
Council, 2 December 2015

Review of Practice Notes

Introduction

Practice Notes exist to provide clear guidance to all parties with an interest or involvement in a Fitness to Practise investigation or Hearing. As our processes change, or there are case law or learning issues, it is necessary to review these documents.

Process of review

There are currently 33 Practice Notes. These documents are available on HCPC's website, and are actively referred to during the investigation and hearing processes.

We aim to review each Practice Note on an annual basis. The review has three stages: firstly, HCPC review any relevant case outcomes, complaints or learning points from bodies such as the Professional Standards Authority. Any changes to content or wording are then added. The second stage is for a review by HCPC's Special Counsel, to ascertain if any legislative changes are required. The third and final stage is to review the readability of the document prior to consideration at Council.

In most cases, there are little or no changes, or there is the requirement to edit the document to make it easier to understand or use.

The Practice Notes are not reviewed in isolation. Most relate to an element of an HCPC policy, so the review cycle of the Practice Notes is linked to the review of policies, or any operational guidance for HCPC team members.

Summary of changes to Practice Notes for Council approval

Two Practice Notes have been reviewed: Concurrent Court Proceedings and Restoration to the Register. The Practice Note on Concurrent Court Proceedings has not required any substantive changes and is therefore not included with this paper for approval. The Practice Note relating to Restoration to the Register has been amended to clarify: the applicant's appeal rights (and the requirement for Panels to make applicants aware of their appeal rights) and the requirements that first need to be satisfied before an order restoring a person to the Register can take effect.

Decision

The Council is asked to discuss and approve the changes to Restoration to the Register Practice Note.

Resource implications

Accounted for in the 2014-15 Fitness to Practise Directorate Budget

Financial implications

Accounted for in the 2014-15 Fitness to Practise Directorate Budget

Appendices

Appendix One: Practice Note: Restoration to the Register

Date of paper

19 November 2015

PRACTICE NOTE

Restoration to the Register

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

Introduction

Article 33(1) of the Health and Social Work Professions Order 2001 (the **Order**) provides that a person who has been struck off the HCPC Register ~~by a Practice Committee or the court~~ and who wishes to ~~be restored~~ **return** to the Register must make an application for restoration.¹

Applications for restoration ~~are~~ **must be** made in writing to the Registrar, but the Order requires the Registrar to refer restoration applications to a Panel of the Practice Committee which made the striking off order.² In most cases **this will be a Panel of** the Conduct and Competence Committee.

When a restoration application can be made

An application for restoration cannot be made until five years have elapsed since the striking off order came into force. In addition, a person may not make more than one application for restoration in any period of twelve months.

If a person makes two or more applications for restoration which are refused, the Panel refusing the second application may, ~~by~~ **make a** direction, ~~suspending~~ the applicant's right to make further restoration applications. If such a direction is ~~given~~ **made**, the applicant may apply to have it reviewed three years after it was made, and at three yearly intervals after that.

These time constraints are subject to Article 30(7) of the Order, which enables a Panel to review a striking off order at any time if new evidence comes to light which is relevant to the making of that order. A review of that kind should be treated in all other respects as if it was an application for restoration.

¹ an order of the Investigating Committee, removing a person's Register entry because it was fraudulently or incorrectly made, is not a striking off order and cannot be the subject of a restoration application.

² or, where previous applications have been made in connection with the same striking-off order, the Committee which last made a decision on such an application.

Procedure

Article 33 of the Order and the relevant Practice Committee procedural rules³ provide for restoration applications to be considered at a hearing before a Panel.

Subject to one significant modification ~~modification~~ **difference**, the procedure to be followed will ~~generally be the same as~~ **similar to that** for other fitness to practise proceedings and, for example, Panels may hold preliminary hearings, order the production of documents or the attendance of witnesses, etc. as they consider appropriate.

The significant modification **difference** is that, **as the applicant has the burden of proof in a restoration case**, ~~although any hearing should be conducted in the normal manner~~, Rule 13(10) of the procedural rules requires the Panel to adopt an order of proceedings which provides for the applicant to present his or her case first and for the HCPC Presenting Officer to speak after that.

~~This modification reflects the fact that, in applying for restoration, the burden of proof is upon the applicant.~~ Panels should always make it clear to applicants that **this they have the burden of proof and explain this** means **that** it is for the applicant to prove that he or she should be restored to the Register and not for the HCPC to prove the contrary.

Although the procedural rules require the applicant to present his or her case first, **at the start of a hearing** it will often be helpful ~~at the beginning of a hearing~~ for the HCPC Presenting Officer to set out the history of the case and the circumstances which led to a striking off order being made. Allowing Presenting Officers to do so will not be contrary to Rule 13(10) provided that their comments are limited to background information of the kind described and do not include any substantive arguments which the HCPC wishes to put to the Panel in relation to the restoration application.

