

# Guidance for case examiners on making restoration decisions following voluntary or administrative erasure

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**Date of publication:** September 2020

**Last updated:** May 2025

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## Purpose

1. The purpose of this guidance is to provide case examiners with advice on the approach they should take when deciding if a doctor should be restored to the register following voluntary or administrative erasure. Although case examiners should consider each application according to its individual circumstances, the guidance provides examples of when it is likely to be appropriate to grant or refuse restoration and when referral to a medical practitioners tribunal (MPT) may be necessary.
2. This guidance may also be used by the Investigation Committee if they are asked to determine a restoration application should the case examiners be unable to agree on an outcome.

## Background

3. Under the regulations\* governing restoration following voluntary and administrative erasure, an application may be referred to case examiners if the Registrar is aware of concerns about the doctor's fitness to practise. These include concerns known about when the doctor was erased, that have arisen while the doctor was unregistered or were declared by the doctor on their restoration application.
4. Case examiners have the power to grant restoration, refuse restoration, or refer the matter to a medical practitioners tribunal. Two case examiners (lay and medical) will consider the application and if they are unable to agree, the matter is referred to the Investigation Committee.

## Overall approach

5. The regulations allow case examiners to:
  - i. grant restoration. This will be appropriate if the case examiners are satisfied, based on reliable evidence, that the doctor is fit to practise without restriction. Restoration should normally be granted if the concerns are not serious enough to raise an issue of impaired fitness to practise or are not capable of proof to the civil standard.
  - ii. refuse restoration. The application should be refused if there is reliable evidence that the doctor's fitness to practise is impaired.
  - iii. refer the application to a medical practitioners tribunal. This outcome will be indicated if it is unclear whether the doctor is fit to practise, for example, because

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\* Either [The General Medical Council \(Voluntary Erasure and Restoration following Voluntary Erasure\) Regulations Order of Council 2004](#) or [The General Medical Council \(Restoration following Administrative Erasure\) Regulations Order of Council 2004](#).

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there is a conflict of evidence or the doctor's insight needs to be assessed in more detail at a tribunal hearing.

6. The test for restoration following administrative or voluntary erasure is *'having considered all the relevant information received, is the doctor fit to practise having regard to each of the three elements of the overarching objective?'*
7. In making decisions, case examiners should have regard to our overarching objective which is to protect the public. This has three elements which should all be considered when making restoration decisions. These are:
  - a protecting, promoting and maintaining the health, safety and well-being of the public
  - b promoting and maintaining public confidence in the profession, and
  - c promoting and maintaining proper professional standards and conduct for members of the profession.
8. Where the above test is met, restoration should normally be granted. It is not possible to grant restoration with conditions or undertakings, so case examiners must be satisfied that the doctor is fit to practise without restriction before granting restoration.
9. Case examiners should consider the evidence before them, including its relevance and what weight can be attributed to it, when assessing whether the doctor's fitness to practise is impaired. The type of evidence is likely to vary according to the nature of the concerns about the doctor. In some cases, it may be reasonable to expect objective evidence to be put forward, such as an assessment of the doctor's knowledge of English or professional performance, for example. In other cases, where an assessment of insight and remediation is needed, the doctor's own account of reflection and learning may be all the evidence available. In looking at references or testimonials, the opinion of an independent referee is more likely to carry weight than that of a friend or relative.
10. It is for the GMC to prove untested allegations of impairment in a restoration case. Case examiners should apply the realistic prospect test to allegations that have not already been determined in GMC proceedings. In doing so, case examiners should not resolve significant conflicts of evidence although they can weigh the available information to decide if there is a realistic prospect of proving an allegation. Case examiners should grant an application for restoration if, following full and proper investigation, they conclude there is not a realistic prospect of proving disputed allegations of misconduct. If restoration is to be granted on this basis, detailed reasons should be given in the decision.
11. In assessing the weight to be given to evidence, case examiners should consider whether it is the best evidence that could realistically be expected, given the circumstances of the doctor's application for restoration.
12. Case examiners should ask the Investigation Officer to request further information if they are unable to assess the seriousness of the concerns or the likelihood of proving them on the basis of the evidence already obtained. This could include more specific information from an overseas regulator about the investigation they carried out or an expert report if one has not already been obtained.

