:</p> <ul style="list-style-type: none"> ▶ To an MPTS Case Manager in advance of the hearing - we strongly recommend this option to save time at the hearing ▶ To the tribunal at the hearing. | <p>No.</p> |

Vulnerable witnesses

19. Rule 36(1) provides that certain witnesses may, if the quality of their evidence is likely to be affected, be treated as vulnerable witnesses. Those are any witness:



20. Rule 36(2) requires that the tribunal hears representations from the parties, with advice from the LQC or legal assessor, before deciding on the measures to adopt to enable it to receive evidence from a vulnerable witness.

21. Rule 36(3) provides a non-exhaustive list of the special measures that may be adopted.

How to obtain permission

22. Whether a witness is a vulnerable witness, and how they may give their evidence, can be decided either:

- ▶ in advance of the hearing by an MPTS Case Manager at a pre-hearing meeting or by a party making a written application or
- ▶ at the start of the hearing by an oral application to the tribunal.

23. The MPTS strongly encourages parties to make any such application in advance to assist vulnerable witnesses and to ensure efficient use of hearing time. Use of video link will only be permitted if the requirements of the technical guidance referred to are met (see page 5 for further information).

24. Where the special measure applied for is for video link or telephone evidence for a witness who is located outside of the UK, the guidance at paragraphs 44 to 64. will also be relevant and will impact the timing of your application.

Applying to an MPTS Case Manager before the hearing

25. The application must be made at the earliest opportunity and usually no later than 14 days before the hearing. To make an application to an MPTS Case Manager, please download and complete [Form W2](#), which will require the following information:

| | |
|--------------------------------|---|
| <p>Party Applying</p> | <ul style="list-style-type: none"> ▶ Written explanation of why the witness is vulnerable, to include clear identification of which limb of Rule 36(1) is engaged and the special measure(s) requested. ▶ Signed witness statement for the witness setting out the evidence they will give at the hearing. ▶ Evidence demonstrating why the witness is vulnerable and how their evidence will be affected. For example, this might include confirmation of relevant medical conditions and details of how the witness believes their evidence will be affected. ▶ If video link or telephone evidence is applied for, confirmation of whether the witness will be located within the UK when giving evidence. |
| <p>Party Responding</p> | <ul style="list-style-type: none"> ▶ Written confirmation of agreement or objections to the application. Such comments should specifically address the application made by the applying party and provide sufficient detail to allow a decision to be taken on the application. |

Applying for permission at the hearing

26. The application must be made at the start of the hearing where possible. To make an application to the tribunal, the information outlined below must be supplied to the tribunal. Parties are encouraged to prepare and exchange skeleton arguments in advance of the hearing:

| | |
|-------------------------|---|
| Party Applying | <ul style="list-style-type: none"> ▶ Explanation of why the witness is vulnerable, to include clear identification of which limb of Rule 36(1) is engaged and the special measure(s) requested. ▶ Signed witness statement for the witness setting out the evidence they will give at the hearing. ▶ Evidence demonstrating why the witness is vulnerable and how their evidence will be affected. For example, this might include confirmation of relevant medical conditions and details of how the witness believes their evidence will be affected. ▶ If video link or telephone evidence is applied for, confirmation of whether the witness will be located within the UK when giving evidence. |
| Party Responding | <ul style="list-style-type: none"> ▶ Oral submissions indicating agreement or objections to the application. |

Guidance for tribunals and MPTS Case Managers

Considering applications

27. Both parties must be given the opportunity to make representations before the decision maker(s) reach a decision on a vulnerable witness application. The decision maker(s) must consider the representations from the parties and, in the case of the tribunals, any advice received from the LQC or legal assessor.
28. The decision maker(s) must first decide whether the individual should be treated as a vulnerable witness and, if so, go on to decide on the measures they consider desirable to enable the tribunals to receive evidence from that witness. Rule 36(3) provides a non-exhaustive list of the special measures which can be adopted. Other measures relevant to virtual hearings, such as practitioners switching their camera off while a vulnerable witness gives evidence, may also be adopted if the decision maker(s) consider it appropriate to do so.
29. When considering the use of video link or telephone evidence, the decision maker(s) should consider the Practical Issues highlighted later in this guidance.

