

Health and Care Professions Tribunal Service

PRACTICE NOTE

Disposal of Cases by Consent

This Practice Note has been issued
for the guidance of Panels and to assist those appearing before them.

Introduction

1. Disposing of cases by consent is an effective case management tool. Attending a fitness to practise hearing can be a stressful event, and therefore in cases that meet the criteria set out in this Practice Note, disposal by consent can provide a fairer method of concluding a case, which reduces the time taken to deal with allegations. However, as the HCPC's overarching statutory objective is the protection of the public¹, a Panel should not agree to a case being resolved by consent unless it is satisfied that:
 - a. the appropriate level of public protection is being secured; and
 - b. doing so would not be detrimental to the wider public interest.

Disposal by consent

2. If the HCPC and the registrant concerned wish to conclude a case without the need for a contested hearing, they may seek to do so by putting before a Panel an order of the kind which they consider the Panel would make if the case had proceeded to a full substantive hearing. The process may also be used where a Panel is due to review an existing conditions of practice order or suspension order, to enable the order to be varied, replaced or revoked without the need for a contested hearing.²
3. Disposal by consent does not affect a Panel's powers or the range of sanctions available. It is merely a process by which the HCPC and the registrant concerned may propose what they regard as an appropriate outcome to the case. If a Panel is content to do so, it may conclude the case on an expedited basis, upon the terms of the draft Consent Order and

¹ Article 3(4), Health Profession Order 2001.

² HCPC policy in respect of the use of disposal by consent is reproduced in Annex A.

supporting skeleton argument³ put before it by the HCPC. Equally, it may reject that proposal and set the case down for a full substantive hearing.⁴

4. Panels must retain the option of rejecting a proposal for disposal by consent. Consequently, before considering a draft Consent Order, a Panel should satisfy itself that the HCPC:
 - a. has provided a clear, appropriately detailed and objectively justified explanation within its supporting skeleton argument of why the matter is suitable for disposal by consent on the terms set out in the draft Consent Order; and
 - b. has made clear to the registrant concerned that co-operation and participation in the consent process will not automatically lead to a Consent Order being approved.
5. If a Panel rejects a proposed consensual disposal, it should direct the HCPC to treat any admissions made by the registrant as part of that process as a “without prejudice” settlement offer.
6. Doing so will mean that, when a substantive hearing takes place before a different Panel, it will not be made aware of those admissions or the attempt to resolve the matter by consent unless the registrant chooses to bring those matters to the Panel’s attention.
7. The HCPC’s governing legislation⁵ prevents a registrant from resigning from the HCPC register whilst the subject of an allegation or a conditions of practice order or suspension order.
8. In cases where the HCPC is satisfied that it would be adequately protecting the public if the registrant was permitted to resign from the Register, it may enter into a Voluntary Removal Agreement allowing the registrant to do so, but on similar terms to those which would apply if the registrant had been struck off.
9. In cases where an allegation is already before a Panel or a conditions of practice or suspension order is in place, such an agreement cannot take effect unless those proceedings are withdrawn or a Panel revokes the order. In such cases the HCPC will give formal notice of withdrawal to the Panel and, if necessary, ask it to revoke any existing order.
10. As with consensual disposal, a Panel should only agree to revoke an existing order where it is satisfied that voluntary removal would secure an appropriate level of public protection and would not be detrimental to the wider public interest.

³ the HCPC is expected to present a draft Consent Order and supporting skeleton argument to the Panel in advance of any consent application hearing. In particular, the skeleton argument must address the appropriateness of concluding the allegations without a full hearing, having regard to the extent to which they engage the ‘public components’ of impairment identified in *Cohen v GMC* [2008] EWHC 581 (Admin) (more fully considered in the Practice Note on finding that fitness to practise is ‘impaired’).

