



**General
Osteopathic
Council**

Draft Restoration Guidance

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Introduction

This guidance sets out the arrangements for and procedure at a hearing where an application for restoration is made after the removal of an osteopath (the applicant) from the register following a fitness to practise hearing before a Professional Conduct Committee.

Relevant Legislation

Section 8 of the Osteopaths Act 1993 provides as follows:

'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.*
- (7) The provisions of section 22 shall have effect in relation to a conditions of practice order made by virtue of subsection (6) as they have effect in relation to one made by virtue of subsection (4)(b) of that section....'*

Before the Hearing

1. A notice of hearing will be sent to the applicant at least 28 days before the restoration hearing (the hearing). The notice of hearing will specify the date, time and venue for the hearing. Along with the notice, the applicant will be served with any documentation that the GOsC intends to present at the hearing. This will include the previous decision of the Committee and may also include the transcript of the substantive fitness to practise hearing and other relevant documentation.
2. The notice will also inform the applicant of their right to attend the hearing and be represented and that they are able to present evidence and call witnesses at the hearing.
3. The applicant must notify the GOsC within 14 days of the date of the notice whether or not they wish to attend the hearing. If they choose not to attend, then they make written representations to the Committee. These written representations should be received by the GOsC at least seven days before the date of the hearing.

Procedure at the Hearing

4. The Chair shall open the hearing by confirming that it is a meeting of the Professional Conduct Committee of the General Osteopathic Council to consider an application for restoration to the Register of Osteopaths by the applicant. The Chair shall introduce the other Committee members together with the names of the legal assessor, applicant and legal representatives.
5. If the applicant is not present or represented, the Committee shall first determine whether to proceed in absence. The Committee may proceed in the absence of the applicant if it is satisfied that all reasonable steps have been taken to serve the notice of the hearing on the applicant.
6. If the Applicant is present, the Chair will invite him or her to confirm their name and the registration number they held at the time of their removal from the Register. If the applicant is not present the Presenting Officer for the GOsC will be asked to confirm the name and registration number of the applicant.
7. The Committee will consider any preliminary legal arguments.
8. The hearing shall be held in public unless the Committee decides that it in the interests of any person giving evidence to hold the hearing, or any part of it, in private and, in such a case, all persons who are not concerned with the hearing shall withdraw.
9. The presenting officer will then address the Committee as to the background of the case and the circumstances which led to the applicant's name being removed from the Register. In the course of doing so, the presenting officer may

direct the attention of the Committee to relevant evidence, including the transcript of the substantive fitness to practise hearing, and may call witnesses.

10. The applicant will then have the opportunity to address the Committee, adduce evidence and call witnesses relevant to their application for restoration.
11. There is a persuasive burden on the Applicant to satisfy the Committee that they should be restored to the Register.¹ This means that the Applicant (or their representative) has to satisfy the Committee that:
 - a. They are of good character
 - b. They are in good health, both physically and mentally
 - c. They have a recognised qualification (where relevant)
 - d. They are a fit and proper person to practise the profession of osteopathy.
12. The Committee will then invite submissions from the GOsC presenting officer and the Applicant as to whether it should grant or refuse the application, with the Applicant being provided with the opportunity to have the last word.
13. At the conclusion of the evidence and submissions, the Committee shall invite the legal assessor to provide advice to the Committee before it goes into private session to decide whether to refuse or grant the application (with or without conditions). The Committee shall give reasons for that decision.
14. When determining whether the applicant is of good character, the Committee should have regard to the Good Character Assessment Framework at the Appendix.
15. When considering whether the applicant is a fit and proper person to practise the profession of osteopathy the Committee will have regard, in particular, to the circumstances which led to the making of the order. In addition, it should also consider a number of factors including:
 - a. The reasons of the Committee at the substantive hearing to direct removal.
 - b. Whether the applicant has any insight or remorse into the matters that led to removal.
 - c. What the applicant has done since his or her name was removed from the register.

¹ The Committee must consider the overriding objective of protecting the public, section 1(3A) Osteopaths Act. See Practice Note: The duty to act in the public interest.

