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 and who wishes to return to the Register must make an application for restoration.¹

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.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, 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.

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 rules provide for restoration applications to be considered at a hearing before a Panel.

Subject to one significant difference, the procedure to be followed will be 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 difference is that, as the applicant has the burden of proof in a restoration case, 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.

Panels should always make it clear to applicants that 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 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 provides that a Panel must not grant an application for restoration unless it is satisfied, 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 sense cannot be secured by any lesser means.

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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 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.

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 continuing denial.

In determining 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 the ‘return to practice’ period needs to be satisfactorily completed before the applicant may return to unrestricted practice.

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, 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 order restoring a person to the Register should 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:

(a) provided the Registrar with the information and declarations required for admission to the Register; and
(b) 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:

(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

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.
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] ].

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