Varying or setting aside case management directions

30. Directions made by an MPTS Case Manager are legally binding and tribunals must proceed in accordance with them unless there is a material change in circumstances or it is otherwise in the interests of justice to proceed differently. Where an MPTS Case Manager has already granted an application, it is not necessary for the tribunal to consider the same application again.

31. When considering whether to make a different decision, the tribunal must bear in mind that the parties will have prepared their case based on directions given. Any subsequent change must be clearly justified as it is likely to result in delay, distress for the vulnerable witness and possibly unfairness to at least one, if not both, parties.

Other witnesses located in the UK

32. Rules 16(6)(fb), 34(13) and 34(14) allow parties to apply to a MPTS Case Manager or the tribunal for permission for any witness (including factual, expert or character witnesses) to give evidence by video link or telephone.
33. Please note if a witness will be located outside of the UK when giving evidence, separate guidance applies as set out at paragraphs 44 to 64.

How to obtain permission

34. Whether a witness is permitted to give their evidence by video link or telephone can be decided:
- ▶ in advance of the hearing by an MPTS Case Manager at a pre-hearing meeting or by a party making a written application, but only where the parties agree or
 - ▶ at the start of the hearing by an oral application to the tribunal.
35. To ensure that hearing time is used efficiently for the benefit of all parties, the MPTS strongly encourages parties to make applications to an MPTS Case Manager before the hearing where they meet the criteria for doing so. Use of video link will only be permitted if the requirements of our technical guidance referred to are met (see page 5 for further information).

Applying to an MPTS Case Manager before the hearing

36. The application must be made at the earliest opportunity and usually no later than 14 days before the hearing. To make an application to an MPTS Case Manager, please download and complete [Form W1](#), which will require the following information:

| | |
|----------------|---|
| Party Applying | <ul style="list-style-type: none">▶ Written explanation of whether video link or telephone use is requested and the reasons why.▶ Signed witness statement for factual witnesses, expert report for expert witnesses and/or testimonial letter for character witnesses, as applicable. |
|----------------|---|

| | |
|-------------------------|---|
| | <ul style="list-style-type: none"> ▶ Written evidence of agreement to the application from the party responding. Contested applications cannot be considered by an MPTS Case Manager. ▶ Confirmation that the witness will be located within the UK when giving evidence. |
| Party Responding | <ul style="list-style-type: none"> ▶ Written confirmation of agreement to the application, if not supplied by the party applying. |

Applying for permission at the hearing

37. The application must be made at the start of the hearing where possible. To make an application to the tribunal, the information outlined below must be supplied to the tribunal. Parties are encouraged to prepare and exchange skeleton arguments in advance of the hearing:

| | |
|-------------------------|---|
| Party Applying | <ul style="list-style-type: none"> ▶ Explanation of whether video link or telephone use is requested and the reasons why. ▶ Signed witness statement for factual witnesses, expert report for expert witnesses and/or testimonial letter for character witnesses, as applicable. ▶ Confirmation that the witness will be located within the UK when giving evidence. |
| Party Responding | <ul style="list-style-type: none"> ▶ Oral submissions indicating agreement or objections to the application. |

Guidance for tribunals and MPTS Case Managers

Considering applications

38. Both parties must be given the opportunity to make representations before the decision maker(s) reach a decision on a video link or telephone evidence application. The decision maker(s) must consider the representations from the parties and, in the case of the tribunal, any advice received from the LQC or legal assessor.

39. The decision maker(s) must decide whether it is in the interests of justice to allow use of video link or telephone evidence. In doing so, the decision maker(s) should consider whether video link or telephone evidence will be more likely to be beneficial to the fair and just disposal of the case. For example, there may be strong argument in favour of receiving video link or telephone evidence from:

- ▶ Professional witnesses (including expert witnesses) by video link or telephone if requiring the witness to attend in person would result in the cancellation of a clinic, theatre list or similar professional commitment
- ▶ Witnesses based overseas where the cost of that witness' travel to the hearing is disproportionately expensive and/or likely to result in a delay to the proceedings.

