
PRACTICE NOTE

Disposal of Cases by Consent

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

Introduction

The use of procedures for disposing of cases by consent is an effective case management tool which reduces the number of contested hearings which need to be held. However, the Health Professions Order 2001 imposes broad public protection obligations on HPC which mean that neither the HPC nor a Panel can simply agree to resolve a case by consent without having regard to those wider statutory obligations.

In considering proposals for disposal of a case by consent both the HPC and the Panel must be satisfied that:

- the appropriate level of public protection is being secured in the case before it; and
- there is no detriment to the wider public interest, for example, by undermining the deterrent effect which might arise from pursuing the case.

Disposal by consent

The consent process is a means by which the HPC and the registrant concerned can seek to conclude a case without the need for a contested hearing, by negotiating and then putting before a Panel an order of the kind which the Panel would have been likely to make in any event.

The HPC will only consider resolving a case by consent:

- 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;
- where the registrant is willing to admit the allegation in full. A registrant’s insight into, and willingness to address, failings are key elements in the FTP process and it would be inappropriate to dispose of a case by consent where the registrant denied liability; and
- where the 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.

Procedure

Disposal by consent does not affect the range of sanctions available to a Panel, it is merely a process by which the registrant and the HPC can propose an appropriate outcome to the case and ask the Panel, assuming that it is content with that outcome, to conclude the case on that basis.

The task for the Panel is to determine whether, on the basis of the evidence before it, to:

- deal with the case in an expedited manner by approving the proposal set out in the draft Consent Order put before it; or
- reject that proposal and set the case down for a full contested hearing.

As the Panel must retain the option of rejecting a proposal for disposing of a case by consent, the HPC has an obligation to make it clear to registrants that co-operation with the process will not automatically lead to a Consent Order being approved.

Equally, as the registrant is required to admit liability in order for the process to proceed, in the event that the proposal is rejected by the Panel, that admission will be treated in the same way as a “without prejudice” settlement offer and the full hearing will take place before an entirely different Panel which will not be made aware of the proposal unless the registrant chooses to bring it to their attention.

A template Consent Order is set out in the annex to this Practice Note.

April 2009

Health Professions Council

[PRACTICE] COMMITTEE

CONSENT ORDER

TAKE NOTICE that, in respect of the [allegation made] [review of the order made by the Committee] on [date] against [name]:

1. [name of registrant] consents to the Committee [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:

[set out reasons]

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:

[set out Order]

Signed: _____ Panel Chair

Date: _____

Signed: _____ Signed: _____

Date: _____ Date: _____

Note: the parties may consent to the Order by all signing one copy of this form or each signing separate copies.