Consensual Panel Determination: Guidance for Registrants and Informants

Introduction

Consensual panel disposal (“CPD”) is a case management tool that we use to identify and process cases which are suitable for concluding without a contested hearing.

A case may be eligible to be managed by CPD if the registrant has admitted the facts of the allegation against them and admits that their fitness to practise is impaired.

If a case is managed by CPD, we will agree a sanction with the registrant that both the registrant and the GOC consider is appropriate to the seriousness of the offence. This agreed sanction will be put to the Fitness to Practise Committee (“FTPC”) as a recommendation.

We assess all cases that are referred to the Fitness to Practise Committee (FTPC) to establish whether they are suitable for CPD.

This guidance is for:

- Registrants who are under investigation because of an allegation about their fitness to practise, undertake training or carry on business. If you are a registrant, you will be provided with a copy of this guidance if an allegation against you has been referred to the FTPC and meets the criteria to be managed by CPD.
- Informants who have provided information to the GOC which has resulted in an investigation of a registrant’s fitness to practise, undertake training or carry on business. If you are an informant, you will be provided with a copy of this guidance if the allegation against the registrant has been referred to the FTPC, and the registrant has agreed to the case against him or her being managed by CPD.

Which cases are eligible for CPD?

A case will only be eligible for CPD if:

a. The allegation against the registrant has been referred to the FTPC by:
   - The case examiners
   - The Investigation Committee
   - In the case of a criminal conviction resulting in a custodial sentence, the Registrar
b. The registrant has admitted the facts of the allegation. This means that all parts of the allegation that have been referred to the FTPC have been accepted by the registrant in their representations.
c. The registrant has admitted that the grounds for impairment, as they appear in the allegation, are established. This means, for example, that if it is alleged that the registrant’s fitness to practise is impaired on
grounds of misconduct, they must have admitted that the facts amount to misconduct to be eligible for CPD.

d. The registrant has admitted that their fitness to practise is impaired. This means that the registrant must have accepted that their fitness to practise is currently impaired to be eligible for CPD. Admissions about previous impairment are not relevant for the purposes of this eligibility criteria.

How does the GOC assess whether a case is suitable for CPD?

If a case is eligible to be considered for CPD, we will go on to consider whether it is suitable to manage it in this way. Our overriding consideration is always what is in the public interest. If there is a public interest reason why the case should be considered at a full hearing, and not managed by CPD, then this will override all other considerations.

We will take the following factors into account when assessing whether a case is suitable for CPD. Other factors may also be relevant, and this is not an exhaustive list.

a. The seriousness of the allegation

In cases where the registrant’s conduct has had serious implications for patient safety or public safety, it is more likely to be in the public interest for the case to proceed to a full hearing.

b. The registrant’s insight into his or her fitness to practise

When we assess the level of insight the registrant has demonstrated we will consider whether the registrant made a self-declaration of the facts alleged, whether they have cooperated with our investigation so far, and whether they have made any admissions about their current fitness to practise. We will also consider whether they have taken any action to address the concerns raised about their fitness to practise.

c. The registrant’s own interests

We will assess whether CPD would be contrary to the registrant’s own interests, even if it is something they agree to. To determine whether CPD is in the registrant’s best interests, we will consider whether they are supported by legal representation or whether they have access to independent legal advice. We will also consider whether they have understood the CPD process and the implications and risks of agreeing to CPD. We will take into account whether the registrant has engaged with the investigation process to date as well.

d. The registrant’s circumstances

We will take into account any information the registrant has given us about their personal circumstances which may affect whether there is a public
interest in holding a full hearing of the case against them. For example, if they had previously informed us of a plan to retire at the end of the year, this may affect whether there is a public interest in going forward with a full FTP hearing.

e. The registrant’s character

If the allegation against the registrant calls their character into question (for example, if it is alleged that they were dishonest), it may be less likely that the case is suitable to manage by CPD. This is therefore another factor that we will take into consideration.

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<tr>
<th>Registrants: Is CPD right for you?</th>
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<tr>
<td>We will only manage your case by CPD if it is something you agree to. If we have written to you to invite you to consider managing your case in this way you should carefully consider if this is the right route for you. We encourage you to seek legal advice about you options before making a decision.</td>
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<td>If you have any questions about the process of managing a case by CPD, you should contact the investigations officer responsible for managing your case. They will be able to address your queries about how the process works. Please be aware however that we cannot advise you about whether or not to agree to CPD. It is important that this is a decision made by you with the support of your independent advisors.</td>
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Communication between registrants and the GOC

Discussions between the registrant and the GOC about CPD are usually held on a “without prejudice” basis. This means that the content of communications will not be publicly disclosed at any subsequent hearing.

Please be aware however that there are exceptions to this provision. If a registrant discloses new information during discussions with the GOC which raises a concern about their fitness to practise which we were not previously aware of, we would have a duty to investigate that matter and, if necessary, disclose it to the FTPC.

Please also note that the without prejudice provision applies only to discussions about CPD. Any communication between the registrant and the GOC that does not relate to CPD may be disclosable to the FTPC.

The “without prejudice” provision will apply to any discussions between the registrant and the GOC about CPD from the point when we write to the registrant to invite them to consider CPD until either we receive the registrant’s signed agreement to CPD, or a decision is made not to proceed with CPD.

The CPD Report
If a registrant agrees to manage their case by CPD, we will prepare a CPD report for the case. This report will set out the finalised allegation against the registrant and the sanction that we propose to recommend to the FTPC for the case. The proposed sanction will be based on the GOC’s Indicative Sanctions Guidance. This assessment will be carried out by our legal team. The report will also set out the admissions the registrant will make to the FTPC.

