



General Teaching Council  
for England

## **Guidance for Members of Disciplinary Committees**

**This guidance applies from July 2010 to cases conducted under the Council's  
Disciplinary Procedure Rules 2008.**

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## **Part 1 Introduction: General principles affecting regulatory work**

The purpose of this guidance is to assist members of Investigating, Professional Conduct and Professional Competence Committees in carrying out their functions in accordance with the Council's Disciplinary Procedure Rules ("the Rules") and the law.

**Any reference to the Rules in this guidance is a reference to the Council's Disciplinary Procedure Rules 2008.**

**Any reference to the Registrar is a reference to the Registrar or such other person with delegated responsibility to act on his behalf.**

This guidance is supplemented by scripts, which must be used by Members chairing disciplinary committees and help ensure that hearings are conducted in a fair and consistent manner. This guidance does not form part of the Rules.

The law applying to the Council's disciplinary Committees is contained in the Teaching and Higher Education Act 1998 (as amended by the Education Act 2002) and in The General Teaching Council for England (Disciplinary Functions) Regulations 2001 (as amended by the General Teaching Council for England (Disciplinary Functions) Amendment Regulations 2003).

The Rules provide further detail of the procedures to be followed. The legislation and the Rules are available at the meeting of any Committee and are also accessible through the Council's website at [www.gtce.org.uk](http://www.gtce.org.uk) and, for Council Members, through the Members' extranet.

Members of Committees must both act, and be seen to act, in an independent and impartial manner, whether at the investigating or hearing stages. In hearings, members must be seen to favour neither the case presented by the presenting officer nor that presented by or on behalf of the teacher. Care taken in the questions asked, tone of voice and body language will all help in ensuring that the teacher and others present have confidence in the process.

In particular, the manner in which the Committee is chaired will have a significant impact on the tone and effectiveness of the proceedings. It is critical that the Chair retains firm control over the conduct of proceedings to ensure their effectiveness and fairness, and maintains an impartial and understanding approach.

## **1.1 The Status of the Council's Disciplinary Procedure Rules**

The Council has approved its Disciplinary Procedure Rules following wide consultation with interested parties, including the teacher trade unions and professional associations and representatives of employers within the education service.

The purpose of the Rules is to ensure that the teacher who is the focus of the Council's disciplinary proceedings is subject to a fair process, which accords with the requirements of natural justice and the Human Rights Act 1998.

Inevitably there will be circumstances which the Rules do not envisage or anticipate and where it is necessary for the Chair to exercise judgment in the way that the procedures operate. The Rules provide that a legal adviser must be made available to a Committee (whether Investigating or Hearing). The role of the legal adviser is explained at 1.5 below.

## **1.2 Appointing a Chair**

Before the beginning of an Investigating or disciplinary hearing Committee, the members of the Committee should hold a pre-meeting to elect a Chair (**see Rules 5 and 20**).

## **1.3 Conflicts of interest**

Members are asked to note that **Rules 6(2) and 21(3)** require members to consider whether any conflict of interest may exist between themselves and the registered teacher. In practice, the teacher and members of the Committee are asked to declare any such interest in advance of the meeting or hearing. However, as a matter of good practice, members are also asked to confirm on the day that no such conflict exists.

**Rules 6(3) and 21(5)** provide that belonging to the same or a different trade union as the registered teacher does not, of itself, constitute a conflict of interest for this purpose and the same may be presumed in respect of witnesses.

It is important that members consider not only whether there is an obvious conflict of interest (for example, where they know the teacher in question) but also the risk of the perception that a conflict of interest may exist. The test to be applied is whether a fair minded and informed observer, having considered the given facts, would conclude that there was a real possibility that the tribunal was biased. Thus, consideration also needs to be given to the risk of a possible conflict of interest arising because a Committee member knows a teacher's representative.

Where a possibility of conflict, either real or perceived, exists, **Rule 21(4)** requires that the member should declare it and invite representations from the parties as to the appropriateness of continuing to sit in relation to the case. The Committee, acting upon legal advice, shall then determine whether it is appropriate for that member to continue to sit.

#### **1.4 Member status**

All regulatory committees are constituted by the Council from: (a) Members of the Council, and (b) Additional Committee Members, who have been specifically appointed through a public appointment process to undertake regulatory work.

Both categories of member are divided into pools available to sit on Investigating Committees, disciplinary hearing committees and Induction Appeals Committees. The proceedings of Induction Appeal Committees are governed by separate procedures and guidance.

Members of the investigating pool are not interchangeable with members of the disciplinary hearing pool, although some flexibility between the other pools is occasionally necessary.

It is Council policy that disciplinary Committees must always comprise a majority of qualified teacher members with lay representation.

Investigating Committees normally comprise 5 members. Disciplinary hearing committees normally comprise 3 members.

