

Disposal by consent – guidance for registrants and representatives

Fitness to practise fact sheet

This guidance sets out the consent process and relevant criteria. It should be read in conjunction with the HCPTS Practice Note: Disposal of Cases by Consent.

What is the consent process?

Disposal by consent is a process by which the registrant and the Health and Care Professions Council (HCPC) can seek to conclude a case without the need for a contested hearing. Cases can be disposed of by consent before a final hearing has been held or following a final hearing where a suspension or conditions of practice order is in place.

There are two different types of consent order:

1. Voluntary Removal Agreement (VRA)

A VRA allows the registrant to remove themselves from the HCPC Register, either before the final hearing has taken place, or after a final hearing has concluded and where there is a substantive order in place. A VRA will have the same effect as a striking off order. It requires approval by a panel of the relevant committee (either the Conduct and Competence Committee or Health Committee).

2. Consent to a sanction (Caution, Conditions of Practice or Suspension)

This requires the HCPC and registrant to agree to a proposed outcome (sanction), which is of the kind that a panel would make if the case had proceeded to a full substantive hearing. It also requires approval by a panel of the relevant committee.

What types of cases may be suitable for disposal by consent?

When considering a request from a registrant, the HCPC must balance the interests of the registrant with the protection of the public and wider public interest. In suitable cases, the HCPC and registrant can agree to conclude a case by way of consent, and the HCPC will proceed to make a consent application to a panel of the relevant committee.

In considering requests to dispose of a case by consent, we will review the case and the request to check that the following criteria are met:

1. a case to answer decision has been made by the Investigating Committee;
2. the registrant is willing to admit both the substance of the allegations and that their fitness to practise is impaired;
3. the registrant has shown insight into the key elements of the allegations and a willingness to address them;
4. any remedial action proposed by the registrant, which will form part of the consent order, is consistent with the expected outcome if the case was to proceed to a contested hearing;
5. the appropriate level of public protection is being secured in the case; and
6. there is no detriment to the wider public interest if the case did not proceed to a full contested hearing

Our policy on Disposal by Consent is attached to the Practice Note on Disposal of cases by Consent. It explains our approach in more detail.

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Applying the criteria

Our decision to agree to dispose of a case by way of consent will always follow a detailed review of the particular circumstances of each case. However, the following factors will be taken into account:

- the type of allegations - consent is likely to be appropriate in certain cases where the registrant admits their fitness to practise is impaired by reason of their health and/or a lack of competence;
- the seriousness of the allegations – consent may be appropriate in cases relating to less serious conduct issues, which could be remedied and do not indicate a risk to the public;
- the registrant's current circumstances and future plans – for example, their current employment circumstances and whether they want to continue practising in their profession. It may be the case that the registrant's competence can be monitored and/or their employer has already imposed conditions or restrictions on their practice and there are supervision arrangements in place to monitor adherence to the conditions/restrictions;
- the registrant's level of understanding of the terms of any consent order and the process as a whole.

We will not generally 'negotiate' the terms of any consent agreements. However, in the case of conditions of practice, some discussion will be required to ensure that any proposed conditions are appropriate.

If a request is received from a registrant for disposal by way of a sanction (Caution, Conditions of Practice or Suspension) we will make reference to our **Indicative Sanctions Policy** when considering any such request. Any proposed sanction to be offered in a consent arrangement will be consistent with the guidance and principles set out in this policy.

In cases where a final hearing has been held and a sanction is already in place, consensual disposal can still be considered. The criteria and factors above apply in these cases.

How can I ask for my case to be disposed of by consent?

In the first instance, registrants should contact their case manager to obtain further guidance about the consent process and to discuss the particular circumstances of their case. Registrants should then complete the 'Response Proforma: Consensual Disposal' form. This form will be reviewed by the HCPC together with the criteria described above to decide whether an application will be made to a panel of the relevant committee.

A panel will meet in public to consider applications and will be guided by the HCPTS Practice Note: **Disposal of Cases by Consent**.

A panel may not agree to the application and so, whilst an agreement may be in place between a registrant and the HCPC, no guarantees can be made that the panel will grant the proposed order.

If a panel decides not to grant the order, the matter will continue to be considered at a final substantive hearing.

In the event that consensual disposal is not agreed by a panel, all documents and communications relating to the issue will be deemed 'Without Prejudice' and not disclosed to a future hearing panel.