



Council
20 November 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 Annex A
Financial and resourcing implications	None identified
Financial and resourcing implications	Within existing budget
Equality and diversity implications	None identified
Communications implications	A public engagement consultation was undertaken from 23 April 2019 – 20 June 2019. If approved, the Restoration Guidance will be published on the GOsC website.
Annex	A - Draft Restoration Guidance B - Consultation responses
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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/ukxi/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 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 interim 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.

Discussion

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) and whether 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 guidance document.

February 2019 Council Meeting

8. During Council meeting in February 2019, an amended draft restoration guidance was presented having first considered the views of stakeholders

including those outside of healthcare regulation and those involved in the regulation of the legal profession as part of the policy development.

9. Discussion centred around the relevance of issues depending on the timing of the restoration application. It was recognised that erasure from the Register happens in only the most serious of circumstances. Where there are issues of patient protection the different issues relating to an applicant returning to the Register after one year, or ten years, must be very carefully considered. The way which the guidance is written and the timescale for restoration should play an important part in the PCC's decision making.
10. Because of the Worboys' case it was considered that it would be good practice to engage and support patients during the restoration process, as complainants would be treated during any fitness to practise case. It was confirmed that the consultation would invite views on this and on whether the formal views of the patient to be presented before the PCC. The PSA's views would also be sought.
11. A further matter discussed, related to 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). It was confirmed that views on this specific point during the public consultation.
12. The Chair of Council requested that Council have sight of the consultation document in advance of its circulation and give any further feedback as this is a particularly critical issue.

The Consultation

13. The GOsC undertook a public consultation from 23 April 2019 – 20 June 2019. We received four responses in total, including a detailed response from the Professional Standards Authority, the Chair of the Professional Conduct Committee and the Scottish Social Services Council.
14. As a general indicator as to the relative success of the engagement strategy, the consultation featured in the Osteopath magazine and GOsC e-bulletins. It is also relevant to note that over the consultation period there were 105 views of the draft Restoration consultation page on our website. A summary of the formal consultation responses we received are set out in Annex B.

15. In summary, to enhance clarity, the draft guidance is now divided into three separate parts: the procedure before the hearing and during the hearing together with the approach that should be adopted by the PCC as part of its decision-making process.
16. In relation to the 2 matters we explored during the consultation (as set out at paragraph 10 and 11 above), we have decided not to take the proposal requiring exceptional circumstances further. Instead, we have given the importance of the public interest greater prominence in the guidance by drafting a separate paragraph within the section dealing with the approach to be taken by the Committee at the restoration hearing. Regarding contact with the complainant, we have added specific content to the draft guidance which explicitly states our position in relation to complainants. Where the substantive fitness to practise hearing involved a complainant, the GOsC will ensure all reasonable and proportionate steps are undertaken to liaise with the complainant to ensure they are provided with information and support in advance of the Applicant's restoration hearing. We consider this reflects our person-centred approach where we put patients, families and the public at the heart of what we do.

Recommendation: to agree the draft Restoration Guidance