FOR FITNESS TO PRACTISE COMMITTEE

SUPPLEMENTAL GUIDANCE ON CONSENSUAL PANEL DISPOSALS

INTRODUCTION

1. This guidance has been developed by the GOC for use by its Fitness to Practise Committee when undertaking hearings where the registrant and the GOC have agreed which allegations are admitted and a recommended sanction.

2. This guidance is intended to sit alongside the Hearings and Indicative Sanctions Guidance and the Consensual Panel Disposals Policy. This guidance is addressed to the members of the Fitness to Practise Committee. It will be made publicly available on our website and may be useful for others involved personally or professionally in fitness to practise cases.

3. This guidance is not an alternative source of legal advice. In matters being heard under the consensual panel disposals procedure, the Committee will still have a legal adviser present, who will advise the Fitness to Practise Committee on questions of law, including questions about the use of this guidance and the approach it should take to it. Each case is different and should be decided on its own merits.

Consensual Panel Disposal

4. Consensual panel disposal is a case management tool that will be used by the GOC to identify and process cases which may be suitable for concluding without a contested hearing.

5. The Opticians Act 1989 sets out, as section 1(2A), that the overarching objective of the GOC in exercising their functions is the protection of the public. The purpose of consensual panel disposal is to allow the GOC to continue to meet the overarching objective in a way that encourages registrants to engage in the process and supports those who raise concerns.

6. Once a case has been referred to the Fitness to Practise Committee, the GOC will assess whether the case is eligible to be considered for consensual panel disposal. Consensual panel disposal will only be considered by the GOC 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.

The role of the Fitness to Practise Committee at a consensual panel disposal hearing

7. In accordance with Rule 46 of the Fitness to Practise Rules, the final decision must be made by the Fitness to Practise Committee.

8. Any hearing where a consensual panel disposal procedure has been agreed with the registrant will take place before a panel of the Fitness to Practise Committee in a public hearing (unless determined by the Committee that the proceedings, or any part thereof, should be held in private).

9. Where a consensual disposal process has been agreed with the registrant, the panel will be provided with the following documents:
   a. Investigation bundle including witness statements and other evidence obtained by the GOC;
   b. Consensual panel disposal report;
   c. The registrant's written representations;
   d. Comments from the maker of the allegation; and
   e. This guidance.
10. Where a hearing proceeds under the consensual panel disposal procedure, the registrant may still choose to attend and/or be represented. In addition to the written representations referred to at paragraph 9 above, the registrant also has the option to make representations at the hearing if they so choose. As the process is consensual and all facts, the existence of impairment and the proposed sanction have been agreed between the GOC and the registrant, the registrant cannot be cross examined and there will be no witnesses in attendance.

11. While the registrant is permitted to make representations in either written or oral form, this is not intended to provide evidence beyond what has been agreed between the registrant and GOC. The panel may ask questions of the registrant to clarify their representations, but may not ask for evidence beyond the substance of the representations. These questions could, for example take the form of the panel ensuring that they understand the registrant’s statement of facts, position or evidence of insight, but the panel must not ask them for further information to establish any other facts or to expand on the agreed position. The legal advisor will be present to advise the panel on what may and may not be asked.

12. If the panel considers that it cannot make their decision on the case without asking for further evidence from the registrant, cross-examination by the Presenting Officer or witness evidence, the hearing must be discontinued and the case rescheduled for a full hearing before a fresh panel of the Fitness to Practise Committee; see paragraph 24 below.

The decision of the Fitness to Practise Committee

13. The panel must come to its own decision independent of the views of the GOC and the registrant, and must come to its own, reasoned decision as it would in any other case. A proposal for consensual disposal is designed to assist the panel’s determinations, but is not a substitute for the panel’s own considerations.

14. The panel must still approach the decision in four stages as it would usually do, providing distinct decisions on the facts, ground(s) of potential impairment, current impairment and sanction in accordance with the procedural requirements of rule 46 of the Fitness to Practise Rules 2013. In doing so it will take the consensual panel disposal report, the registrant’s admissions, the comments from the maker of the allegation and this guidance into account. The panel will make their determinations on each stage giving full reasons for the findings; these stages will be the same as the process for contested hearings. Given that no further evidence or representations can be presented, the panel may consider it appropriate to give their decision on multiple stages at the same time without adjourning for consideration between each stage.

15. At each stage the panel may:
   a. Agree with the findings in the report;
   b. Disagree with the findings in the report;
   c. Require further information in order to reach their decision.