We will send a draft copy of this report to the registrant to review and ask them to confirm whether they agree its contents.

**Registrants: Responding to a CPD Report**

You should carefully review the report and documents. It is important that you discuss these with your independent legal advisor before responding. This is because your legal advisor can help you to think through the implications of agreeing to the proposed sanction for you.

You can contact the investigation officer for your case if you have any queries about the content of the CPD report or would like to request any amendments. Please note however that we cannot remove any parts of the allegation against you. CPD can only be used if you admit the allegation in full. If there are any parts of the allegation that you dispute, then the case should not be managed by CPD.

You may suggest amendments to the sanction we have proposed. We will consider these requests and may agree to amend the proposed sanction if we agree that the amendments are appropriate and comply with the principles set out in the Indicative Sanctions Guidance.

You will need to confirm whether you agree to the contents of the CPD report within 28 days of the day it was served on you.

If you agree to the contents of the CPD report, you will be asked to return a signed copy of the report to us.

**Communicating with the GOC’s informant.**

If the allegation against the registrant has arisen because a concern was raised with the GOC by an informant (for example, a patient) that person is entitled to be informed that we are managing the case by CPD. Once the registrant has agreed the contents of the CPD report, a copy of this will be send to the informant and they will be given an opportunity to make comments to the FTPC in writing.

**Informants: Responding to the CPD Report**

If you do not agree that the case should be managed by consent, you should set out your reasons for this in your comments. When we receive your comments, we will review whether the case should continue to be managed by CPD. We will inform you of our decision.

You must submit your comments within 14 days of the report being sent to you.
Serving the case

Once the informant’s comments have been received, we will send the registrant all of the case papers, including:

1. Signed CPD Report
2. Documents the Council intends to put before the FTPC
3. Comments from the informant

This is known as “Service of evidence”. In response, the registrant will serve any evidence they wish to be put before the FTPC on the Council.

Registrants: serving evidence

You are entitled to a period of four months to respond to the Council’s service of evidence. You will be asked if you will waive this right and respond within a shorter timeframe. This is on the basis that through the CPD process you will already have made admissions and agreed a proposed sanction. You do not have to agree to a shorter timeframe, however. This is something you should consider discussing with your legal adviser.

The Hearing

The GOC’s Hearings Manager will schedule a hearing for the case. Most FTPC hearings, including CPD hearings are held in public. An exception is made only if the hearing covers personal matters that the FTPC agrees should be heard privately. In these circumstances the FTPC may decide that all of the hearing should be heard in private, or just the part of the hearing that relates to the personal matters. Matters relating to a registrant’s health are always heard in private.

Registrants: Attending a hearing

You are entitled to attend your CPD hearing. You will not be expected to make oral submissions at the hearing, although you can do so if you wish to. Neither the Council nor the registrant will call witnesses at a CPD hearing, and the case will be considered on the documents alone.

The FTPC will first consider whether the facts of the allegation against the registrant are found proved. As the signed CPD report will contain the registrant’s admission of the facts, the FTPC must declare the facts found proved.

The FTPC will then go on to consider whether the grounds of impairment set out in the allegation are established. Again, the signed CPD report will contain the registrant’s admission that the grounds are established. The FTPC must carefully consider the case however, and reach its own conclusion about this.

If the FTPC decides that the grounds of impairment are established, it will go on to consider whether the registrant’s fitness to practise is impaired. It will take the registrant’s admissions in the signed CPD report into account, but again must reach its own conclusion about impairment.
If the FTPC finds that the registrant’s fitness to practise is impaired, then finally it will go on to consider the proposed sanction. Having regard to the Indicative Sanctions Guidance, it will consider whether the sanction recommended is appropriate to the level of impairment it has found.

If the FTPC agrees with the recommended sanction, it will make an order setting out the reasons for its findings in relation to each of: the facts; grounds of impairment; impairment and sanction. It will prepare a written determination giving full reasons for their findings at each stage.

**What happens when the FTPC does not agree with the CPD report?**

If the FTPC does not agree that the grounds of impairment are established, or that the registrant’s fitness to practise is impaired, or if it is minded to direct a sanction that is different to the sanction proposed, it will it will discontinue the hearing.

In the event of a discontinued hearing, we will consider with the registrant whether to amend the recommendations of the report in light of the panel’s findings and resubmit this to the panel at a reconvened hearing.

Alternatively, we may decide not to continue to manage the case by CPD. In these circumstances, the case will be heard at a full hearing before a fresh panel of the FTPC. Before a new hearing is arranged, we will re-serve the case on the registrant and from the point of service, the case will proceed by the usual process for full hearings. Neither the CPD report, nor the reasons for the discontinuance of the CPD hearing will be disclosed to the fresh panel. At the hearing, the panel may be informed that the registrant previously signed an agreed statement of facts. The panel will not be informed that the registrant indicated that they accepted their fitness to practise is impaired. It is open to the registrant to tell the panel this if they wish.

Knowledge of the previous CPD agreement between the registrant and the GOC will not normally be grounds for the fresh panel to recuse itself from considering the case as the panel cannot consider any irrelevant considerations in its role as a professional panel.

**Registrants: changing your mind about CPD**

If you have agreed to CPD but change your mind about this, please notify us as quickly as possible. You can choose for your case to be disposed of at a full hearing instead.

As mentioned above, we would encourage you to think carefully about whether to agree to CPD, and to take legal advice before making your decision. If you change your mind at a late stage of the CPD process, this will cause significant delays to your case. This is because the case papers will need to be re-served and the hearing rescheduled.

**Further Questions**
If you have any questions about CPD which are not answered in this guidance, please contact the investigations officer for your case in the first instance, or email ftp@optical.org.