

One strike and out: the rigours of professional disciplinary proceedings

by Gillian Nevin of Horwich Farrelly Solicitors

Articles | Published on 19-Apr-2021 | England, Wales

In this article, Gillian Nevin considers the approach of professional disciplinary tribunals to findings of unfitness to practise and removal from the register, and addresses the possibilities of restoration.

Professionals: one strike and out?

Horse racing rarely warrants a mention outside the sporting pages (except perhaps on Grand National day), and even less so in a legal context, but it has featured prominently in the mainstream press in recent weeks due to the furore surrounding the publication of a photograph of Irish racehorse trainer E sitting astride a dead horse. The governing body for horse racing in Ireland, the Irish Horseracing Regulatory Board, swiftly convened a disciplinary hearing and E was found to have acted in a manner which was prejudicial to the integrity, proper conduct and good reputation of horse racing. Many were calling for the trainer to have his licence removed, but the referrals committee handed down a one-year suspension, six months of which was suspended, and a fine.

Had the ultimate penalty been imposed, would that have meant the end of E's career? Should a single incident wipe out years of dedication? For many professionals, being struck off by their regulatory body and therefore unable to practise in their chosen discipline as a result is more often than not the end of their careers. The process of restoration or re-applying for a licence varies considerably between regulators. No doubt some are deterred by the arduous requirements, which may preclude such an application. However, there have been some recent decisions which suggest a strike off is not necessarily the final blow if an applicant is determined enough to pursue this course of action.

Doctors

For doctors, reinstatements to the register were historically fairly rare. This is primarily due to the fact that doctors who are struck off are only able to apply after a period of five years. In 2018, four out of 14 applications were granted. In 2019, out of 13 applications, only two were successful. It may well be a coincidence that the world was (and remains) in the grip of a global pandemic, but 2020 appeared to show a bucking of this trend, with 17 applications resulting in seven successful outcomes.

So far in 2021 two doctors have been reinstated, O who had been erased from the medical register after his fitness to practise was found to be impaired at a hearing in 2015. This followed his conviction for having wilfully ill-treated a child in his care, in a manner likely to cause him unnecessary suffering or injury to health. The tribunal was satisfied that there were no public safety concerns in relation to O. In addition, he had worked in Nigeria as a consultant anaesthetist for a number of years, so could demonstrate his skills were up to date (which is usually the most difficult hurdle for an applicant to overcome). For more information see [Practice notes, General Medical Council Fitness to Practise: overview](#) and [General Medical Council sanctions](#).

Nurses and midwives

A nurse or midwife who has been subject to a striking off order may not apply for restoration until a period of five years has

elapsed since the striking off order was made. The Nursing and Midwifery Fitness to Practise Committee is able to grant applications for restoration, subject to the completion of additional training and experience. In March 2021, the panel determined that S was a fit and proper person to return to the register, having been removed for plagiarism and dishonesty offences in 2015. Her application was granted, subject to completion of additional training. P was removed in 2014, but on her second attempt at restoration in March 2012 the panel allowed her application, subject to completion of a return to practice course. For more information see [Practice notes, Nursing and Midwifery Council: sanctions](#) and [Nursing and Midwifery Council: Fitness to Practise Committee](#).

Veterinary surgeons

Veterinary surgeons do not face quite such an uphill battle to be restored to the register following strike off. This is mainly attributable to the fact that the Veterinary Surgeons Act 1966 allows for an application to be made after ten months following removal from the register. M, who was also embroiled in a high-profile horseracing case, was restored to the register in March 2012. This followed his strike off in February 2011 for administering tranexamic acid to a racehorse owned by the Queen on the morning of a race and dishonestly concealing this by recording it as a “pre-race check” in his practice records. M accepted the original committee’s decision and apologised for his actions, as well as demonstrating he had undertaken appropriate continuing professional development.

However, successful applications for restoration by veterinary surgeons are not guaranteed. During 2020, the RCVS Disciplinary Committee rejected the eighth attempt of H to be restored to the register, on the grounds that he lacked an understanding as to why he had not been restored in the past and had not addressed any of his shortcomings. W’s application in July 2020 was also unsuccessful, having been removed from the register in June 2018 following his conviction for possessing indecent images of children.

Also during 2020, the RCVS adjourned its consideration of an application for restoration of V, who had been struck off for falsifying certificates. The RCVS Disciplinary Committee found that she had accepted the reasons for her removal and the seriousness of those findings, but expressed concern over the knowledge and skills required for her to return to practice. The hearing was adjourned for seven months to allow the applicant to follow a properly structured return to practice plan.

Solicitors

Unlike some professions, it is generally accepted that a solicitor removed from the roll for dishonesty will never be allowed to practise again. Such applications are rare, but in February 2021 K made a successful application to the Solicitors Disciplinary Tribunal, which overruled the Solicitors Regulation Authority’s objections to his return. K had previously made an unsuccessful application in 2018, having originally been removed following his conviction on money laundering charges in 2009. He had served two years in prison and since then worked as a legal officer in Bradford Council and latterly as a paralegal, with permission from the SRA. For more information see [Practice note, Solicitors Disciplinary Tribunal](#).

Conclusion

In summary, a strike off may not necessarily mean a professional can never work in their chosen career again. Nevertheless, successful applications are the exception and whatever the profession, there are certain criteria which must be fulfilled. The applicant must fully accept the decision to remove in the first place, and this is usually accompanied by an apology. There must also be no risk of repetition or of public confidence being harmed by the restoration. Clear evidence that the professional has been fully rehabilitated and that skills are up to date are also essential.

END OF DOCUMENT