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13. When considering restoration applications and whether there is a realistic prospect of proving an untested allegation, case examiners may also find it helpful to refer to [Deciding the outcome of an investigation \(Doctors\)](#).

## Types of case

### Criminal cautions and convictions

14. Case examiners can rely on a certificate of conviction as conclusive proof that the doctor committed the offence. This is not the case with criminal cautions and case examiners may need to weigh evidence about their circumstances if these are disputed by the doctor.
15. If a doctor has been convicted of a criminal offence considered to present a significant risk to patient safety or to public confidence in the profession, case examiners should normally refuse restoration without referring the matter to a MPT. Examples include but are not limited to murder, offences involving serious violence, rape and sexual offences relating to children or adults with care and support needs.
16. Case examiners should use their judgment to decide if it would be proportionate to grant or refuse restoration or refer the application to a MPT in other cases involving a caution or conviction. The following factors are likely to be relevant and will also apply to other types of criminal outcome such as a cannabis warning or Anti Social Behaviour Order (ASBO.)
- a The nature and circumstances of the caution or conviction. It will usually be appropriate for case examiners to allow restoration of doctors who have a criminal caution or conviction for offences at the lower end of the spectrum of seriousness which would not meet the realistic prospect test. For example, driving with excess alcohol, criminal damage or fare evasion. However, there may be situations where restoration may not be appropriate. For example, where a conviction for driving with excess alcohol is linked to a health condition that is not being managed and therefore poses a risk to patients. For some convictions and cautions, whether they impact on a doctor's fitness to practise will depend on the level of the doctor's insight, remorse and remediation. In cases of doubt or uncertainty, it is likely to be appropriate to refer the application to a MPT as the tribunal will be best placed to make an overall judgment as to whether the doctor is fit to practise, having heard oral evidence from the doctor about their insight, remorse and remediation.
  - b The length of time since the caution or conviction. The longer the time that has lapsed, the less likely it is that the caution/conviction will raise an issue of current impairment. It will normally be expected that any sentence or other penalty (for example registration as a sex offender) imposed by the Court will have been served, or otherwise come to an end, before an application for restoration is granted. Cases in which a sentence or penalty, including a suspended sentence of imprisonment, are still outstanding are highly likely to raise issues of public confidence and to justify either refusal, or referral to a MPT.
  - c Any other factors which are relevant to the doctor's fitness to practise such as whether they have previous cautions or convictions.

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## Determinations

17. Doctors seeking restoration may have been the subject of a determination by another regulatory body including those overseas. A formal determination by a regulatory body is conclusive evidence of the facts found proved in relation to that determination and the underlying matters do not need to be proved again.
18. Case examiners should consider the individual circumstances of the determination and any other specific factors which are relevant such as the doctor's fitness to practise history.
19. Where the determination is of a serious nature and there is no doubt the doctor's current fitness to practise is impaired, case examiners should refuse restoration. This includes where the doctor's registration in another country or with another regulator in the UK\* is suspended or subject to restrictions even if these only relate to a specific area of practice and the doctor has been allowed to continue to work in other areas; doctors cannot be restored to the register with restrictions. Some exceptions may apply, such as if a doctor who is dual-registered with us and the GDC has restrictions which are only relevant to their GDC registration.
20. It may be appropriate to refer a restoration application to a MPT if the determination raises a potential issue of impairment but is not necessarily incompatible with the doctor being allowed to practise again. While in serious cases restoration should be refused, in others it may be appropriate to refer the application so a tribunal can assess the doctor's insight, remorse and remediation in more detail.
21. There may be cases involving determinations where it is appropriate to grant restoration if we have obtained reliable and objective evidence which clearly demonstrates that the doctor is fit to practise without restrictions. For example, the original findings related to the doctor's performance or health but the overseas regulator subsequently issued a further determination that they have been successfully remediated and the doctor allowed to return to full practice.
22. When considering restoration applications where there is an outstanding caution/conviction or determination, case examiners may also find it helpful to refer to the [Decision on whether regulatory action is required \(Doctors\)](#).

