**Consensual Panel Disposal Policy**

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Consensual Panel Disposal Policy

1. Statement

1.1 As the UK regulator for 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 Consensual panel 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.

1.3 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.

1.1. Utilising consensual panel 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 is a proportionate means of protecting the public 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. Purpose

2.1 The purpose of the consensual panel disposal policy is to allow us to continue to meet our over-arching objective of protection of the public in a way that encourages registrants to engage in the process and supports those who raise concerns.

3. Scope

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. Please see sections 5 and 6 for further details about the eligibility criteria and suitability factors applied to determine if a case is suitable for consensual panel disposal.
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4. How consensual panel disposal fits in to the current fitness to practise investigation process

4.1 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 panel 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.

4.2 Consensual panel 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. Once a case has been referred to the Fitness to Practise Committee, we will assess whether the case is eligible to be considered for consensual panel disposal. The criteria applied in this assessment are set out in section 5 below. If a case is eligible to be considered, we will go on to consider whether the case is suitable for consensual panel disposal. The factors which are taken into account when making the assessment are set out in section 6 below.

4.3 Although the initial consideration of consensual panel disposal takes place after a referral to the Fitness to Practise Committee, the decision to dispose of a case by consent can be made at any stage between the referral of a case and the hearing date.

4.4 It is open to the registrant to ask the GOC to consider disposing of his or her case by consent. If the registrant asks us to consider consensual panel disposal, the eligibility criteria and suitability criteria set out in sections 5 and 6 will be applied in the same way as if the consideration of consensual panel disposal had been initiated by the GOC.

4.5 In cases where a consensual panel 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 panel disposal is that the hearing will not be a contested one.

4.6 Consensual panel disposal cases must still be fully investigated, and all relevant investigation documents will be made available to the Fitness to Practise Committee.

5. Eligibility Criteria

5.1 Not all cases are eligible for disposal by consensual panel disposal.

5.2 A case will only be eligible for consensual panel disposal if:
   a. The allegation has been considered by the case examiners and referred to the Fitness to Practise Committee OR
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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.

5.3 In addition, consensual panel 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.

6. Suitability Factors

6.1 On receipt of a case examiner, Registrar or Investigation Committee decision, the case officer managing the case will carry out an assessment of whether the case is suitable for consensual panel disposal. This assessment will take place in accordance with the GOC’s guidance on consensual panel disposal and will include consideration of a range of factors.

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

6.3 Factors taken into account when determining whether the case should be disposed of by consent include, but are not limited to:

   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. In assessing the level of insight demonstrated by the registrant, we will consider whether the registrant made a self-declaration of the facts alleged, whether he or she has cooperated with the GOC’s investigation by responding to requests for information, and whether he or she has made any admissions as to the facts alleged and as to impairment. We will also consider whether the registrant has taken any remedial action to address the concerns raised. It is more likely that consensual panel disposal will be successful as a means of protecting the public in cases where the registrant has demonstrated insight and remediation.

   c. The registrant’s own interests. In some circumstances a registrant may wish to dispose of a case by consent, but consensual panel disposal would be contrary to their own interests. To determine whether consensual panel disposal is in the registrant’s best interests, we will consider whether the registrant is supported by legal representation or has access to independent legal advice. We will also consider whether the registrant has demonstrated
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an understanding of the consensual panel disposal process and the implications and risks of agreeing to consensual panel disposal. The registrant’s engagement with the investigation process is also relevant. If the information available indicates that a registrant would be unable to represent their own interests in the consensual panel disposal process, then it is likely to be appropriate for the case to proceed to a full hearing to avoid the risk of unfairness to the registrant.

d. The registrant’s circumstances. We will consider whether the registrant has made any submissions to the GOC which indicate an intention to cease practising or restrict their practice in the area that concerns have been raised. If a registrant has informed the GOC that they have ceased practice, for example because they are retiring from the profession, there is less likely to be a public interest in proceeding to a full hearing for that case. Similarly, if a registrant informs us that they have restricted their practice due to the concerns raised about them, the case may be suitable for disposal by consent.

e. The registrant's character. If, for example, an allegation against a registrant relates to dishonest conduct, it is unlikely such a case would be suitable for consensual panel disposal.

6.4 On completion of their consensual panel disposal assessment, the case officer will submit it to a senior lawyer, who will review the assessment and advise on the suitability of the case for consensual panel disposal, in line with the consensual panel 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.

7. Procedure for applying for consensual panel disposal

7.1 If the Director of Fitness to Practise decides that the case is 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 panel disposal process and invited to consider whether he or she would like to manage the case by consensual panel disposal. The registrant will be provided with a copy of the consensual panel 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 panel disposal.

