



Council
6 February 2019
Draft Restoration Guidance

Classification	Public
Purpose	For decision
Issue	This paper proposes the introduction of guidance on the arrangements for and procedure at a hearing where an application for restoration is made after the removal of an osteopath from the register following a fitness to practise hearing.
Recommendation	To agree the draft Restoration Guidance at the Annex for consultation
Financial and resourcing implications	None identified
Financial and resourcing implications	Within existing budget
Equality and diversity implications	None identified
Communications implications	If agreed, a three month consultation will be required to be undertaken
Annex	Draft Restoration Guidance
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Background

1. An osteopath who is removed from the GOSC's Register for fitness to practise reasons may apply for readmission after a period of ten months. In such cases the application for registration must be referred to the Professional Conduct Committee rather than being considered by the Registrar which would be the normal procedure for any other type of restoration application.
2. Section 8 of the Osteopaths Act 1993 states:

'Restoration to the register of osteopaths who have been struck off

 - (1) Where a person who has had his entry as a fully registered osteopath removed from the register as the result of an order under section 22(4)(d) wishes to have his entry restored to the register he shall make an application for registration to the Registrar.*
 - (2) No such application may be made before the end of the period of ten months beginning with the date on which the order under section 22(4)(d) was made.*
 - (3) Any application for registration in the circumstances mentioned in subsection (1) (an "application for restoration") shall be referred by the Registrar to the Professional Conduct Committee for determination by that Committee.*
 - (4) For the purposes of determining an application for restoration--*
 - (a) the Committee shall exercise the Registrar's functions under section 3; and*
 - (b) subsection (2) of that section shall have effect as if paragraph (d) were omitted.*
 - (5) The Committee shall not grant an application for restoration unless it is satisfied that the applicant not only satisfies the requirements of section 3 (as modified) but, having regard in particular to the circumstances which led to the making of the order under section 22(4)(d), is also a fit and proper person to practise the profession of osteopathy.*
 - (6) On granting an application for restoration, the Committee--*
 - (a) shall direct the Registrar to register the applicant as a fully registered osteopath; and*
 - (b) may make a conditions of practice order with respect to him...'*
3. Save for the enabling provisions within section 8 of the 1993 Act for restoration hearings, the GOSC (Professional Conduct Committee) (Procedure) Rules 2000 (<http://www.legislation.gov.uk/ukSI/2000/241/contents/made>) (and associated

rules) are silent as to the procedure to be followed both by the Registrar when making arrangements for a restoration hearing, and also the procedure to be followed by the Committee during the hearing.

4. Applications for readmission to the Register following removal are rare. There has only been one such application, received in 2018. After consideration of draft guidance in July 2018, Council agreed interim guidance to enable this application to be considered by the PCC. The interim guidance details the arrangements and procedure for restoration hearings where an individual, 'struck off' or removed from the register following a hearing before the Professional Conduct Committee, makes an application to be restored to the Register of Osteopaths.
5. The interim guidance is divided into separate paragraphs: what happens before the hearing and during the hearing. The procedure before the hearing mirrors the process laid down within the GOsC (Professional Conduct Committee) (Procedure) Rules 2000 followed for fitness to practise hearings, including the notice of hearing required and disclosure of materials in advance of the hearing. Important safeguards for the fairness of the hearing are replicated within the procedure for the hearing which has been designed to guide the Committee through the appropriate procedure to follow when considering the restoration hearing, including the Committee having access to independent legal advice and the requirement to produce written reasons for the decision reached.
6. The guidance is designed to be read in conjunction with other guidance and is aligned with the Good Character Assessment Framework which is used by the Registration Department when considering applications for registration (which was developed by the Education and Registration Standards Committee in 2014) and the Hearings and Sanction Guidance approved by Council in January 2018.
7. During the discussion in July 2018, Council raised whether a complainant's views should be sought and placed before the Committee as part of its decision-making process. It was felt that the fact an application for restoration could be made after only ten months meant that consideration should be given to seeking the complainant's views (if there was a complainant). Following on from this, consideration should also be given as to whether this should be explicitly dealt with in the guidance document (as it is within the voluntary removal guidance for example). Council concluded that, in light of this discussion, the draft Restoration Guidance required further reflection and possible development, including whether seeking the complainant's view should feature in the process document.