In order to serve on a Committee as a Registered Teacher Member or a Lay Member, Members must meet the definitions set out in the General Teaching Council for England (Disciplinary Functions) Regulations 2001 (as amended), as follows:

- (a) "lay member" means a member of the Committee who -
  - (i) is neither a registered teacher, nor
  - (ii) has been employed, or engaged to provide his services otherwise than under a contract of employment, as a teacher within the period of five years ending with the date of his appointment to the Committee,

and a lay member who becomes a registered teacher or who takes up a post or engagement as a teacher shall cease to be regarded as a lay member;

- (b) "registered teacher member" means a member of the Committee who is -

- (i) a registered teacher, and
- (ii) employed, or engaged to provide his services otherwise than under a contract of employment, as a teacher on the date of his appointment to the Committee,

and a registered teacher member who ceases to be a registered teacher or who ceases to hold a post or engagement as a teacher shall cease to be regarded as a registered teacher member.

Note: Under a decision of the Registration and Regulation Committee on 5 October 2004, a member of the Council who is a registered teacher may also serve as a teacher member of a Committee, even if not currently employed or engaged as a teacher.

The Council will allocate Members to Committees based on the above definitions.

**In order to ensure Committees are legally constituted, it is essential that Members notify the Council Secretary as soon as possible in advance of any change to their circumstances which may affect their status. This includes Registered Teacher Members who retire or resign from full-time teaching and/or wish to deregister or Lay Members who register with the Council or who take up teaching positions. Members are asked to confirm their status on appointment to any disciplinary committee.**

## **1.5 The role of the Legal Adviser**

A legal adviser will be present at all proceedings of disciplinary Committees. The responsibilities of the legal adviser may be summarised as follows: (Matters marked \* do not apply to an Investigating Committee.)

1. To provide the Committee with any advice they require to properly perform their functions, whether or not the Committee has requested that advice, on:
  - (i) questions of law;
  - (ii) questions of mixed law and fact;
  - (iii) matters of practice and procedure;
  - (iv) the range of penalties available\*;
  - (v) any relevant decisions of the superior courts or other guidelines;
  - (vi) other issues relevant to the matter before the Committee;
  - (vii) the appropriate decision-making structure to be applied in any given case.
2. Legal advisers may also:
  - assist the Committee by reminding them of evidence;

- ask questions of witnesses and the parties in order to clarify the evidence and any issues in the case\*;
- assist the Committee in formulating their reasons and recording the Committee's reasons.

3. When advising, the legal adviser should:

- ensure that they are aware of the relevant facts of the case;
- provide the parties with the information necessary to enable them to make any representations they wish as to the advice before it is given.\*

Any legal advice given other than in public session should be clearly stated to be provisional and the adviser should subsequently repeat the substance of the advice in open session and give the parties an opportunity to make any representations they wish.

4. The legal adviser is under a duty to assist unrepresented parties to present their case but must do so without appearing to become an advocate for the party concerned.\*

## **1.6 Security of hearings**

The following arrangements are made to ensure the safety and security of all involved in the hearings process:

- The GTC has trained first aiders who may offer relevant assistance in the course of a disciplinary hearing.
- The GTC will not proceed with a case where there is information which could prejudice the safe and secure conduct of the case.
- Primary responsibility for the conduct of the hearing rests with the Hearing Committee and, in particular, the Chair. The Chair may adjourn the proceedings at any time if he/she considers the case may not be conducted in a safe and secure manner.
- All staff and visitors are subject to the requirements of building security, and may not bring into the building any hazardous item or substance. The GTC reserves the right to refuse the admission of bags, equipment or other items into the hearing accommodation.

## **Part 2 Guidance to members of Investigating Committees**

### **2.1 The role of the Council in considering referrals**

Information received by the Council regarding regulatory matters may take the form of:

- i criminal convictions, cautions or other disposals;
- ii allegations of Unacceptable Professional Conduct from members of the public; and
- iii referrals by employers where teachers have ceased employment for reasons of misconduct or incompetence.

On occasion, the Council may itself identify an issue which appears to merit further investigation under these procedures.

Under **Rule 2**, the Registrar will, through delegations to staff, determine initially whether the individual about whom information is received falls within the Council's jurisdiction, i.e. that they are a registered teacher. If so, the Registrar will consider whether the information received by the Council is capable of amounting to an allegation, undertaking such preliminary enquiries as he or she considers necessary.

The Registrar's practice in making preliminary enquiries will generally follow the pattern below, as approved by the Council:

- i. In the case of offences, the maximum penalty for which is at Level 3 or less of the Standard Scale under section 37(2) of the Criminal Justice Act 1982 and complaints from the public, the Registrar will exercise discretion in seeking further information regarding the circumstances from the teacher and/or their employer
- ii. In the case of offences, the maximum penalty for which is above Level 3 of the Standard Scale under section 37(2) of the Criminal Justice Act 1982, and referrals from employers, further investigation will generally involve the issue of a Notice of Investigation, prior to consideration of the case by an Investigating Committee.