40. When considering the use of video link or telephone evidence, the decision maker(s) should consider the Practical Issues highlighted later in this guidance. Where an MPTS Case Manager has already granted an application, it is not necessary for the tribunal to consider the same application again.

Varying or setting aside case management directions

41. Directions made by an MPTS Case Manager are legally binding and tribunals must proceed in accordance with them unless there is a material change in circumstances or it is otherwise in the interests of justice to proceed differently.

42. When considering whether to make a different decision, the tribunal must bear in mind that the parties will have prepared their case based on directions given by a case manager. Any subsequent change must be clearly justified as it is likely to result in delay, inconvenience and potential distress for the witness and possibly unfairness to at least one, if not both, parties.

Agreement reached by the parties

43. Where no case management directions regarding video link or telephone evidence have been made by an MPTS Case Manager but the parties have reached agreement, the tribunal are not bound by that agreement. However, the tribunal should give due regard to any agreement reached and the potential impact on the parties and the efficient running of the hearing if that agreement were to be disregarded.

Other witnesses located outside the UK

44. Rules 16(6)(fb), 34(13) and 34(14) allow parties to apply to a MPTS Case Manager or the tribunal for permission for any witness (including factual, expert or character witnesses) to give evidence by video link or telephone.
45. Where a witness (including the registrant) will be located in a state outside the UK when they give evidence, consideration must also be given to whether that state has given permission for that **oral evidence*** to be received, as to do so without permission risks damaging UK diplomatic relations with other states[†]. It is not for individual tribunals to form their own view of what may, or may not, damage the UK's relations with another state.
46. Where a witness required to give oral evidence will be located outside the UK when giving their evidence, the party relying upon that evidence (referred to below as '**the applying party**') must clarify whether or not permission is required from the state in which the witness will be located (referred to below as '**the host state**').
47. It is the responsibility of the applying party to ascertain whether permission is required from the host state and, if so, to secure that necessary permission. Where permission is required but is not obtained, the applying party must make appropriate alternative arrangements with the witness, as outlined at paragraph 52.

Confirming whether permission from a host state is required

48. Advice on whether permission from the host state is required must be obtained from the Royal Courts of Justice's Foreign Process Section (FPS). The FPS will advise whether the host state's position is known on the taking of oral evidence from within their territory, or whether the party will need to seek permission from the host state and, if so, the process to obtain that permission.
49. It is essential for the applying party to make enquiries with the FPS as soon as the potential need for a witness to give evidence from the host state becomes known. Any advice obtained from the FPS should be evidenced in writing wherever possible.

* NB. The requirement for permission applies to oral evidence only and not to oral submissions or written evidence.

[†] *Re Agbabiaka (Evidence from Abroad: Nare Guidance: Nigeria)* [2021] UKUT 286 (IAC)

The applying party must make contact with the FPS either by email via foreignprocess.rcj@justice.gov.uk or by telephone on +44 020 3936 8957 (option 7 – Foreign Process Section). The applying party should provide the following information to assist the FPS:

- ▶ the nature of the MPT hearing (a new, review, restoration or non-compliance hearing) and the hearing dates
- ▶ the name of the host state
- ▶ the nationality of the witness, their status in the host state (i.e. whether they are a citizen, resident or tourist of that country).

If the applying party wishes to contact the FPS by email, they may wish to use the suggested template correspondence which can be found at [Annex A](#) to this guidance.

50. If the FPS confirms that permission is required from the relevant overseas state, then the applying party should follow the advice given by the FPS to obtain that permission.
51. Failure to seek confirmation of the position from the FPS and/or to obtain permission from the host state if so advised by the FPS will likely result in the tribunal being unable to receive oral evidence from that witness. Where a party has failed to act promptly and reasonably to take all necessary steps, the tribunal may decide to proceed with the hearing and decline to permit additional time for the applying party to take further steps where to do so would cause undue delay.
52. If the applying has not been able to obtain permission, or has failed to act promptly, the parties should consider alternative ways to proceed to avoid delaying the hearing, including:
 - ▶ agreeing that only written evidence from the witness will be relied upon, including their witness statement and responses to written questions put to the witness. Wherever possible parties should liaise to ensure written questions are put to and answered by the witness in advance of the hearing, so that their written responses could be shared with the tribunal along with their statement;

- ▶ where the parties consider oral evidence is required from the witness, making arrangements for the witness to travel to the UK or to another country where permission for oral evidence is not required;
- ▶ in the case of a self-represented practitioner, deciding to provide written evidence and oral submissions only, without giving oral evidence to the tribunal.

