Fitness to Practise Complaints Strategy:
Policy for consensual disposal of cases

A draft for consultation

9 August 2017
Introduction

This document seeks the views of stakeholders on our proposed change of policy to introduce a process for the consensual disposal of fitness to practise cases. We welcome all responses to the consultation and we will consider the proposed change of policy in light of the responses we receive.

This consultation will be of particular interest to registrants, professional bodies and patient representative groups. We have included a number of questions that we would like those responding to the consultation to answer.

The consultation will run for six weeks from 9 August 2017 to 20 September 2017 and applies to the whole of the UK.

About the General Optical Council

We are the regulator for the optical professions in the UK. Our purpose is to protect the public by promoting high standards of education, performance and conduct amongst opticians. We currently register around 29,000 optometrists, dispensing opticians, student opticians and optical businesses.

Our Mission
In line with our statutory function, our mission is to protect and promote the health and safety of members of the public.

Our Values
We are responsible, forward thinking and principled:

Responsible
We inspire confidence because:
• We make clear, well-reasoned, evidence based decisions
• We account for our actions and are open to scrutiny
• We apply our resources in a targeted and proportionate manner

Forward thinking
We make a difference because:
• We pursue defined goals and measure our results
• We are progressive, innovative and agile in our ways of working
• We achieve and deliver more by working collaboratively
• We are a learning organisation committed to continuous improvement
Principled
We build trust because:
• We gain respect through our credibility, integrity and high standards
• We listen openly, act responsively and communicate honestly
• We behave consistently and fairly to everyone
• We foster a positive and productive culture

How we will use your feedback

We will use the information and feedback that we gather from this consultation to further develop our policy for the consensual disposal of fitness to practise cases. We will publish a report to summarise the findings of this consultation and explain how we have used the feedback. We reserve the right to not publish responses which contravene our Acceptable Behaviour policy.

If you have any queries about the consultation then please contact Hannah Doherty at: ftp@optical.org.

How to respond

We welcome all responses to this consultation in any format, although we prefer written responses where possible. Please contact us to request a copy of this document in an alternative format via: ftp@optical.org or 020 7307 3927.


Responses should be sent via:
  Email: ftp@optical.org
  Post: General Optical Council
        Fitness to Practise
        10 Old Bailey
        London
        EC4M 7NG

How we process your personal information

Please include your contact details so that we can follow up any relevant aspect of your response. We will not publish nor share with any third parties any personal information that you provide. We will not publish your name, your position or any other personal information you provide unless you specifically request this, nor will we attribute your responses to your organisation, unless you agree.

Our commitment to consultation

Our Consultation Framework outlines our approach to consultation. Feedback on the consultation process itself would also be welcome, please contact ftp@optical.org.
Policy for Consensual Disposal of Fitness to Practise Cases

1. Introduction

1.1. Consensual disposal is a case management tool that will be used by the General Optical Council (“GOC”) to identify and process cases which may be suitable for concluding without a contested hearing. The Opticians Act 1989 sets out, at section 1(2A), that the over-arching objective of the GOC in exercising their functions is the protection of the public. We will not seek to dispose of a case by consent unless we are satisfied that to do so will not adversely affect public protection or be detrimental to the wider public interest.

1.2. Consensual disposal as a way to manage cases has a number of benefits:
   a. It encourages registrants to participate in the fitness to practise process;
   b. It gives the GOC the flexibility to adapt its process to individual case circumstances;
   c. It enables the GOC to respond proportionately in cases where the registrant demonstrates insight;
   d. It avoids the need for witnesses to attend hearings and face cross-examination;
   e. It enables the GOC to more accurately estimate the likely length of hearings and so reduces the number of wasted hearing days; and
   f. It results in shorter hearings, making hearing panel members available for other contested hearings and interim order hearings.

2. How consensual disposal fits in to the current fitness to practise investigation process

2.1. The GOC’s legislation clearly sets out who has authority to make decisions about fitness to practise cases. Cases that have been referred to the Fitness to Practise Committee for consideration must be considered by a panel of that committee. Where a case is managed by way of consensual disposal, the decision as to facts, whether the alleged grounds of impairment are established, impairment and sanction still rests with the Fitness to Practise Committee.

