

## Agreed Panel Disposal Policy



Status of document:	Live
Version:	1.1
Approved by:	Gareth Hadley (Chair) and Vicky McDermott (Chief Executive)
Date of approval:	2 February 2018 (v. 1.0)
Effective from:	22 August 2019 (v.1.1)
Owner:	Louise Hall – Investigations Manager
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Relevant legislation:	Opticians Act 1989 (as amended) Fitness to Practise Rules 2013
Linked policies:	
Impact Assessment:	Completed
Impact Assessment completion:	22 August 2019
Impact Assessment review:	1 December 2019
<b>Next policy review date:</b>	<b>August 2021</b>
Location - Website:	<a href="https://www.optical.org/en/Investigating_complaints/fitnessto-practise-guidance/index.cfm">https://www.optical.org/en/Investigating_complaints/fitnessto-practise-guidance/index.cfm</a>

# Agreed Panel Disposal Policy

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### 1. Statement

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- 1.1 As the UK regulator for the Optical sector, we are committed to protecting the public, maintaining high ethical standards and taking all concerns raised with us seriously. We are committed to taking a proportionate and fair approach when investigating and acting on concerns about the fitness to practise of those who we regulate.
- 1.2 Agreed panel disposal (formerly known as Consensual Panel Disposal) is a hearing management tool that will be used by the General Optical Council (“GOC”) to identify and process hearings which may be suitable for concluding without a contested hearing. In such cases, the GOC and the registrant will seek to agree joint submissions to the hearing panel on facts, ground(s) of impairment, current impairment and the appropriate outcome or disposal. This agreement will be set out in an Agreed Panel Disposal Report, which will be presented to the hearing committee.
- 1.3 The Opticians Act 1989 sets out, at section 1(2A), that the over-arching objective of the GOC in exercising its functions is the protection of the public. We will not agree joint submissions unless we are satisfied that to do so will not adversely affect public protection or the wider public interest.
- 1.4 Agreed panel disposal could have a number of benefits:
  - a. It may make it easier for registrants to participate in the process;
  - b. The GOC can adapt its process to individual case circumstances;
  - c. It may avoid the need for witnesses to attend hearings;
  - d. The GOC can more accurately estimate hearing length; and

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- e. It may result in shorter hearings, alleviating some of the burden on registrants, committee members and parties' representatives .

### 2. Purpose

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- 2.1 The purpose of the agreed panel disposal policy is to continue to meet our overarching objective of protection of the public in a way that makes it easier for registrants to engage in the process, and supports those who raise concerns.

### 3. Scope

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- 3.1 The policy will apply to registrants who are the subject of a fitness to practise investigation which has been referred to the Fitness to Practise Committee ("FTPC").

### 4. Role within the fitness to practise investigation process

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- 4.1 As set out in the GOC's legislation, it is for the FTPC to make findings of facts, ground(s) of impairment, current impairment and sanction. The Committee will continue to discharge this function in hearings managed under this policy, and will not be bound by the parties' agreement.
- 4.2 After a case has been referred to the FTPC, we will assess whether the case is **eligible** to be considered for agreed panel disposal, per the criteria in Section 5 below. We will then consider whether an eligible case is **suitable** for agreed panel disposal, taking account of the factors in Section 6 below.
- 4.3 Following FTPC referral, it will be open to the registrant to suggest to the investigating case officer that the matter is suitable for agreed panel disposal. This can be done at any stage before the hearing date.
- 4.4 Agreed panel disposal cases must still be fully investigated, and all relevant investigation documents will be made available to the FTPC.

### 5. Eligibility Criteria

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- 5.1 The following cases are eligible for agreed panel disposal:-
  - a. The case has been referred to the FTPC after:
    - (i) the allegation has been considered by the case examiners or
    - (ii) the allegation concerns a criminal conviction resulting in a custodial sentence and the Registrar has made a direct referral or
    - (iii) the allegation has been considered by the IC, AND
  - b. The registrant has admitted the facts of the allegation, admitted misconduct (and/or other categories set out in section 13D of the Opticians Act), admitted that their fitness to practise is currently impaired.