How to obtain MPTS permission for video link or telephone evidence

53. Whether a witness is permitted by the MPTS to give oral evidence by video link or telephone can be decided:

- ▶ in advance of the hearing by an MPTS Case Manager at a pre-hearing meeting or by a party making a written application, but only where the parties are in agreement
- ▶ at the start of the hearing by an oral application to the tribunal.

54. To ensure that hearing time is used efficiently for the benefit of all parties, the MPTS strongly encourages parties to make applications to an MPTS Case Manager before the hearing where they meet the criteria for doing so. Use of video link will only be permitted if the requirements of our technical guidance referred to are met (see paragraph 10 for further information).

Applying to an MPTS Case Manager before the hearing

55. The application must be made at the earliest opportunity and usually no later than 14 days before the hearing. To make an application to an MPTS Case Manager, please download and complete [Form W1](#), which will require the following information:

| | |
|-----------------------|--|
| Party Applying | <ul style="list-style-type: none"> ▶ Written explanation of whether video link or telephone use is requested and the reasons why. ▶ Signed witness statement for factual witnesses, expert report for expert witnesses and/or testimonial letter for character witnesses, as applicable. |
|-----------------------|--|

| | |
|-------------------------|--|
| | <ul style="list-style-type: none"> ▶ Written evidence of agreement to the application from the party responding. Contested applications cannot be considered by an MPTS Case Manager. ▶ Either: <ul style="list-style-type: none"> ▶ confirmation from the FPS that permission from the host state is not required or ▶ confirmation that required permission has been obtained from the host state or ▶ confirmation from the applying party that checks will be made with the FPS and host state (if required) in good time ahead of the hearing commencing. |
| Party Responding | <ul style="list-style-type: none"> ▶ Written confirmation of agreement to the application, if not supplied by the party applying. |

56. Please note that where the applying party confirms that checks will be made with the FPS and host state prior to the hearing commencing, any direction granted by an MPTS Case Manager will be expressly subject to those checks being completed. This means that the applying party will need to be prepared to satisfy the tribunal of the position on permission before the witness gives evidence from the host state. Where the applying party cannot demonstrate to the tribunal that either the FPS has confirmed permission is not required, or that required permission has been obtained, the direction issued by an MPTS Case Manager will be of no effect.

Applying to the tribunal at the hearing

57. The application must be made at the start of the hearing where possible. To make an application to the tribunal, the information outlined below must be supplied to the tribunal. Parties must prepare and exchange skeleton arguments in advance of the hearing if the application is contested:

| | |
|-----------------------|--|
| Party Applying | <ul style="list-style-type: none"> ▶ Explanation of whether video link or telephone use is requested and the reasons why. |
|-----------------------|--|

| | |
|-------------------------|---|
| | <ul style="list-style-type: none"> ▶ Signed witness statement for factual witnesses, expert report for expert witnesses and/or testimonial letter for character witnesses, as applicable. ▶ Either: <ul style="list-style-type: none"> ▶ confirmation from the FPS that permission from the host state is not required or ▶ confirmation that required permission has been obtained from the host state. |
| Party Responding | <ul style="list-style-type: none"> ▶ Oral submissions indicating agreement or objections to the application. |

Guidance for tribunals and MPTS Case Managers

Considering applications

58. Both parties must be given the opportunity to make representations before the decision maker(s) reach a decision on a video link or telephone evidence application. The decision maker(s) must consider the representations from the parties and, in the case of the tribunal, any advice received from the LQC or legal assessor.
59. Given that these applications relate to overseas oral evidence, the decision maker(s) must ensure that there is confirmation that there are no objections from the host state to this evidence being taken (or, in the case of pre-hearing applications made to an MPTS Case Manager, that written confirmation has been given that such checks will be carried out subsequently). If no evidence of such confirmation can be provided by the applying party, then the decision maker(s) should refuse the application. In the case of tribunals, consideration should also be given to the appropriateness of permitting the applying additional time to seek permission, taking into account the time already afforded and the delay which would be caused to the proceedings.
60. If, having applied the guidance in paragraph 59, the decision maker(s) are satisfied that no outstanding issues arise regarding host state permission, the decision maker(s) must then decide whether it is in the interests of justice to allow use of video link or telephone evidence. In doing so, the decision maker(s) should consider whether video link or telephone evidence will be more likely to

be beneficial to the fair and just disposal of the case. For example, there may be strong argument in favour of receiving video link or telephone evidence from:

