

# PRACTICE NOTE

## Restoration to the Register

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

Article 33(1) of the Health Professions Order 2001 (the Order) provides that a person who has been struck off<sup>1</sup> the HPC Register by a Practice Committee or the court and who wishes to be restored to the Register must make an application for restoration.

Applications for restoration are made in writing to the Registrar, but the Order requires the Registrar to refer such applications for determination by a Panel of the Practice Committee which made the striking off order; which in most cases will be the Conduct and Competence Committee.

### When an 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 application may also direct that the applicant's right to make further restoration applications shall be suspended. If such a direction is given, the applicant can 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.

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<sup>1</sup> 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 an application for restoration.

## Procedure

Article 33 of the Order and the relevant Practice Committee procedural rules<sup>2</sup> provide for applications for restoration to be considered by means of a hearing before a Panel. Subject to one significant modification, the procedure to be followed will generally be the same as 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 is that, 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 HPC 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 make clear to applicants that it is for them to prove that they should be restored to the Register and not for the HPC to prove the contrary.

Although the procedural rules require the applicant to present his or her case first, it will often be helpful at the beginning of a hearing for the HPC Presenting Officer to set out the history of the case and the circumstances which led to the 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 that kind and exclude any substantive arguments which the HPC wishes to put to the Panel in relation to the restoration application.

## Issues for the Panel

Article 33(5) of the Order requires that a Panel must not grant an application for restoration unless it is satisfied,<sup>3</sup> 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, used in cases involving serious, deliberate or reckless acts and where there may be a lack of insight, continuing problems or denial. The reasons why a person seeking restoration was originally struck off the register will invariably be highly relevant 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. However, in determining applications for restoration, the issues which a Panel should consider include:

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<sup>2</sup> the Health Professions Council (Conduct and Competence Committee) (Procedure) Rules 2003 and the Health Professions Council (Health Committee) (Procedure) Rules 2003.

<sup>3</sup> as these are civil proceedings, "satisfied" in this context means satisfied on the balance of probabilities

- 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 those matters 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 primarily intended for registrants who have taken a career break and are likely to be of only limited use in dealing with restoration cases.

The other option, of replacing a striking off order with a conditions of practice order, 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 be reviewed and, if necessary, extended. Such an order also provides the added safeguard that swift action can be taken against the registrant if there is any breach of those conditions of practice.

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