

## ICLR conference 2016

# Reinstatement and Supervision of Lawyers on Probation

Solicitors who have been struck off can only be reinstated by an order of the Solicitors Disciplinary Tribunal. This is known as restoration to the Roll.

Solicitors are sometimes suspended indefinitely and must apply to the SDT to end the suspension. This is usually used where the solicitor has a problem, such as alcohol dependency or other ill-health that they need to resolve before they are safe to practise again.

Solicitors who are suspended for a fixed period are restored at the end of the suspension.

We do not use the concept of probation in our jurisdiction but any solicitor who returns to practice in these circumstances is very likely to be subject to supervision because we will allow them to practise only on conditions such as that they can only work as an employee and not as a sole practitioner or partner.

Struck off and suspended solicitors can be employed in law firms with our permission. If we agree to that, it will usually be on the basis of strict supervision by a solicitor in the firm.

### Restoration by the SDT

- The solicitor has to make a formal application to the SDT and the SRA can agree, object or remain neutral. We usually object to restoration.
- In the last six years there have been a total of 20 applications.<sup>1</sup>
- Only six have been granted. Fourteen have been refused.
- Key factors in a restoration application include the passage of time, evidence of rehabilitation and the seriousness of the original misconduct. If the solicitor was found dishonest when struck off the SDT warns that “the solicitor faces an almost insurmountable obstacle to his restoration”.

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<sup>1</sup> A summary of orders made by the SDT since 2010 is provided in their latest Annual Report, page 18: <http://www.solicitorstribunal.org.uk/about-us/annual-reports/>

- The SDT give details of the process in their guidance on sanctions, as follows:<sup>2</sup>
  50. The Tribunal has power to restore to the Roll the name of a former solicitor whose name has been struck from it. An application in such a case must be supported by a statement setting out:
    - details of the original order of the Tribunal leading to strike off
    - details of the applicant's employment and training history since the Tribunal's order of strike off
    - details of the applicant's intentions as to and any offers of employment within the profession in the event that the application is successful
  51. An application for restoration is not an appeal against the original decision to strike off. The Tribunal's function when considering an application for restoration is to determine whether an applicant has established that he/she is now a fit and proper person to have their name restored to the Roll.
  52. In considering any application for restoration to the Roll, the Tribunal will have regard to the following factors:
    - the period which has elapsed since the order of strike off was made. Save in the most exceptional circumstances an application for restoration to the Roll within six years of the original strike off is likely to be regarded by the Tribunal as premature evidence of rehabilitation. This will usually require detailed evidence of substantial and satisfactory employment within the profession in the period since strike off
    - the applicant's future employment intentions and whether another solicitor would be willing to employ the applicant within a practice in the event that the applicant's name is restored to the Roll
    - the extent to which the applicant has repaid any losses sustained by others as a result of the applicant's original misconduct, including any fines and cost orders made by the Tribunal. The applicant must be in a position to demonstrate that he/she has made a sustained effort to meet any such liability

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<http://www.solicitorstribunal.org.uk/Content/documents/GUIDANCE%20NOTE%20ON%20SANCTIONS%204th%20edition%20December%202015%20website.pdf>

- a criminal conviction recorded against an applicant involving dishonesty or a finding of dishonesty by the Tribunal can constitute an almost insurmountable obstacle to a successful application for restoration.”

We do see cases where a struck off solicitor has been restored and commits further serious misconduct. In a case where a solicitor was struck off for deleting a document and flouting a court order, the SDT restored him 11 years later and said

“The Tribunal in no way seeks to condone what [the solicitor] did. His wrongdoing had been at a serious level. The Tribunal has taken into account that at the time he was relatively young, had been a solicitor for five or six years and had been subjected to extraordinary pressures for a solicitor of his age and experience. The Tribunal also leans heavily on the fact that the earlier Tribunal considered that the Respondent’s behaviour had been an aberration.”

This solicitor is now alleged to have been facilitating investment frauds and we have had to close down the firm in which he was a partner. He is likely to be struck off again.

### **Terminating an indefinite suspension**

Indefinite suspension is not used by the SDT as often as it used to be. In 2010 there were 20. There were 16 in 2011 and 18 in 2012 but only two in 2014 and three in 2015.

In the last six years there were 10 applications to terminate indefinite suspensions and five were granted.

### **Supervision by conditions**

We have wide powers to impose conditions on how a solicitor can practise.

A solicitor who has been restored by the SDT will rarely be allowed to practise alone or even as a partner.

Examples of commonly used conditions are that the solicitor:

- may only practise as an employee with a firm and under arrangements approved by the SRA
- may only practise under the supervision of another named lawyer in the firm

- will not be allowed to operate the firm's bank accounts
- is not allowed to carry out certain types of work, such as litigation or conveyancing of property.

These conditions will usually apply for a number of years until we are satisfied that the solicitor can practise unconditionally.

We take an even stronger line when a struck off or suspended solicitor wants to work for a law firm. We cannot prevent this entirely because there is statutory provision for it. The application is made by the law firm that wants to employ the former solicitor. As well as conditions similar to those listed above, we may grant the application subject to conditions such as that the former solicitor:

- must not be named on the firm's headed notepaper, website, publicity material or in the firm's name – this is to avoid the impression being given that the former solicitor is still practising
- must not have their own caseload or give advice to clients.

### **Routine return to practice**

Solicitors who have come off the roll for other reasons (such as to pursue another career) have to apply to us if they want to return to practice.

They then have to satisfy our Suitability Test.<sup>3</sup>

They are asked for evidence across all aspects of this test including criminal offences, financial details, and regulatory history.

In 2015 there were 1,356 applications, of which four were refused. All of these were based on failing to meet a key part of the Suitability Test:

"5.1. Unless there are exceptional circumstances *we* will refuse *your* application if:

(a) there is evidence that *you* cannot manage *your* finances properly and carefully;

(b) there is evidence that *you* have deliberately sought to avoid responsibility for *your* debts; and/or

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<sup>3</sup> <http://www.sra.org.uk/solicitors/handbook/suitabilitytest/content.page>

(c) there is evidence of dishonesty in relation to the management of *your* finances."

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