

## Health and Care Professions Tribunal Service

# PRACTICE NOTE

## Restoration to the Register

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

### Introduction

1. Article 33(1) of the Health Professions Order 2001 (the Order) provides that a person who has been struck off the HCPC Register and who wishes to return to the Register must make an application for restoration.<sup>1</sup>
2. Applications for restoration 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.<sup>2</sup> In most cases this will be a Conduct and Competence Panel.

### When a restoration application can be made

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

<sup>2</sup> or, where previous applications have been made in connection with the same striking-off order, the Committee which heard the last application.

6. Article 33 of the Order and the Panel rules<sup>3</sup> provide for restoration applications to be considered at a hearing before a Panel.
7. The procedure to be followed will be similar to that for other fitness to practise proceedings and, for example, Panels may give directions, hold preliminary hearings, order the production of documents or the attendance of witnesses, etc. as they consider appropriate.
8. However, one significant difference is that as the applicant has the burden of proof in a restoration case, the Panel rules<sup>4</sup> provide for the applicant to present his or her case first.
9. Panels should always make it clear to applicants that they have the burden of proof and explain what this means; that it is for the applicant to prove the facts they rely on and persuade the Panel that he or she should be restored to the Register, and not for the HCPC to prove the contrary.
10. Although the Panel rules require the applicant to present his or her case first, it is often helpful at the start 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. Permitting the Presenting Officer to do so is not contrary to those rules if their comments are limited to background information of that kind 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**

11. Article 33(5) of the Order provides that a Panel must not grant an application for restoration unless it is satisfied<sup>5</sup>, on such evidence as it may require, that the applicant:
  - a. meets the general requirements for registration; and
  - b. is a fit and proper person to practise the relevant profession, having regard to the particular circumstances that led to striking off.
12. 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 sense<sup>6</sup> cannot be secured by any lesser means.
13. When considering if the applicant is a fit and proper person to practise the relevant profession, the panel should consider if their fitness to practise is

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<sup>3</sup> the HCPC (Conduct and Competence Committee) (Procedure) Rules 2003 and the HCPC (Health Committee) (Procedure) Rules 2003.

<sup>4</sup> rule 13(10)

<sup>5</sup> "satisfied" in this context means satisfied on the balance of probabilities on any question of fact

<sup>6</sup> this includes not only protection of the public but also the maintenance of public confidence in the profession and the regulatory process and the wider public interest

currently impaired. The reasons why the applicant was 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.

14. An application for restoration is not an appeal from, or review of, the original decision. 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 denial.
15. In determining restoration applications, the issues which a Panel should consider include:
  - a. the matters which led to striking off and the reasons given by the original Panel for imposing that sanction;
  - b. whether the applicant accepts and has insight into those matters;
  - c. 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;
  - d. what other remedial or rehabilitative steps the applicant has taken;
  - e. what steps the applicant has taken to keep his or her professional knowledge and skills up to date.

### **Conditional restoration**

16. If a Panel grants an application for restoration, it may do so unconditionally or subject to the applicant:
  - a. meeting any applicable education and training requirements\* specified by the Council; or
  - b. complying with a conditions of practice order imposed by the Panel.
17. "Applicable education and training requirements" include the requirements for return to practice<sup>7</sup>. These are generic requirements designed to ensure that people who have been out of practice for a period of time have up to date knowledge and skills. They are not intended to address any fitness to practise issues.

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<sup>7</sup> Information about the requirements that everyone returning to practice must meet are set out in the HCPC's return to practice standards. Everyone who has been out of practice for five years or more is required to complete 60 days' of updating in a set period before being readmitted to the register. More information can be found at <https://www.hcpc-uk.org/registration/returning-to-practice/our-requirements/>.

18. Because an application for restoration cannot be made until five years after the striking off order took effect, the return to practice requirements must be satisfactorily fulfilled before the applicant is restored to the register, and Panels should make this clear in their decisions by directing that the applicant must satisfy the return to practice requirements. Failure to do so risks putting an applicant who seeks restoration after being struck off in a more favourable position than someone with no concerns about their fitness to practise who seeks to return to the register after a career break.
19. Where Panels wish to impose bespoke requirements on a registrant who is being restored to the Register in addition to the return to practice requirements, they may also make a conditions of practice order. Conditions of practice can be tailored to meet the specific needs of a particular case, 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 those conditions. A conditions of practice order imposed in these circumstances will only become effective once the applicant has successfully completed the return to practise process, met the readmission requirements, and been readmitted to the register.

## **Appeals**

20. An applicant may appeal to the appropriate court if the Panel:
- a. refuses an application for restoration;
  - b. allows an application, but subject to the applicant satisfying education and training requirements under Article 33(6); or
  - c. makes a direction under Article 33(9) suspending indefinitely the applicant's right to make further restoration applications.
21. 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.

## **Drafting Restoration Orders**

22. Where a Panel decides to restore a person to the Register, it must clearly set out the order which it has made. The order should be addressed to the Registrar, who must amend or annotate the Register as required, and should provide that it is only to take effect after the applicant has:
- a. provided the Registrar with the information and declarations required from any applicant seeking admission to the Register;
  - b. satisfied the Registrar that appropriate cover under an indemnity arrangement is or will be in force in relation to the applicant;
  - c. paid the prescribed restoration fee; and

- d. if the Panel so decides, satisfied the Registrar that the applicant has successfully completed the 'return to practice' requirements.

23. 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:

- (a) provided the Registrar with any information and declarations required for admission to the Register;
- (b) paid the prescribed restoration fee; [and]
- (c) satisfied the Registrar that, in relation to the Applicant, there is or will be in force appropriate cover under an indemnity arrangement[.] [; and]
- (d) provided evidence which satisfies the Registrar that the Applicant has successfully completed a 60 day period of professional updating in accordance with the HCPC Standards for Return to Practice.

[And

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*] ].