- ▶ Professional witnesses (including expert witnesses) by video link or telephone if requiring the witness to attend in person would result in the cancellation of a clinic, theatre list or similar professional commitment
- ▶ Witnesses based in a location where the cost of that witness' travel to the hearing is disproportionately expensive and/or likely to result in a delay to the proceedings.

61. When considering the use of video link or telephone evidence, the decision maker(s) should consider the Practical Issues highlighted later in this guidance. Where an MPTS Case Manager has already granted an application, it is not necessary for the tribunal to consider the same application again.

Varying or setting aside case management directions

62. Directions made by an MPTS Case Manager are legally binding and tribunals must proceed in accordance with them unless there is a material change in circumstances or it is otherwise in the interests of justice to proceed differently.

63. When considering whether to make a different decision, the tribunal must bear in mind that the parties will have prepared their case based on directions given by an MPTS Case Manager. Any subsequent change must be clearly justified as it is likely to result in delay, inconvenience and potential distress for the witness and possibly unfairness to at least one, if not both, parties.

Agreement reached by the parties

64. Where no case management directions regarding video link or telephone evidence have been made by an MPTS Case Manager but the parties have reached agreement, the tribunal are not bound by that agreement. However, the tribunal should give due regard to any agreement reached and the potential impact on the parties and the efficient running of the hearing if that agreement were to be disregarded.

Practitioners whose cases are under consideration

65. Decisions on hearing venue are made as part of the case management process, bearing in mind the submissions of parties and the needs of hearing participants.

Virtual hearings

66. Where a practitioner's hearing has been arranged as a virtual hearing, it is expected that their case will be presented (either by a representative or the practitioner themselves) and they will (if they choose to do so) give evidence by video link using MS Teams. No further MPTS permission for appearing by video link will be required, although where the practitioner intends to **give evidence** and is located outside the UK, the guidance at paragraphs 44 to 64 will apply. The tribunal will also need to keep the efficient and effective running of the hearing under review.

Hearings at the MPTS hearing centre

67. Where a practitioner's hearing has been arranged to take place at the MPTS hearing centre, it is expected that their case will be presented (either by a representative or the practitioner themselves) and they will (if they choose to do so) give evidence in person. There may, however, be circumstances where a practitioner wishes to request the use of video link or telephone for some or all of the hearing where circumstances have changed.
68. Different approaches will apply depending on whether the practitioner is represented and whether they wish to give evidence remotely, present their case remotely, or both.
69. Where a practitioner is represented by a representative who will attend the MPTS hearing centre, but the practitioner wishes to **give evidence** via video link or telephone, the guidance at paragraphs 32 to 43 will apply if the practitioner is located in the UK or at paragraphs 44 to 64 if the practitioner is not located in the UK.
70. If the practitioner is self-represented and wishes to present their case and give evidence remotely, they must urgently contact the MPTS Case Management team, who will consider whether it is appropriate and feasible for the hearing to proceed virtually. Where the practitioner intends to **give evidence** and is located outside the UK, the guidance at paragraphs 44 to 64 will apply.

71. Where a practitioner makes an application to use video link or telephone during the hearing, the tribunal must consider all relevant circumstances, including the guidance below.

Considering in-hearing applications

72. Both parties must be given the opportunity to make representations before the tribunal reaches a decision on the practitioner's application. The tribunal must consider the representations from the parties and any advice received from the LQC or legal assessor.

73. The tribunal must decide whether allowing the practitioner to present their case remotely (whether by video link, telephone or by engagement through other forms of correspondence) is in the interests of justice and is a proportionate and workable adjustment in view of the change of circumstances in the particular case.