⁴ the decision of the Panel is published in accordance with the Fitness to Practise Publication Policy

⁵ Article 11(3) of the Order and Rule 12(3) of the Health and Care Professions Council (Registration and Fees) Rules 2003

11. Templates for Consent Orders and Withdrawal Notices are set out in Annex B and Annex C respectively.

Annex A

HCPC Policy on Consensual Disposal

1. The Health and Care Professions Council (HCPC) will consider resolving a case by consent:
 - a. after an Investigating Committee Panel has found that there is a 'case to answer', so that a proper assessment has been made of the nature, extent and viability of the allegation;
 - b. where the registrant is willing to admit both the substance of the allegation and that his or her fitness to practise is impaired. A registrant should not be prevented from resolving a case by consent simply because he or she disputes a minor aspect of the allegation. However, a registrant's insight into, and willingness to address, failings are key elements in the fitness to practise process and it would be inappropriate to dispose of a case by consent where the registrant denied those failings; and
 - c. where any remedial action proposed by the registrant and to be embodied in the Consent Order is consistent with the expected outcome if the case was to proceed to a contested hearing.
2. As the Panel which considers any proposal for consensual disposal must retain the option of rejecting the proposal, the HCPC should make it clear to registrants that co-operation and participation in the consent process will not automatically lead to a Consent Order being approved.
3. Equally, as a registrant is required to admit the substance of the allegation in order for the process to proceed, if a proposal is rejected by the Panel, that admission will be treated as a "without prejudice" settlement offer. A full hearing will take place before a different Panel which will not be made aware of the proposal unless the registrant chooses to bring it to the Panel's attention.

Annex B

**Health and Care Professions Tribunal Service
[Conduct and Competence] [Health] Panel**

CONSENT ORDER

TAKE NOTICE that, in respect of the [allegation made] [review of the order made by the Tribunal] on [date] against [name] (the **Registrant**):

1. the Registrant consents to the Panel [making][revoking][varying] [a][the] [type] Order against [him][her] in respect of that matter on the terms set out below; and
2. the Council consents to the making of an Order on those terms, being satisfied that doing so would in all the circumstances be appropriate for the following reasons:

[for example:

- (a) the Registrant has admitted the allegation in full and did so at an early stage in the fitness to practise process;*
- (b) the Registrant has demonstrated insight by recognising the serious nature of the allegation;*
- (c) given the low risk of repetition, the public will be adequately protected by such an Order which is proportionate in the circumstances.]*

AND FURTHER TAKE NOTICE that the Panel, with the consent of the parties and, upon due inquiry being satisfied that it is appropriate to do so, now makes the following Order:

[for example:

That the Registrar is directed to annotate the register entry of [name of registrant] to show that, with effect from [date of hearing], [set out Order]

Signed: _____ Panel Chair

Date: _____

Annex C

Health and Care Professions Tribunal Service [Conduct and Competence] [Health] Panel

NOTICE OF WITHDRAWAL

TAKE NOTICE that:

On [date] an Investigating Panel referred the [following] [annexed] allegation (the **Allegation**) against [name] (the **Registrant**) for hearing by a Panel of the [Conduct and Competence][Health] Panel:

[set out allegation or, if lengthy, include as an Annex]

On [date] the HCPC and the Registrant entered into a Voluntary Removal Agreement, under the terms of which:

1. the HCPC agreed to withdraw all proceedings in relation to the Allegation; and
2. the Registrant, in consideration of that withdrawal, agreed:
 - a. to resign from the HCPC register;
 - b. to cease to practise as a [profession] or use any title associated with that profession; and
 - c. that, if the Registrant at any time seeks to be readmitted to the HCPC Register, in considering any such application the HCPC shall act as if the Registrant had been struck off of the register as a result of the Allegation.

AND FURTHER TAKE NOTICE that the Panel, being satisfied upon due inquiry that it is appropriate to do so, consents to the HCPC withdrawing those proceedings.

Signed: _____ Panel Chair

Date: _____