7.2 Communications between the registrant and the GOC about consensual panel disposal 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. Registrants will be made aware however that if they disclose any new information to us which constitutes an allegation of impaired fitness to practise, that disclosure will not be without prejudice. If a new allegation about the registrant’s fitness to practise is disclosed to us during discussions about consensual panel disposal, we will investigate it as a new allegation.
7.3 Discussions between the registrant and the GOC about consensual panel disposal of the case will relate to procedural matters only. We will not enter into a discussion with the registrant about the merits of managing his or her case by consensual panel disposal, and will not advise or make recommendations to the registrant.

7.4 To invoke the process, the registrant must admit all allegations that have been referred to the Fitness to Practise Committee. We will not enter into a plea-bargaining process with the registrant as part of the discussions about consensual panel disposal. The consensual 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, we do not consider it to be in the public interest or in the registrant’s own interests for the case to be disposed of by consent and the case will therefore proceed to a full hearing.

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

7.6 If the discussions with the registrant do not raise any factors which indicate that the case is no longer suitable for consensual panel disposal, the Investigations Manager will confirm that the case can continue to be managed by consensual panel disposal. The case officer will then prepare a consensual panel 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; and

c. An allegation that the registrant’s fitness to practise is currently impaired with reasons;

7.7 The report will also include a recommended sanction. The full range of sanctions available to the Fitness to Practise Committee may be recommended within the consensual panel disposal report, from no sanction to erasure from the register. Before the recommended sanction section is completed, the report will be submitted to a senior lawyer for their review. The senior lawyer will provide advice on the appropriate level of sanction by reference to the consensual panel disposal guidance, GOC Indicative Sanctions Guidance, and case law.

7.8 The case officer will complete the report and this will be reviewed by an Investigations Manager before being sent to the registrant for their representations. As part of their representations, 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 recommended sanction.

7.9 As stated above at section 7.4 consensual panel 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.

7.10 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 panel disposal. When the response from the maker of the allegation has been received, the case will be re-assessed against the factors set out in section 6 above. Careful consideration will be given to these factors in light of the response received from the maker of the allegation to determine whether consensual panel disposal remains appropriate in the circumstances of the case.

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

8. **Determination of the Fitness to Practise Committee**

8.1 The hearing will take place in public before a full panel of the Fitness to Practise Committee (unless determined by the Fitness to Practise Committee that the proceedings, or any part thereof, should be held in private).

8.2 The panel will be provided with the following documents:
   a. Investigation bundle including witness statements and other evidence obtained by the GOC;
   b. Consensual panel disposal report;
   c. The registrant’s representations;
   d. Comments from the maker of the allegation; and
   e. Consensual panel disposal guidance for the Fitness to Practise Committee.

8.3 Witnesses will not be called to attend the hearing. It is open to the registrant to attend and be represented. The registrant will not be required to make submissions at the hearing but can do so at his or her request. The registrant will not be cross examined at the hearing. If the Fitness to Practise Committee consider that they cannot make their decision on the case without cross-examination of the registrant, the hearing must be discontinued and the case rescheduled for a full hearing before a fresh panel of the Fitness to Practise Committee.

8.4 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 registrant’s admissions, the comments from the maker of the allegation, and their consensual panel disposal guidance into account. Their decision is, at each of the four stages, independent of the consensual panel disposal 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.
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8.5 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; impairment and sanction.

8.6 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.

8.7 If at any stage the panel’s findings 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 the hearing. The GOC and the registrant may agree 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, the case will proceed to a full hearing on another date before a fresh panel. The guidance will set out the process to be followed where a panel does not agree with the recommendations in the consensual panel disposal report.

8.8 If either party decides at any stage during the hearing that they no longer want the case to proceed by consensual 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 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 panel disposal.

9. Compliance

9.1 If you are concerned that the policy is not being adhered to, please contact the caseworker 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:


9.2 The management of the case will be reviewed in light of the concerns you have raised. 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

10.1 The decisions taken by the Fitness to Practise Committee are reviewed by the Professional Standards Authority. They are the organisation that 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 If the registrant thinks that the Fitness to Practise Committee’s decision is unfair, they can appeal that decision to the High Court.
11. Transparency

11.1 The publication of information for cases managed under this policy is the same as for all fitness to practise cases. The disclosure of fitness to practise case information is covered within the disclosure policy at section 4. The disclosure policy forms part of the Information Governance Handbook, which can be found here: https://www.optical.org/en/about_us/data-and-information/index.cfm