### 6. Suitability Factors

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- 6.1 The overriding consideration will be protection of the public and public interest.

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- 6.2 Suitability will be determined by all the factors of the case, including but not limited to:
- a. **The nature of the allegation.** Occasionally it will be in the public interest for the FTPC to hear directly from the witnesses, usually in cases of serious allegations.
  - b. **The registrant's insight and remediation.** It is more likely that this policy will successfully protect the public where the registrant has demonstrated insight and remediation. In some cases, it will be relevant to consider whether the registrant has made a self-declaration, the extent to which he or she has engaged with the GOC's investigation, and the stage at which he or she admitted the facts, misconduct (or other ground) and impairment. We will also consider whether the registrant has taken any remedial action to address the concerns raised.
  - c. **The registrant's own interests.** If the GOC considers that this policy would not be in the registrant's best interests, for example because they would not be able to represent themselves effectively, this process may raise a risk of unfairness to the registrant and will not be appropriate. For example, we will consider whether the registrant is supported by professional or legal representation or has access to independent legal advice. We will also consider whether the registrant has demonstrated an understanding of the agreed panel disposal process and the implications and risks of agreeing to agreed panel disposal.
  - d. **The registrant's circumstances.** The registrant's wider circumstances may affect the appropriateness of this policy. For example, if a registrant has ceased or restricted their practice, there is less likely to be a public interest in witnesses attending before the FTPC.

## 7. Procedure for agreed panel disposal

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- 7.1 The case officer will prepare an agreed panel disposal assessment (Annex 1).
- 7.2 The GOC's lawyer will review the assessment and prepare advice for the Director of Casework and Resolutions.
- 7.3 The Director will, on behalf of the Registrar, decide whether to agree the assessment. If the assessment is not agreed, the case will proceed under the usual process.
- 7.4 If the Director agrees the case is suitable for agreed panel disposal, the case officer will notify the registrant or his or her representative and invite submissions.
  - 7.4.2 Communications between the registrant and the GOC about agreed panel disposal will take place on a 'without prejudice' basis. This means that the discussions will not be binding on either party and the content of these discussions will not be placed before the FTPC. Registrants will be made aware however that if they disclose any new information to us

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which constitutes an allegation of impaired fitness to practise, that disclosure will not be without prejudice.

- 7.4.3 Discussions between the registrant and the GOC about agreed panel disposal will relate to procedural matters and the contents of this policy. We will not discuss the merits of managing his or her individual case by agreed panel disposal, and we will not advise or make recommendations to the registrant.
- 7.4.4 We will not enter into a plea-bargaining process with the registrant as part of the discussions about agreed panel disposal. This means that agreed panel disposal is not a mechanism by which the registrant can ask for certain allegations to be discontinued in return for agreeing to admit to others. If the registrant does not admit all of the allegations against him or her, the case will not be eligible for agreed panel disposal.
- 7.5 The Investigations Manager will then consider whether the registrant's communications mean that this matter is no longer suitable for agreed panel disposal, for example if the registrant does not seem to fully understand the implications for his case. If so, the case officer will inform the registrant that the case will follow the usual process and give reasons for this.
- 7.6 If the case continues with agreed panel disposal, the case officer will prepare a agreed panel disposal report (Annex 2). The report will include a recommended disposal. The full range of the FTPC's options may be recommended, from no sanction to erasure from the register.
- 7.7 The case officer's report will be reviewed by the GOC's lawyer and a disposal option recommended by reference to the GOC Indicative Sanctions Guidance and case law.
- 7.8 The case officer will send the report to the registrant and seek confirmation that he or she admits the facts, the alleged grounds of impairment, current impairment and recommended sanction as set out in the report.
- 7.9 The GOC will, where possible, provide the maker of the allegation with an opportunity to comment on the decision to manage the case by way of agreed panel disposal and provide them with the agreed recommendation on disposal. The maker of the allegation will not receive a copy of the agreed panel disposal report. The Investigations Manager will carefully reconsider the factors set out in paragraph 6 in light of any response received from the maker of the allegation, to determine whether agreed panel disposal remains appropriate in the circumstances of the case.
- 7.10 If the case is still considered suitable for agreed panel disposal, it will proceed to an FTPC hearing. Otherwise, the registrant will be informed with reasons that the GOC no longer considers the process to be suitable for this case.