74. In making their decision, the tribunal must consider whether the proposed method of remote case presentation could be disruptive to proceedings, cause unnecessary distress to witnesses and/or result in hearings not concluding within their allocated listing dates. The decision maker(s) must clearly identify the circumstances which justify allowing the practitioner to conduct their case in this way.

75. The tribunal should also consider how they will effectively case manage proceedings if they were to agree to a change to how the practitioner appears at the hearing. This must include clarifying how engagement will occur and how the hearing will proceed if engagement is not as expected.

76. Case law* states that 'any culture of adjournment is to be deprecated' and therefore the decision maker(s) should be mindful of this when managing proceedings.

77. When considering the unplanned use of video link or telephone for case presentation, the tribunal should also consider the Practical Issues highlighted later in this guidance.

* *General Medical Council v Adeogba; General Medical Council v Visvardis* [2016] EWCA Civ 162

Practical issues – video link and telephone evidence

Availability of video link facilities

78. The MPTS has video link facilities in almost all of its hearing rooms. Where directions are given by an MPTS Case Manager, or the MPTS is informed in advance that agreement is reached between the parties for a witness to give evidence by a video link, the MPTS will ensure that video link facilities are available.
79. Where an application for evidence to be given by a video link is made for the first time at a hearing, the MPTS will establish whether video link facilities are available so that the tribunal can take this into consideration when reaching its decision.

Cost of video link and telephone facilities

80. There is no charge to witnesses joining a video link via MS Teams, although they will require access to an appropriate device and suitable internet connection. If the witness dials into the Teams link using a telephone, they will incur a local charge.
81. A party whose witness is to give video link evidence by Teams is responsible for ensuring that the witness has an appropriate device and internet connection ensure the video link will work. The cost of the use or hire of any conference suites (if applicable) will be borne by the party. They must ensure that the witness is able to use MS Teams in order to avoid delays during the hearing. This includes checking that the witness is in a country where Teams may be used.
82. At the hearing the witness will join the hearing via the MS Teams link and the MPTS will admit the witness from the virtual lobby.
83. If the tribunal wishes to call a person to give evidence by video link who is not a witness relied on by either party, any cost arising from the hire of a video link facility (if applicable) will be borne by the MPTS. Where a witness' evidence is agreed between the parties but the tribunal wish to ask questions of that witness, arranging that evidence to be heard (including the identification of a video link facility) remains the responsibility of the party relying upon that witness.

Taking evidence by video link or telephone

84. When taking evidence by video link or telephone the tribunal chair should ensure that the session is as close as possible to the tribunal's normal practice when taking evidence in person. This will include:

- ▶ the administration of the oath/affirmation
- ▶ ensuring the witness understands who is in the hearing room
- ▶ that the witness has switched off their mobile phone (or other electronic device)
- ▶ that the witness has access to any documents to which the parties or the tribunal will refer during their questioning.

Use of documents

85. Where the witness is likely to be referred to any documents, it is the responsibility of the party calling them to ensure that the bundle or other documents have been provided to them. The tribunal chair should, prior to the start of the witness's evidence, ask the witness whether they have a copy of the documents before them.

86. The party calling the witness can send additional exhibits circulated during the hearing to the witness directly by e-mail or by fax. That party will be responsible for ensuring the security of the arrangements made.

Before the witness gives evidence

87. The tribunal chair should, prior to the start of the witness's evidence, ask the witness to state whether there is anyone else in the room with them and, if so, to state who the individual(s) is/are and the reason for their presence. There may be valid reasons for the presence of another individual (for example, a vulnerable witness may wish to have someone present for support), but the tribunal chair should establish that the individual(s) is/are not also due to give evidence. Provided there is no reason why the third party should not be present, the tribunal chair should ensure the third party understands that they cannot speak, pass notes or give any signals to the witness during their evidence. In the case of video link evidence, the tribunal chair should also ask the third party to sit where they can be seen by the tribunal.

While the witness gives evidence

- 88.** Where evidence is given by video link, even with advanced systems, there can be delay between the receipt of the picture and that of the accompanying sound. The tribunal needs to make allowance for this and, if necessary, the tribunal chair should remind hearing participants of the need to avoid speaking over the witness.