## Allegations of misconduct

23. There may be allegations about the doctor's conduct that have not previously been determined by the GMC.
24. Although significant conflicts of evidence should not be resolved, case examiners can weigh the available information to decide if there is a realistic prospect of proving an allegation. Restoration can be granted if, following full and proper investigation, case examiners conclude there is not a realistic prospect of proving disputed allegations of misconduct.

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\*For example, maxillofacial surgeons are usually dual registered with the General Dental Council (GDC).

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25. Referral to a MPT will be indicated if the factual matters are disputed by the doctor but there is a realistic prospect of proving them and, were they to be proved, there is a realistic prospect of the tribunal finding the doctor is not fit to practise and refusing restoration.
  26. Case examiners can however refuse restoration if the allegations are not disputed by the doctor and lead them to conclude the doctor is not fit to practise unrestricted.

## Health

27. Where concerns relate to a doctor's health, case examiners should consider whether the health condition could affect patient safety and, if so, whether the doctor is managing their condition adequately to ensure patients are not placed at risk of harm. If there is insufficient information to clarify this, the case examiners should request further information from the doctor, including from their treating doctors. If the case examiners are satisfied that there is no risk to patient safety and there are no other fitness to practise concerns, restoration should be granted.
28. The doctor should be directed to undergo a health assessment if it appears that their fitness to practise may be impaired by reason of ill health. This may include concerns about a recurring condition which could make the doctor unfit to practise in future.
29. Where both health examiners agree that the doctor is fit to practise without restriction, this will usually indicate that it is appropriate for case examiners to grant restoration. If both health examiners agree that the doctor is not fit to practise without restriction, this is likely to be a strong indicator in favour of the case examiners refusing restoration. Where the examiners do not initially agree on whether or not the doctor is fit to practise, they should be asked to confer with a view to reaching a consensus. If one health examiner maintains that the doctor is not fit to practise without restriction, it is likely to be appropriate for the case examiners to refuse restoration or refer the application to a MPT, depending on the circumstances.
30. If there is evidence of impairment on health grounds and the doctor declines to undergo a health assessment, this will weigh in favour of case examiners refusing to grant restoration. However, each case should be considered individually, and case examiners can take into account other relevant information such as reports from medical practitioners treating the doctor.

## Language

31. Where there are outstanding concerns about a doctor's knowledge of English, they should be directed to undergo a language assessment. If the doctor passes this will usually indicate that restoration should be granted, in the absence of any other concerns. A doctor's failure to reach the minimum acceptable score will be a strong indicator their application should be refused.
32. If the doctor declines to undergo a language assessment, it is likely to be appropriate for case examiners to refuse restoration.

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## Performance

33. There may be concerns about a doctor's performance from when they were registered with the GMC or, since their erasure from our register, their practice in another jurisdiction.
34. If there are outstanding concerns about a doctor's performance that raise a question about their fitness to practise, they should be directed to undertake a performance assessment and case examiners may be asked to provide advice to the Registrar on the necessity and potential scope of any assessment. Performance concerns will arise from information that demonstrates, or appears to demonstrate, repeated or persistent poor performance against one or more of the categories in *Good Medical Practice*. Examples of common areas of deficient professional performance are prescribing, record keeping and working effectively with colleagues.
35. A performance assessment prior to restoration will not be indicated if the doctor's application would be refused because they are not fit to practise on another ground. For example, they have a serious conviction or a health or language assessment has found their fitness to practise is impaired.
36. We should also not undertake a performance assessment if there is other objective evidence to demonstrate that an assessment is almost certain to find the doctor's performance to be deficient. It would not be fair to ask a doctor to undergo (and pay for) an assessment in these circumstances.
37. Where an assessment is undertaken and the assessors consider the doctor's performance to be deficient, it will usually be appropriate for the case examiners to refuse the restoration application. If the assessors consider that the doctor's performance is not deficient, it is likely to be appropriate for the case examiners to grant restoration.
38. If there is information that raises a question about the doctor's fitness to practise in relation to their performance and they decline to undergo a performance assessment, this will be a strong indicator that case examiners should refuse to grant restoration.