Issues for the Panel

Article 33(5) of the Order ~~requires~~ **provides** that a Panel must not grant an application for restoration unless it is satisfied,⁴ on such evidence as it may require, that the applicant:

- meets the general requirements for registration; and
- is a fit and proper person to practise the relevant profession, having regard to the particular circumstances that led to striking off.

Striking off is a sanction of last resort, which should only be used in cases involving serious, deliberate or reckless acts and where there may be a lack of insight, continuing problems or denial or where public protection in its widest sense⁵ cannot be secured by any lesser means.

³ the HCPC (Conduct and Competence Committee) (Procedure) Rules 2003 and the HCPC (Health Committee) (Procedure) Rules 2003.

⁴ "satisfied" in this context means satisfied on the balance of probabilities

⁵ this includes not only protection of the public but also the maintenance public confidence in the profession and the regulatory process and the wider public interest

The reasons why a person seeking restoration **the applicant** was originally struck off the Register will invariably be highly relevant to the Panel's **consideration of the application** and it is insufficient for an applicant merely to establish that they meet the requisite standard of proficiency and the other general requirements for registration.

An application for restoration is not an appeal from, or review of, the original decision, and Panels should avoid being drawn into 'going behind' the findings of the original Panel or the sanction it imposed **and attempts by the applicant to persuade the Panel to do so may be indicators of a continuing lack of insight or continuing denial.**

However, in **In** determining applications for restoration **applications**, the issues which a Panel should consider include:

- the matters which led to striking off and the reasons given by the original Panel for imposing that sanction;
- whether the applicant accepts and has insight into those matters;
- whether the applicant has resolved those matters, has the willingness and ability to do so, or whether they are capable of being resolved by the applicant;
- what other remedial or rehabilitative steps the applicant has taken;
- what steps the applicant has taken to keep his or her professional knowledge and skills up to date.

Conditional restoration

If a Panel grants an application for restoration, it may do so unconditionally or subject to the applicant:

- meeting any applicable education and training requirements specified by the Council; or
- complying with a conditions of practice order imposed by the Panel.

The only "applicable education and training requirements" would be the requirements for 'returners to practice', which are generic requirements primarily designed for registrants who have taken a career break and which are likely to be of only limited use in dealing with restoration cases. **If a Panel considers that such a requirement is appropriate, it should also consider whether** As with any other returning registrant, the 'return to practice' period **would need to be satisfactorily completed before the applicant may return to unrestricted practice.** restoration could take place.

The other option, of **Replacing** a striking off order with a conditions of practice order, **may provides** a better and more flexible alternative in cases where Panels wish to impose specific requirements on a registrant who is being restored to the Register. A conditions of practice order can be tailored to meet the specific needs of a particular case, **can will be** reviewed and, if necessary, **can be** extended. Such an order also provides the added safeguard that swift action can be taken against the registrant if there is any breach of the conditions of practice.

Appeals

An applicant may appeal to the appropriate court if the Panel:

- refuses an application for restoration;
- allows an application, but subject to the applicant satisfying education and training requirements under Article 33(6); or
- makes a direction under Article 33(9) suspending indefinitely the applicant's right to make further restoration applications.

Panels should ensure that applicants are made aware of any right of appeal,

For this purpose the "the appropriate court" means the High Court in England and Wales, the High Court in Northern Ireland or, in Scotland, the Court of Session.⁶

Drafting Restoration Orders

Where a Panel decides to restore a person to the Register, it must clearly set out the Order which it has made, which should be addressed to the Registrar who must amend or annotate the Register as appropriate.

Any such order restoring a person to the Register should also provide that it is only to take effect once the applicant has:

- provided the Registrar with the information and declarations required from any applicant seeking admission to the Register; and
- paid the prescribed restoration fee.

A restoration order template is out below:

ORDER: The Registrar is directed to restore the name of [name] (the Applicant) to the [relevant profession] Part of the Register, but restoration is only to take effect once the Applicant has:

- provided the Registrar with the information and declarations required for admission to the Register; and
- paid the prescribed restoration fee.

[The Registrar is further directed to annotate the Register to show that, from the date that this Order takes effect (the Operative Date), the Applicant must:

⁶ in the case of an appeal relating to a social worker in England, the appropriate court means the High Court in England and Wales regardless of where the applicant resides.

- (a) undertake a 60 day period of professional updating in accordance with the HCPC Standards for Return to Practice; and**
- (b) limit [his][her] practice to the completion of that updating until such time as the Applicant provides evidence which satisfies the Registrar that the Applicant has successfully completed that period of updating.]**

OR

[The Registrar is further directed to annotate the Register to show that, for a period of [time] from the date that this Order takes effect (the Operative Date), the Applicant must comply with the following conditions of practice:

[set out conditions]].

December 2015