Discussion

8. In April 2018, the Ministry of Justice published a review of the law, policy and procedure relating to Parole Board decisions (the review) arising from the decision of a parole board in the case of Worboys. This review arose from a judicial review brought by victims who were not part of the index offences

Worboys had been convicted of. The review has been considered as part of this paper with the focus being on how it relates to victim (complainant) involvement and engagement and disclosure of information.

9. The review considered the transparency of Parole Board decision making including whether there should be a mechanism whereby Parole Board decisions can be reconsidered, together with involvement of and communication with victims. The catalyst for this review was a Parole Board decision to direct the release of John Worboys. However, the review examined the parole process as a whole to enable the implementation of changes to enhance transparency which would support public and victim confidence in the criminal justice system.
10. In summary, the review set actions that will be taken by the Government including:
 - Removing a 'blanket' prohibition of disclosure of information about Parole Board proceedings
 - A consultation on a new reconsideration of decisions mechanism
 - Implementing immediate changes around communication with victims (as well as looking at how more victims can be offered the Victim Contact Scheme).

It is bullet point three above that has potential relevance and application to the GOsC draft restoration guidance.

11. Victims of sexual or violent offences for which the offender was given a sentence of 12 months or more are entitled to receive information about key stages of the offender's sentence, including making representations about the offender's licence conditions and submitting a Victim Personal Statement (VPS) to the Parole Board in respect of an offender whose release is being considered through the Victim Contact Scheme (VCS). The VPS provides victims with the opportunity to explain, in their own words, the effect the crime has had on them. The Review looked at extending the VCS to a broader range of victims as well as improving the service offered to victims.
12. The GOsC Guidance on Voluntary Removal (VR) Applications requires the Registrar to give individual regard to the Complainant's views before reaching a decision. However, the VR guidance applies to requests made by a registrant for removal from the register where there are current fitness to practise concerns relating to them. A key difference is that the restoration guidance applies where a former registrant is applying to be restored to the register following removal from the register after a fitness to practise hearing has concluded. In the latter case, the Professional Conduct Committee will have determined sanction in the case by having regard to the need to maintain public confidence in the osteopathic profession and declare and uphold proper standards of conduct and competence amongst the osteopathic profession.

13. Not all fitness to practise hearings involve complainants, for example, conviction cases or professional indemnity insurance cases. If the case involved a Complainant, they will often have given evidence at the hearing and been informed of the outcome and given the Professional Conduct Committee's decision. That usually concludes the involvement of the Complainant at that point. Where a review hearing has been directed (following a conditions of practice or suspension order being imposed at a substantive final hearing) a Complainant is not usually approached to provide their comments to the Committee. This is because the purpose of fitness to practise hearings is not to punish the registrant nor is it to extract retribution (unlike criminal proceedings). However, a parole board is not concerned with punishment but rather with an assessment of risk should the offender be released into the community. The Complainant providing a statement akin to a VCS could be said to be extremely prejudicial with only limited relevance as the allegation has already been ventilated and adjudicated upon at a principal hearing.
14. The preliminary view is a Complainant's views should not be sought and placed before the Professional Conduct Committee in restoration hearings. However, in pursuit of enhancing our public centred approach where we put patients, families and the public at the heart of what we do, we would liaise with the complainant (and other witnesses) in advance of a restoration hearing to ensure they are provided with information and support and this would be reflected in the Regulation internal manual. We intend to invite views on this specific point during the public consultation.
15. A further, related matter is one arising from the fact that an application for restoration to the register can be made after ten months has elapsed, whereas with other healthcare regulators, such as the General Medical Council, an application for restoration following a doctor being struck off cannot be made for at least five years (it is noteworthy that the Medical Act 1983 used to stipulate only ten months but this was amended to five years in 2000). Where a former solicitor makes a restoration application there is a requirement for there to be exceptional circumstances before the application can be successful. This is because there is no requirement for solicitors to wait five years before applying for restoration but also there is no equivalent requirement that the tribunal must consider the overriding objective of protecting the public (as the PCC must do). We also intend to invite views on this specific point during the public consultation.

Recommendation: to agree the draft Restoration Guidance at the Annex for consultation.