## Multifactorial cases

39. In multifactorial cases, an application for restoration should be refused or referred to a MPT if any of the concerns about the doctor's fitness to practise would make this appropriate.

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## Restoration applications where the doctor was suspended or had conditions or undertakings at the point of voluntary or administrative erasure

40. If the doctor was suspended or had conditions or undertakings on their registration when they took voluntary erasure or were administratively erased\*, case examiners should follow the approach below.
41. If the original findings related to behavioural misconduct such as probity issues, violence or discrimination, it will usually be appropriate to refer the doctor's application to a MPT. This will enable the tribunal to reach a judgment on whether the doctor is now fit to practise without restriction having assessed their insight, remorse and remediation.
42. Where the MPT or (in the case of undertakings) case examiners' most recent findings related solely to the doctor's health, performance or knowledge of English, case examiners should consider:
  - a whether the doctor has fulfilled any requirements that were previously identified by the tribunal as being necessary for the purpose of a review hearing. This applies to MPT cases only.
  - b whether objective evidence demonstrates that the doctor has remedied the concerns about their fitness to practise such that it is no longer impaired.
43. This evidence will usually take the form of an up to date GMC assessment. However, there may be circumstances where the case examiners are able to conclude the doctor's fitness to practise is no longer impaired based on alternative evidence that clearly and objectively demonstrates that the doctor is fit to practise without restrictions. Examples may include:
  - a a report (equivalent to a GMC performance assessment) from an overseas regulator which concludes that the doctor is fit to practise or has no areas of deficiency
  - b a recent assessment of the doctor's health (usually carried out by another regulatory body) which is equivalent to a GMC assessment. In some cases, reports from treating doctors together with other information such as attendance at support groups, confirmation the doctor has been in remission for a long time and details of steps taken to manage the risk of relapse will be sufficient for the case examiners to conclude the doctor is no longer impaired.
44. In cases of clinical misconduct, a performance assessment might not be appropriate, but the case examiners will need to assure themselves that the risk of repetition is low. Evidence of relevant training together with proof of other actions the doctor has taken to address any areas of concern might be sufficient assurance that the misconduct would not be repeated. Doctors practising overseas will have also provided (as part of our restoration

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\* This only applies to substantive MPT sanctions and not suspensions or conditions imposed by an Interim Orders Tribunal

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requirements) provision of medical service statements from overseas employers and a Certificate of Good standing. Where applicable, they should also detail any other steps they have taken during their overseas practice to prevent repetition such as arranging for their clinical practice to be audited.

- 45.** Having considered all the available evidence, case examiners should form a judgment on whether the doctor is fit to practise and if restoration is consistent with all three elements of the overarching objective. If case examiners are unable to do so, for example because the evidence is inconclusive or the doctor's insight needs to be assessed in person, the application should be refused or referred to a medical practitioners tribunal.

## **Time period before a doctor can re-apply after being refused restoration**

- 46.** Case examiners do not have a power to specify how long the doctor must wait before reapplying after being refused restoration.
- 47.** Where a doctor has made repeated applications for restoration case examiners may, at their discretion, refer the matter to a MPT for consideration.
- 48.** Should a MPT refuse restoration, the doctor cannot apply again for 12 months or such other period as the medical practitioners tribunal may specify.