



Registration Council of Clinical Physiologists

Restoration to the Register

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 the RCCP 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 Registrar has the discretion to refer restoration applications to a Panel of the Fitness to Practice Committee which made the removal order.² In most cases this will be a Professional Conduct Committee Panel.

When a restoration application can be made

A restoration application cannot be made until five years have elapsed since the removal 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 enable a Panel to review a removal 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 Assessment Committee, removing a person's Register entry because it was fraudulently or incorrectly made, is not a removal order and cannot be the subject of a restoration application.
2. or, where previous applications have been made in connection with the same removal order, the Committee which heard the last application.

The RCCP Complaints Procedure (2019)³ provides for restoration applications to be considered at a hearing before a Panel.

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.

However, one significant difference is that, as the applicant has the burden of proof in a restoration case, and for the applicant to present his or her case first.

Panels should 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 that he or she should be restored to the Register and not for the RCCP to prove the contrary.

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 RCCP Case Presenter to set out the history of the case and the circumstances which led to a removal order being made. Permitting the Case Presenter 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 RCCP wishes to put to the Panel in relation to the restoration application.

Issues for the Panel

The RCCP Complaints Procedure (2019) provides that a Panel must not grant an application for restoration unless it is satisfied⁴, 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 the removal.

Removal 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.

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.

3. The RCCP Complaints Procedure (2019)

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 of public confidence in the profession and the regulatory process and the wider public interest

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.

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 order imposed by the Panel.

The only "applicable education and training requirements" would be the requirements for 'return to practice'. These are generic requirements, primarily designed for registrants who have taken a career break but where there is no cause for concern about their fitness to practise. Consequently, they may be of limited use in dealing with restoration cases.

If a Panel considers that 'return to practice' requirements are appropriate, those requirements must be satisfactorily fulfilled before the applicant is restored to the register.

Where Panels wish to impose bespoke requirements on a registrant who is being restored to the Register, including updating requirements which may be completed following restoration, the better and more flexible alternative is to replace the removal order with a conditions order. Conditions 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.

Appeals

An applicant may appeal if the RCCP:

- refuses an application for restoration;
- allows an application, but subject to the applicant satisfying education and training requirements; or
- suspends indefinitely the applicant's right to make further restoration applications.

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

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. 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:

- provided the Registrar with the information and declarations required from any applicant seeking admission to the Register;
- satisfied the Registrar that appropriate cover under an indemnity arrangement is or will be in force in relation to the applicant;
- paid the prescribed restoration fee; and
- if the Panel so decides, satisfied the Registrar that the applicant has successfully completed the 'return to practice' requirements.

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) [(d) provided evidence which satisfies the Registrar that the Applicant has successfully completed a period of professional updating in accordance with the RCCP Standards for Return to Practice.]

paragraph (d) may be omitted or, as an alternative:

[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:

[*set out conditions*]].

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Documentation Version Control

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1	06.01.2020	Kelly St. Pier