2.2. Consensual disposal will only be considered in cases where a referral has been made to the Fitness to Practise Committee, either by the case examiners, the Investigation Committee, or directly by the Registrar.

2.3. In cases where a consensual disposal agreement has been reached between the parties, a public hearing before the Fitness to Practise Committee will still be the method by which the case is determined. The difference for cases dealt with by consensual disposal is that the hearing will not be a contested one.
2.4. Consensual disposal cases must still be fully investigated, and all relevant investigation documents will be made available to the Fitness to Practise Committee.

3. **Criteria for considering consensual disposal**

3.1. Not all cases are suitable for disposal by consensual disposal.

3.2. We will only consider this option if one of the following circumstances applies:
   a. The allegation has been considered by the case examiners and referred to the Fitness to Practise Committee OR
   b. The allegation concerns a criminal conviction resulting in a custodial sentence and the Registrar has made a direct referral to the Fitness to Practise Committee OR
   c. The allegation has been considered by the Investigation Committee and referred to the Fitness to Practise Committee.

3.3. In addition, consensual disposal will only be considered if the registrant has indicated that they admit the facts of the allegation, that the admitted facts amount to misconduct (and/or one of the other categories set out in section 13D of the Opticians Act) and that their fitness to practise is currently impaired.

3.4. The overriding considerations that determine whether a case is suitable for consensual disposal will be the protection of the public and the public interest. Consensual disposal will only be considered if the GOC is satisfied that the management of the case in this way would adequately protect the public. In addition, if, in the particular circumstances of the case, consensual disposal would not address the wider public interest in there being a contested public hearing, it will not be pursued.

**Consultation question 1** – What are your views on our proposals about when consensual disposal should be considered?

4. **Identifying cases suitable for consensual disposal**

4.1. On receipt of a case examiner, Registrar or Investigation Committee decision, the case officer managing the case will assess whether the case may be suitable for consensual disposal. This assessment will take place in accordance with the GOC’s guidance on consensual disposal and will include consideration of the following factors (please note that this is not an exhaustive list):

   a. What is the level of seriousness of the alleged failures?
   b. Has the registrant engaged with the process to date?
   c. Did the registrant make a self-declaration of the facts alleged?
d. Has the registrant made any admissions as to the facts alleged?
e. Has the registrant made any admissions as to impairment?
f. In their submissions to the GOC, has the registrant indicated an intention to cease practising or restrict their practice?

4.2. The case officer will submit their consensual disposal assessment to a senior lawyer, who will review the assessment and advise on the suitability of the case for consensual disposal, in line with the consensual disposal guidance. The assessment will then be submitted to the Director of Fitness to Practise for a decision, on behalf of the Registrar, as to whether the case is suitable for disposal by consent.

Consultation question 2 – What factors should be taken into account when deciding whether a case is suitable for consensual disposal?

5. Procedure for applying for consensual disposal

5.1. If the case is identified as being suitable for disposal by consent, the case officer will write to the registrant and his or her representative. The registrant will be informed of the consensual disposal process and invited to consider whether he or she would like to manage the case by consensual disposal. The registrant will be provided with a copy of the consensual disposal guidance and will have an opportunity to discuss the process with the case officer. The registrant will then be asked to indicate whether he or she agrees to management of the case by consensual disposal.

5.2. Discussions between the registrant and the GOC about consensual disposal of the case 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 Fitness to Practise Committee.

5.3. If the registrant indicates that he or she agrees to the case being managed by consensual disposal, the case officer will review the case in line with the consensual disposal guidance and update their assessment as to whether the case continues to be suitable for disposal by consent. This assessment will be submitted to an Investigations Manager for review.

5.4. If the discussions with the registrant do not raise any factors which indicate that the case is no longer suitable for consensual disposal, the case officer will prepare a consensual disposal report setting out the following:

a. The alleged facts;
b. The grounds on which the registrant’s fitness to practise is alleged to be impaired;
c. An allegation that the registrant’s fitness to practise is currently impaired with reasons; and

d. A recommendation as to the appropriate sanction with reasons.