- d. The steps taken by the applicant to keep their professional knowledge and skills up to date.
 - e. The passage of time and evidence of remediation
16. An application for restoration is not to be regarded as an appeal against the decision to strike off. The Committee is bound by the findings and previous decision and cannot go behind the decision to remove the applicant made by the Committee at the substantive fitness to practise hearing.
17. The Committee should have regard to the particular facts and circumstances of the case. The Committee should consider any remediation against the backdrop of the reasons leading to the Applicant's removal. Where an application has been made before five years has elapsed since the substantive decision to remove, the Committee should only restore the applicant's name to the register in exceptional circumstances.
18. The Committee shall announce its decision at the end of the hearing and shall ensure that a written record of this is sent to the parties in reasonable time after the hearing.

Recording of proceedings

The hearing will be recorded and transcripts to be made available on request and on payment of a reasonable fee.

The Professional Standards Authority for Health and Social Care

The GOsC is required to notify the Professional Standards Authority for Health and Social Care (PSA) of certain decisions, including those to restore an osteopath to the register under section 8 of the Osteopaths Act 1993. Under section 29 of the NHS and Healthcare Professions Act 2002, the PSA may refer the case to the High Court if they consider that a decision to restore an osteopath's name should not have been made. Further information about the PSA is available on their website:

<https://www.professionalstandards.org.uk/>

Annex – Good Character Assessment Framework

1. The purpose of this framework

Under Section 3 of the Osteopaths Act 1993 (1993 c.21), a person seeking registration with the General Osteopathic Council (GOsC) must satisfy the GOsC Registrar that he or she 'is of good character.'

In practice, the function of deciding whether or not an applicant is of good character, will be carried out by the GOsC Registration Department.

The purpose of the Good Character Assessment Framework is to assist the Registration Department in making consistent and proportionate decisions.

In deciding whether or not an applicant is of good character, the Registration Department will have regard to the matters set out in this framework.

Where the Registrar decides that an applicant is not of good character, the applicant may appeal to the Registration Appeals Committee in accordance with section 29 of the Osteopaths Act 1993.

2. The definition of good character

For the purpose of the GOsC's registration procedures, we define 'good character' as:

'the absence of evidence that a person has committed conduct or behaviour that is inconsistent with the Osteopathic Practice Standards published by the GOsC, or the exercise of the profession of osteopathy; and that he or she has any disposition to commit such conduct or behaviour.'

In *A Common Approach to Good Character across the Health Professions Regulators*, the Professional Standards Authority stated that 'Health professionals have a relationship with members of the public unlike that in many other sectors, one which is rooted in the mutual trust, confidence and respect that are necessary for a profession to be practised safely and effectively. To prove that they are fit to enter this relationship there are expectations that a prospective professional must meet.'

The PSA set out a suggested test of good character (at paragraph iii, p.2 and paragraph 4.9):

'Has the applicant in the past acted, or is there reason to believe that the applicant may be liable in the future to act:

- in such a way that puts at risk the health, safety or well-being of a patient or member of the public;
- in such a way that his/her registration would undermine public confidence in the profession;

- in such a way that indicates an unwillingness to act in accordance with the standards of the profession; or
- in a dishonest manner.'

In deciding whether or not an applicant for registration is of good character, the GOsC Registration Department will apply the test suggested by the Professional Standards Authority.

In making decisions about an applicant's character, the GOsC Registration Department will also have regard to the GOsC's published *Hearings and Sanctions Guidance*, to provide a benchmark about the seriousness of any findings or convictions received by the applicant; or any allegations or other information about his or her conduct or behaviour.

The rationale for this is that conduct or behaviour that would lead to a registrant being barred from practising should also prevent an applicant from entering the profession in the first place.

Any person applying for registration bears the burden of proving that he or she is of good character.

3. Good character assessment framework

In deciding whether or not an applicant is of good character, the Registrar will consider all available evidence about his or her character, in accordance with relevant national legislation.

