



## Registration Council of Clinical Physiologists

### Removal Order Reviews: New Evidence

This guidance has been issued by the RCCP for FtP Panels and to assist those appearing before them.

#### Introduction

The RCCP Complaints Procedure (2019) provides that a person who has been removed from RCCP Register may not apply for restoration to the Register within five years of the date on which that removal order took effect. Where the Professional Conduct Committee/Health Review Panel determines a sanction of suspension or conditions, they may also impose a Review Hearing. In such circumstances, the Committee will direct that a Review Hearing takes place before the period of suspension or conditions expire.

However, the Complaints Procedure (2019) enables a removal order to be reviewed at any time where “new evidence relevant to a “removal order” becomes available after such an order has been made.

#### Procedure

The RCCP Complaints Procedure (2019)<sup>1</sup>, the procedure to be followed by Panels when hearing a sanction order review and other restoration applications, will generally be the same as for other fitness to practise proceedings. Where the original Committee imposed conditions the hearing panel will hear evidence of compliance of those conditions. The Registrant should compile a report to demonstrate compliance with the conditions.

Where the original Committee imposed a sanction of suspension, the Registrant should show evidence of any CPD, supervision and work experience carried out during the suspension. At a Review Hearing, any finding of Impairment made by the Reviewing Panel must be based on the original allegation.

The Panel will need to consider whether the Registrant’s fitness to practise remains impaired after considering all the information available to them. The Registrant is expected to provide evidence that any past impairment has been addressed.

1. RCCP Complaints Procedure (2019)

The Panel has the discretion to continue the suspension/conditions or vary as they see fit or alternatively take no further action.

In cases where the application is made by the person concerned, the applicant is to present his or her case first and the RCCP is to respond to that case. This reflects the fact that the burden of proof is upon the applicant and that it is for the applicant to prove his or her case and not for the RCCP to prove the contrary.

### **Issues to be addressed**

In considering a removal order application, Panels need to address three issues:

1. whether new evidence has become available which is relevant to the removal order which was made;
2. if so, whether to admit (i.e. to hear and consider) that evidence; and
3. if that evidence is admitted, having conducted a substantive review, deciding whether or not to maintain the removal order.

The need to address these three distinct issues does not mean that a Panel must hold more than one hearing. It is open to a Panel to address all three issues at the same hearing. Equally, it may be appropriate for a Panel to deal with the first two issues at one hearing and then undertake any substantive review at a subsequent hearing. The approach adopted will depend upon the facts and complexity of the particular case, but the latter course of action may be appropriate if, for example, witnesses need to be called to give evidence at the substantive review stage.

### **New evidence**

“New evidence” is any evidence that, for whatever reason, was not available to the Panel which made the removal order but which is “relevant to” the making of that order.

Whether evidence is relevant is a matter for the judgement of the Panel conducting the review but an overly restrictive approach to the question of relevance should not be adopted and, in relation to the original decision, “new evidence” may be relevant to:

- the finding that the allegations were well-founded;
- the finding that fitness to practise is impaired; or
- the decision to impose the sanction of removal.

### **Admitting new evidence**

Whether new evidence may be admitted is a question of law. As with other proceedings under the Order, a Panel may admit evidence if it would be admissible in civil proceedings in the part of the United Kingdom in which the case is being heard and to admit other evidence if the Panel is satisfied that doing so is necessary in order to protect members of the public;

Whether new evidence should be admitted is a matter within a Panel’s discretion. In exercising that discretion, the factors to be taken into account and the weight to be attached to each of them will depend upon the facts of the case but should include:

- the significance of the new evidence;

- the *Ladd v Marshall*<sup>2</sup> criteria for reception of fresh evidence, namely: whether with reasonable diligence the evidence could have been obtained and presented at the original hearing;
  - whether the evidence is such that it could have an important influence on the result of the case; and
  - whether the evidence is credible;
- any explanation of why the new evidence could not have been presented at the original hearing or, if it could have been, whether there is a reasonable explanation for not doing so;
  - if the original hearing proceeded in the absence of the registrant, evidence that the registrant did not receive proper notice of the hearing;
  - the public interest, including the impact upon others (such as vulnerable witnesses) if the case is re-opened, the need for “finality in litigation” and the countervailing public interest factor identified in *Muscat v Health Professions Council*<sup>3</sup>, that there is:

*“...a real public interest in the outcome of the proceedings. It [is] important from the public perspective that the correct decision [is] reached. It is not in the public interest that a qualified health professional, capable of giving good service to patients, should be struck off [the] professional register”.*

The weight that is given to any new evidence will depend upon the facts of the case and the nature and importance of that evidence. However, even if a Panel finds that new evidence exists it is not obliged to admit the evidence and conduct a substantive review of the removal order. Whether it does so will be a matter for the Panel’s judgement, having regard to all the relevant factors.

### **Restoration following a sanction review**

As with any other restoration application, a person must not be restored to the register following a restoration review unless the Panel is satisfied 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 the removal.

If a Panel determines that a person is to be restored to the Register may be unconditional or the Panel may exercise its power to replace the removal order with a conditions of practice order. Further guidance on this issue may be found in the Procedure Note *Restoration to the Register*.

**22nd March 2017**

### **Documentation Version Control**

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<b>1</b>	<b>06.01.2020</b>	<b>Kelly St. Pier</b>

2. [1954] 1 WLR 1489

3. [2009] EWCA Civ 1090