16. When coming to a decision under the consensual disposal process, as with any other matter, the Panel should consider the Hearings and Indicative Sanctions Guidance, as well as the over-arching objective of the protection of the public; the GOC’s over-arching objective and sub-objectives are set out in Section 1(2A) & (2B) of the Opticians Act 1989. In particular, the Panel should consider the registrant’s insight; more information on the importance of insight is available at paragraph 22.3 of the Hearings and Indicative Sanctions Guidance. In addition, consensual panel disposal should not be a method of a registrant obtaining a more lenient sanction than they would otherwise have done and the Panel should consider the Indicative Sanctions Guidance to determine whether it agrees that the proposed sanction is appropriate; further guidance on sanctions is available from page 34 of the Hearings and Indicative Sanctions Guidance.
17. In particular, a panel must still consider the over-arching objective, and should not agree to a case being resolved by consent unless it is satisfied that:
   a. the decision is sufficient to protect the public; and
   b. Doing so would not be detrimental to the public interest.

18. If the panel's findings are in accordance with those in the consensual panel 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, current impairment and sanction.

19. If at any stage the panel's decisions are not in accordance with those in the consensual panel disposal report, or if it does not consider that the sanction is appropriate, it will discontinue (i.e. adjourn) the hearing. The panel should give reasons for their decision not to accept the proposal for consensual disposal and to adjourn the hearing, however at this point it should not reach findings of fact or a decision on any of the four stages, as a panel must either accept the proposal for consensual disposal either in its entirety or not at all. It is not open to the panel to agree to some aspects of the consensual disposal report but not others. Where the panel chooses not to accept a proposal for consensual panel disposal, the panel should explain in its reasons why it did not accept the proposal.

20. While the panel cannot bind a future panel (should a new panel be involved if the matter resumes) as to what else would be required in a proposal for it to be acceptable, it may wish to indicate where its concerns lie and where the parties may wish to amend their agreement if it were to be accepted by a future panel.

21. At this point, the GOC and the registrant may seek to agree amendments to the consensual disposal report. If such amendments are agreed, the original panel hearing may be reconvened to consider the amended report and proceed on that basis. In this situation, the panel must still come to its own independent decision; if at any point it again does not find in accordance with the consensual panel disposal report, the panel must again discontinue the hearing to see if an amended consensual disposal report can be agreed.

22. The Panel's reasons for adjourning the hearing may provide the GOC and the registrant with a greater understanding of the approach a fresh Panel may take. It will be a matter for the GOC and the registrant whether the adjournment decision influences how the case is presented (or whether certain stages are agreed) at any future hearing.

23. If the GOC and the registrant cannot agree an amended report, or if either party decides that they no longer want the case to proceed by consensual panel disposal, the current hearing must be immediately concluded with no orders made (unless there is a request for a procedural directions from both parties). Where the parties decide that an agreement cannot be reached while the panel is still sitting, the panel may immediately give directions under Rules 32 and 33 . Where the parties decide that an agreement cannot be reached after the hearing has been adjourned, the Committee may convene a short procedural hearing at the next opportunity to give directions. The panel should provide reasons for its decision to conclude the hearing, which may refer to the likelihood of any consensual disposal process reaching an agreement. A new hearing will then be scheduled, in accordance with paragraph 24 below.

Requirements for a new hearing

24. Once a panel hearing has begun, if either party decides that they no longer want the case to proceed by consensual panel disposal, or if the panel has come to findings that are not in accordance with the consensual disposal report and the parties cannot agree an amended report, the current hearing must be concluded and a new hearing scheduled. This new hearing must take place before a fresh panel of the Fitness to Practise Committee, and must be organised in accordance with the Fitness
to Practise Rules. In particular, rules 29 to 34 (standard directions and date of substantive hearing) of the Fitness to Practise Rules will apply.

25. As the previous panel was not able to accept the previous proposal in part, the new panel will have to make findings on each of the four stages. However, it is open to agreement between the parties for certain stages, i.e. the factual allegations, to be uncontested/agreed.

**Hearings after Consensual Panel Disposal hearings have not resolved the matter**

26. The fresh panel must be made up of committee members that have not been involved in this matter before, and particularly did not sit as committee members in any previous Investigation Committee or Fitness to Practise Committee proceedings. As in any other proceedings, panel members must not have any conflicts of interest.

27. The new panel must be entirely independent and come to its own findings. While it may be informed of the history of the matter that has led to a fresh hearing being called, i.e. that a previous attempt at consensual panel disposal was unsuccessful, it must come to its own decisions and reasons.