Different time zones

- 89.** Where the witness is in a different time zone to the tribunal, the tribunal may sit early or late to accommodate the witness at its discretion.

Oral evidence in chief

90. Rule 34(11) provides that a tribunal must receive into evidence a signed witness statement as that witness' evidence in chief unless:

- ▶ the parties have agreed that a witness will give oral evidence in chief instead of their witness statement being provided to the tribunal, or
- ▶ an MPTS Case Manager or the tribunal directs that a witness will give oral evidence in chief instead of their witness statement being provided to the tribunal.

91. If a witness' signed witness statement is received as evidence in chief, the witness may still be required for oral cross-examination by the other party, re-examination by the party calling them and any questions the tribunal may have.

92. Where a party intends for a witness to give oral evidence in chief at the hearing, that witness' written statement must not be included in the hearing bundle. It would be unfair and would involve unnecessary duplication for the tribunal to both receive a written witness statement and oral evidence on the same matters.

How to obtain permission

93. As noted at paragraph 72 above, whether a witness gives oral evidence in chief can be agreed between the parties, directed by an MPTS Case Manager or decided by the tribunal at the hearing. If parties agree between them regarding a witness giving oral evidence in chief, they should confirm this in writing to the MPTS Case Management team (when agreement is reached) and also confirm that the relevant witness' witness statement will not be included in the hearing bundle to be read by the tribunal. However, parties may still wish to seek a legally binding case management direction confirming the position.

94. The MPTS strongly encourages parties to agree between them, or make an application to an MPTS Case Manager, in advance to assist that witness giving evidence and to ensure efficient use of hearing time.

Applying to an MPTS Case Manager before the hearing

95. The application must be made at the earliest opportunity and usually no later than 14 days before the hearing. To make an application to an MPTS Case

Manager, please download and complete [Form W3](#), which will require the following information:

| | |
|-------------------------|---|
| Party Applying | <ul style="list-style-type: none"> ▶ Written explanation of why oral evidence in chief is considered necessary and/or desirable, to include explanation of how the hearing timetable would be impacted by oral evidence in chief and whether this could risk the hearing being unable to complete within the time allocated. ▶ Signed witness statement for the witness setting out the evidence they will give at the hearing. |
| Party Responding | <ul style="list-style-type: none"> ▶ Written confirmation of agreement or objections to the application. Such comments should specifically address the application made by the applying party and provide sufficient detail to allow a decision to be taken on the application |

Applying for permission at the hearing

96. The application must be made at the start of the hearing where possible. To make an application to the tribunal, the information outlined below must be supplied to the tribunal. Parties are encouraged to prepare and exchange skeleton arguments in advance of the hearing:

| | |
|-------------------------|---|
| Party Applying | <ul style="list-style-type: none"> ▶ Written explanation of why oral evidence in chief is considered necessary and/or desirable, to include explanation of how the hearing timetable would be impacted by oral evidence in chief and whether this could risk the hearing being unable to complete within the time allocated. ▶ Signed witness statement for the witness setting out the evidence they will give at the hearing. |
| Party Responding | <ul style="list-style-type: none"> ▶ Oral submissions indicating agreement or objections to the application. |

Guidance for tribunals and MPTS Case Managers

Considering applications

97. Both parties must be given the opportunity to make representations before the decision maker(s) reach a decision on an application for oral evidence in chief to be given. The decision maker(s) must consider the representations from the parties and, in the case of the tribunal, any advice received from the LQC or legal assessor.
98. The decision maker(s) must decide whether it is in the interests of justice to allow oral evidence in chief to be given. In doing so, the decision maker(s) should consider whether oral evidence in chief is necessary and/or desirable to ensure the fair and just disposal of the case.
99. The decision maker(s) must bear in mind the impact oral evidence in chief will have on the hearing timetable. Where permitting oral evidence in chief would risk the hearing being unable to complete within the time allocated and there are no compelling reasons why oral evidence in chief is necessary to ensure fairness, it is unlikely to be appropriate to give permission.