5.5. The level of sanction to be recommended will be decided by reference to the consensual disposal guidance. The sanction will be reviewed and approved by a senior lawyer before being sent to the registrant.

5.6. The consensual disposal report will be sent to the registrant. The registrant will be asked to confirm that he or she admits the facts, the alleged grounds of impairment and current impairment as set out in the report. The registrant will also be asked to confirm whether he or she agrees with the suggested sanction.

5.7. Consensual disposal is not a ‘plea bargaining’ process. Cases will not proceed via this disposal mechanism unless the GOC is satisfied that (i) the admissions by the registrant fully cover the alleged misconduct and (ii) the agreed sanction fulfils the requirements of the GOC’s over-arching objective.

5.8. The GOC will not progress the case to a final hearing before the maker of the allegation is provided with an opportunity to comment on the decision to manage the case by way of consensual disposal. Careful consideration will be given to any response received from the maker of the allegation to determine whether consensual disposal remains appropriate or whether the maker of the allegation has raised any concerns which make the case unsuitable for disposal in this way.

5.9. If the case is still considered suitable for disposal by consent, it will proceed to a hearing before the Fitness to Practise Committee.

Consultation question 3 – What are your views as to whether discussions between the registrant and the GOC about consensual disposal should take place on a “without prejudice” basis (see paragraph 5.2)?

6. Determination of the Fitness to Practise Committee

6.1. The hearing will take place in public before a full panel of the Fitness to Practise Committee.

6.2. The panel will be provided with the following documents:

   a. Investigation bundle including witness statements and other evidence obtained by the GOC;

   b. Consensual disposal report;

   c. The registrant’s representations; and
d. Consensual disposal guidance for the Fitness to Practise Committee.

6.2. Witnesses will not be called to attend the hearing. It is open to the registrant to attend and be represented.

6.3. 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 and the registrant’s admissions into account. Their decision is, at each of the four stages, independent of that report. 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.

6.4. If the panel’s findings are in accordance with those in the consensual disposal report at each stage, and if it agrees that the recommended sanction is the appropriate 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.

6.5. The panel will write up their determination giving reasons for their findings. This process will be the same as the process for contested hearings.

6.6. If at any stage the panel’s findings are not in accordance with those in the consensual disposal report, or if it does not consider that the sanction is appropriate, it will adjourn the hearing and consideration of all remaining stages will take place when the hearing is reconvened as a full hearing at a later date. The guidance will set out the process to be followed where a panel does not agree with the recommendations in the consensual disposal report.

6.7. If either party decides at any stage during the hearing that they no longer want the case to proceed by consensual 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 full hearing will be scheduled by the GOC’s Hearings Manager to take place before a fresh panel of the Fitness to Practise Committee. The guidance will set out the process to be followed where either party decides not to proceed with consensual disposal.

Consultation question 4 – To what extent does consensual disposal represent a fair and proportionate way of protecting the public?
Consultation question 5 – What are the likely impacts of consensual disposal for:

a) registrants?
b) the public?
c) the GOC?

Consultation question 6 – Do you have any further comments on our proposed policy for consensual disposal which are not captured in your responses to the questions above?

Summary of consultation questions

Consultation question 1 – What are your views on our proposals about when consensual disposal should be considered?

Consultation question 2 – What factors should be taken into account when deciding whether a case is suitable for consensual disposal?

Consultation question 3 – What are your views as to whether discussions between the registrant and the GOC about consensual disposal should take place on a “without prejudice” basis (see paragraph 5.2)?

Consultation question 4 – To what extent does consensual disposal represent a fair and proportionate way of protecting the public?

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a) registrants?
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Consultation Response

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<tr>
<th>Please respond by:</th>
<th>20 September 2017</th>
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<tbody>
<tr>
<td>Respond for the attention of</td>
<td>Hannah Doherty, Investigations Manager</td>
</tr>
<tr>
<td>Respond via email:</td>
<td><a href="mailto:ftp@optical.org">ftp@optical.org</a></td>
</tr>
</tbody>
</table>
| Or via post:             | General Optical Council  
                          | 10 Old Bailey    
                          | LONDON            
                          | EC4M 7NG          |

About you
Please include your contact details so that we can follow up any relevant aspect of your response. We will not publish nor share with any third parties any personal information that you provide.