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### **8. Fitness to Practise Committee hearing (Agreed Panel Disposal)**

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- 8.1 The agreed panel disposal hearing will take place before the FTPC.
- 8.2 The FTPC will be provided with the following documents (where relevant):
- a. Agreed panel disposal report;
  - b. Bundle of agreed evidence including witness statements;
  - c. The registrant's representations (which may be included in the agreed panel disposal report);
  - d. Comments from the maker of the allegation (if any).
- 8.3 Witnesses will not be called to attend the hearing. It is open to the registrant to attend and be represented. The GOC and registrant/ representative will be available to answer panel questions but neither party will make any further submissions when the panel are considering facts, misconduct, impairment or sanction. The panel will consider facts, grounds of impairment, current impairment and sanction in accordance with the procedural requirements of rule 46 the Fitness to Practise Rules 2013. In doing so they will take the report, the comments from the maker of the allegation (if applicable), and the agreed panel disposal policy into account but will not be bound by the recommendations. In relation to each stage, the panel may:
- a. Agree with the findings in the report;
  - b. Disagree with the findings in the report; or
  - c. Require further information in order to reach their decision.
- 8.4 If the panel's findings are in accordance with those in the agreed panel disposal report at each stage, it will make an order setting out the reasons for its findings. If the panel wish to vary the sanction they will invite submissions from both parties, either in person or (if the registrant is not present at the hearing) by phone or in writing. If both parties agree the variation the case will be concluded on that basis. Otherwise, the case will go to a further hearing where both parties may make new submissions.
- 8.5 The panel will write up their determination giving full reasons for their findings. This process will be the same as the process for contested hearings.
- 8.6 If the panel do not agree with the agreed panel disposal report, the GOC and the registrant may agree to amend the report in light of the panel's findings and resubmit this to the panel at a reconvened hearing. Alternatively, the case will proceed under the usual hearings process.
- 8.7 If either party decides that they no longer want the case to proceed by agreed panel disposal, the current hearing must be immediately concluded by the Committee with no orders made (unless there is a request for procedural directions from both parties). A further hearing will be scheduled by the GOC's Hearings Manager to take place before a fresh panel of the FTPC.

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### **9. Compliance**

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- 9.1 If you are concerned that the policy is not being adhered to, please contact the case officer who is managing your case in the first instance stating that you have a concern about how the policy is being applied. Your concern will be addressed via our corporate complaints policy which can be found here: [https://www.optical.org/en/Investigating\\_complaints/index.cfm](https://www.optical.org/en/Investigating_complaints/index.cfm)
- 9.2 If it is found that the policy is not being adhered to, action will be taken to ensure that the policy is followed.

### **10. Appeal**

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- 10.1 The FTPC's decisions are reviewed by the Professional Standards Authority, which oversees our work. They can ask the High Court to review a decision if they decide that it is insufficient to protect the public.
- 10.2 The Registrant can appeal the FTPC decision to the High Court.

### **11. Transparency**

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- 11.1 The publication of information for cases managed under this policy is the same as for all fitness to practise cases, this is set out at Section 4 of the GOC's disclosure policy in the Information Governance Handbook at [https://www.optical.org/en/about\\_us/data-and-information/index.cfm](https://www.optical.org/en/about_us/data-and-information/index.cfm)