Varying or setting aside case management directions

100. Directions made by an MPTS Case Manager are legally binding and tribunals must proceed in accordance with them unless there is a material change in circumstances or it is otherwise in the interests of justice to proceed differently. Where an MPTS Case Manager has already granted an application for oral evidence in chief to be given, it is not necessary for the tribunal to consider the same application again.
101. When considering whether to make a different decision, the tribunal must bear in mind that the parties will have prepared their case based on directions given by an MPTS Case Manager. Any subsequent change must be clearly justified as it is likely to result in delay, distress for the witness and possibly unfairness to at least one, if not both, parties.

Frequently asked questions

Using video link

102. This section answers frequently asked questions regarding setting up a video link and assumes that the party seeking to use a video link has or will successfully obtain permission from an MPTS Case Manager or the tribunal, as applicable.

Who can I contact about setting up a video link?

103. It is the responsibility of parties to ensure that the MPTS is informed as soon as the potential need for a video link is known. Prior to the hearing you should contact the MPTS Case Management team about video links at MPTS hearings. Once the hearing has started, you should contact the MPTS Tribunal Assistant in the hearing.

104. If there are any changes to your requirements before the hearing starts, including a video link being no longer being needed, please ensure that you inform the MPTS Case Management team as soon as possible. If there are any changes to your requirements once the hearing has started, contact the MPTS Tribunal Assistant in the hearing.

How is a test call arranged?

105. It is the responsibility of the party calling the witness to perform a test call prior to the hearing. If parties require assistance on how to perform a test call, the MPTS Tribunal Assistants can provide guidance and answer queries, by telephone or email, before the hearing begins. The MPTS Tribunal Assistants will perform test calls in exceptional circumstances, such as where a self-represented practitioner wishes to give evidence or attend the hearing by video link. If a test call is required during a hearing, this is done by the Tribunal Assistant.

106. Because a test call is arranged to assess the quality of the connection, it must be done in the same room that the hearing will be in. The test call must be done before the hearing commences, or delays to the hearing can occur.

What do I do if I require a video link at the last minute, or on the day of the hearing?

107. The MPTS can often accommodate this, although parties must give as much notice as possible to avoid unnecessary delay. In these circumstances, the party wishing to use a video link must liaise directly with the Tribunal Assistant in the hearing as soon as possible.

The witness is now attending in person so the video link is no longer required

108. If a video link is no longer required please notify the MPTS as soon as possible. If this is before the hearing, contact the MPTS Case Management team. If this is during the hearing, contact the MPTS Tribunal Assistant in the hearing. If you have made arrangements to use a conferencing suite, please remember to cancel this to avoid incurring any unnecessary charges.

Overseas evidence

I and/or one of my witnesses want to give evidence from outside the UK. Is this allowed?

109. It is possible for witness evidence to be given from outside the UK, providing that the required checks have been made with the Royal Courts of Justice's Foreign Process Section (FPS): see paragraphs 44 to 64 for further information on the process to be followed. In summary, a party wishing to rely on this evidence will need to contact the FPS to establish whether the relevant overseas state has any previously indicated objection to such evidence being taken from their territory. If the position is not known, an application may need to be made directly to the relevant overseas state. Given the time which may be required for these applications to be made, parties may wish to make them as soon as the potential for overseas evidence is known.

The overseas state I and/or one of my witnesses want to give evidence from does not allow this. What can I do?

110. In the event that the relevant overseas state objects to evidence being taken from their territory, the parties should consider whether there are alternative ways in which this evidence could be given: see paragraph 52 for further

information on this. In summary, this could include the witness travelling to the UK or to another overseas state (with no objections to evidence being taken from their territory) to give evidence or answering in written form any questions put to them.

Annex A – Template correspondence

[Please complete or amend the parts shown in square brackets before using]

Dear Sir/Madam

I write to enquire whether permission is required for [me/a witness] to give oral evidence at a hearing in the UK via video link from [insert name of host state].

The hearing is a [New/Review/Restoration/Non-Compliance] hearing at the Medical Practitioners Tribunal Service, which makes decisions about whether a doctor is fit to practise in the UK. The hearing scheduled to take place from [insert date].

[I am/The witness is] a national of [insert country name] and will be present in [insert name of host state] as a [citizen/resident/tourist].

Please confirm whether permission is required for this evidence to be taken from [insert name of host state].