It is helpful if we can attribute your organisation to the responses when we publish our findings, please kindly tick below if you agree that we can publish your responses in this manner. We will not publish your name, your position or any other personal information you provide unless you specifically request this.

Your details

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<th>Name:</th>
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Which category of respondent best describes you (please tick all relevant)?

- [ ] Member of the public
- [ ] Optometrist
- [ ] Dispensing optician
- [ ] Student – optometry
- [ ] Student – dispensing
- [ ] Other (please specify below)

If you are replying on behalf of an organisation

<table>
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<th>Name of the organisation:</th>
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<td>Your position:</td>
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<td>Nature of the organisation’s work:</td>
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- [ ] I would like my responses to be attributed to the organisation’s name.

Keeping in touch: We would like to contact you occasionally to let you know when we launch consultations. We will not pass your personal information on to any third party. Please tick here if you wish to be contacted in this way about the GOC’s consultations: [ ]

We reserve the right to not publish responses which contravene our Acceptable Behaviour policy.
Equality, Diversity and Inclusion (EDI) Monitoring Form

More about you
We are committed to treating everyone fairly, regardless of age, disability, gender reassignment, ethnicity, religion or belief, gender, sexual orientation, marriage and civil partnership, pregnancy and maternity. Completing this form is voluntary – it will help us to measure the impact of our processes, practices and culture. You also have the option to skip questions with ‘prefer not to say’. For more information about why we do this and what we hope to achieve, please see our Approach to EDI monitoring statement.¹ Information provided will be treated in the strictest confidence under the Data Protection Act 1998 and will be only used for monitoring purposes, including publication in our annual monitoring report. No information in this section will be used in any way which allows any individuals to be identified.

You can also complete this form online: https://goc.castrum.co.uk/ediform

Name:

GOC Number (if applicable):

Gender
☐ Female  ☐ Male  ☐ Prefer not to say

Age
☐ 16-24  ☐ 25-34  ☐ 35-44  ☐ 45-54  ☐ 55-64  ☐ 65+
☐ Prefer not to say

Sexual orientation
☐ Bisexual  ☐ Heterosexual/Straight  ☐ Gay/Lesbian/Homosexual
☐ Other  ☐ Prefer not to say

Disability
The Equality Act 2010 defines disability as a physical or mental impairment which has a substantial long-term effect on a person’s ability to carry out normal day to day activities.
Do you consider yourself to have a disability?
☐ Yes  ☐ No  ☐ Prefer not to say

Gender Identity

My gender identity is different from the gender I was assigned at birth:
☐ Yes  ☐ No  ☐ Prefer not to say

Pregnancy/Maternity
Are you pregnant, on maternity leave, or returning from maternity leave?
☐ Yes  ☐ No  ☐ Prefer not to say

Ethnicity

| Mixed / multiple ethnic groups | White / Welsh / Scottish / Northern Irish / British
| White and Asian / British | White and Black Caribbean / British | White and Black African / British |
| White and any other mixed / multiple ethnic background – please specify: |

| Asian / Asian British | Indian / Indian British |
| Pakistani / Pakistani British | Bangladeshi / Bangladeshi British |
| Chinese / Chinese British | Any other Asian background – please specify: |

| Other ethnic group | Arab / Arab British |
| Any other ethnic group – please specify: |

| Black / Black British | African / African British |
| Caribbean / Caribbean British | Any other Black background – please specify: |

| ☐ Prefer not to say |

Marital status

| ☐ Civil partnership | ☐ Divorced/legally dissolved |
| ☐ Married | ☐ Partner | ☐ Separated |
| ☐ Single | ☐ Not stated | ☐ Prefer not to say |

Carer Responsibilities
Do you perform the role of a carer?
☐ Yes  ☐ No  ☐ Prefer not to say

Religion/Belief

| ☐ No religion | ☐ Buddhist | ☐ Christian |
| Hindu | ☐ Jewish | ☐ Muslim |
| Sikh |
| Any other religion / faith – please specify ______________________ |

Thank you for submitting a consultation response and confidential monitoring form.