This may include evidence relating to:

- a) criminal convictions;
- b) cautions, bind-overs, conditional discharges, admonishments or reports to a procurator fiscal;
- c) findings by a body responsible for the regulation of a health or social care profession;
- d) findings made by an osteopathic educational institution;
- e) findings made by a Criminal or Civil Court relating to the applicant;
- f) any evidence in criminal or civil proceedings relating to the registrant, including claims for negligence and disciplinary proceedings;
- g) allegations, complaints or information about the conduct or behaviour of the applicant which have been brought to attention of the Registrar and which are incompatible with the standards set out in the *Osteopathic Practice Standards*; and
- h) testimonials and character references about the applicant.

In the case of applicants seeking temporary registration under Section 5A of the Osteopaths Act, the Registrar may also take into account information received from the Competent Authority in the applicant's state of establishment. This may include whether or not the applicant is subject to any conditions on practice in his or her state of establishment; and the absence of any disciplinary or criminal sanctions of a professional nature.

In assessing the weight and significance of any evidence about the applicant's character, the following factors will be considered:

The seriousness of the conviction, finding, conduct or behaviour
The relevance of the conviction, finding, conduct or behaviour to the practice of osteopathy
The relevance of the conviction, finding, conduct or behaviour to maintaining public confidence in the osteopathy profession
The extent and nature of any risk to patients or the public
The length of time since the conviction or finding was received, or the conduct or behaviour was committed
The number and nature of instances of the conviction, finding, conduct or behaviour, and whether or not they form part of a pattern
The applicant's age at the time the conviction or finding was received, or the conduct or behaviour was committed
The applicant's personal mitigation in respect of the conviction, finding, conduct or behaviour
The applicant's efforts (or lack of) to rehabilitate himself since the conviction and/or finding was received or the conduct or behaviour was committed
The applicant's insight (or lack of) in relation to the conviction, finding, conduct or behaviour
The extent to which the conviction, finding, conduct or behaviour is counterbalanced by testimonials and character references about the applicant's subsequent and recent conduct and behaviour
The extent to which the conviction, finding, conduct or behaviour is characteristic of the applicant, or indicative of a disposition by the applicant to commit such conduct or behaviour
The extent to which the applicant disclosed (or failed to disclose) the existence of the conviction, finding, conduct or behaviour, during the application process
The extent (or lack of) of co-operation by the applicant with any inquiries made by the GOsC

When considering the seriousness of the conviction, finding, conduct or behaviour in question, the following factors will, where present, be regarded **automatically** as serious:

Dishonesty, fraud, deceit or misrepresentation
Drug or alcohol dependency
Violence or intentional or deliberate or reckless disregard of human life
Sexualised behaviour as defined in <i>Clear sexual boundaries between healthcare professionals and patients; responsibilities of healthcare professionals</i> published by the CHRE in January 2008
Sexual acts with children
Abuse of trust or other inappropriate behaviour with vulnerable persons ²
Breach of confidentiality
Trafficking, diversion or illegal manufacture of any medicines (including controlled drugs) or medicinal products
Threats to public health, safety or welfare
Unlawful discrimination, harassment or victimisation, contrary to the requirements of the Equality Act 2010
Blatant disregard for the law or the system of registration
Any other behaviour which is incompatible with the Osteopathic Practice Standards

Any disclosure that is considered to be serious will be referred **automatically** to the Registrar for consideration.

The Registration Department places great emphasis on the important of full and frank disclosure by an applicant as part of the registration process.

As such, any failure to disclose matters that are potentially relevant to an applicant's character will be viewed as positive evidence of a lack of good character, and may result in a decision not to register the applicant.

It is therefore in the applicant's interest to declare any and all matters which may be relevant to a decision about 'good character'.

4. Application of the good character assessment framework to renewal of registration

Persons registered with the GOSc are required to renew their registration periodically. As part of this process, registrants are required to complete a self-declaration in relation to character.

² Vulnerable persons are to be regarded as persons under 18; or adults who are to be regarded as vulnerable within the meaning of section 59 of the Safeguarding Vulnerable Groups Act 2006.

The Registration Department will apply the factors and principles set out in this framework to any matters which come to light as part of the registration renewals process, and which call into question the registrant's continued good character.