**A framework for the consideration of all criminal offences for use in decision-making, by both the Registrar and the Committee, is attached at Appendix 1.**

**Note: From June 2010, decisions on whether there is a case to answer at the investigating stage will be delegated to the Registrar in relation to:**

- i. Any offending involving class A drugs
- ii. Any offending attracting a custodial sentence

## **2.2 The role of an Investigating Committee**

Under **Rule 12**, an Investigating Committee may:

- i decide that there is no case for the teacher to answer; or
- ii decide that there is a case to answer and refer the case to a Professional Conduct Committee or a Professional Competence Committee, or
- iii decide that the case should be discontinued on other grounds; but such other grounds shall not include any defect or deficiency in any procedure required to be observed by an employer or any other person under the teacher's terms of employment or contract

In all cases, the Committee shall give reasons for its decision.

Investigating Committees will consider cases on the basis of written evidence and submissions. Staff from the Council may be in attendance but must not take part in the decision-making (**see Rule 8(2)**). Under **Rule 8 (3)**, the meetings of the Committee must be held in private.

Where a case has been referred following the resignation or dismissal of a teacher, the paperwork before the Committee will consist of the Notice of Investigation and associated documents, together with any written observations and additional evidence provided by the teacher or their representative in response (**see Rule 9(5)**).

The Chair has the lead role in ensuring that the Committee observes the correct procedure for the case and that Members take only relevant matters into account in arriving at a decision. The legal adviser will assist the Chair in that regard.

## **2.3 Further investigations**

In all cases, the Committee must consider whether they have sufficient information to enable them to proceed to a decision or whether there are any aspects of the case which they wish to have clarified by further investigation. There is provision under the Rules for an Investigating Committee (**see Rule 9(3)**) to adjourn for this to be done. Such further investigation would normally be restricted to obtaining further documentary evidence rather than by interviewing witnesses.

In deciding whether or not to request further investigation, the Chair and members of the Committee will need to bear in mind that the decision they are called upon to make at this stage is whether or not there is a case to answer, and not to decide the evidence against or in favour of any party. However, this should not deter a Committee from seeking further information where they feel this is necessary.

Information relating to criminal convictions will normally be provided for the Committee by staff and comprise a PNC (Police National Computer) report, giving basic details of the offence, and an APR (Amplified Police Report), containing further details of the offence. Where the teacher has been sentenced in the Crown Court, the Committee may wish to seek the judge's sentencing remarks, where these are not otherwise available.

If further enquiries are needed, it will be necessary for an adjournment of the case to take place to allow sufficient time for the issue to be investigated and for any further evidence obtained to be copied to the teacher for comment (**see Rule 9(2)**).

## **2.4 The decision-making process**

Following discussion of the case, the Chair of the Committee should confirm with the other members of the Committee whether they are able to move to a decision.

In each case, the Committee must consider three key questions:

- Is there a prima facie case for the teacher to answer?
- Is there a realistic prospect of a hearing committee making a finding of Unacceptable Professional Conduct, Serious Professional Incompetence or Conviction of a Relevant Offence?
- Is it in the public interest for the case to proceed to a hearing?

The formal decision-making itself is effectively a two-stage process (**see Rule 12(1)**).

### **Stage 1: Whether there is a case to answer**

The Chair should put to the Committee, in the form of a motion, whether or not on the evidence before the Committee there is a case for the teacher to answer (**see Rule 10(2)**).

The Committee should decide that there is a case to answer if it is satisfied that:

- a) there is sufficient evidence to constitute a prima facie case of Unacceptable Professional Conduct or Serious Professional Incompetence or Conviction of a Relevant Offence, and
- b) there is a realistic prospect of a hearing committee making such a finding.

The definitions of Unacceptable Professional Conduct, Serious Professional Incompetence and Relevant Offence are contained at **Rule 1**, as follows:

- “Unacceptable Professional Conduct” means “conduct which falls short of the standard expected of a registered teacher within the meaning of paragraph 8(1) of Schedule 2 to the Teaching and Higher Education Act 1996 and is behaviour which involves a breach of the standards of propriety expected of the profession”.
- “Serious Professional Incompetence” means “demonstrating a level of competence which falls seriously short of that expected of a registered teacher taking into account the relevant circumstances”.

Note: Where Serious Professional Incompetence is alleged, the Council has obtained advice from Leading Counsel which has confirmed that “Serious Professional Incompetence” may include all aspects of a registered teacher’s duties including the management and administrative duties of school leaders, managers and class teachers.

- “Relevant offence” means “a conviction for a criminal offence, other than one having no material relevance to a teacher’s fitness to be a registered teacher, committed in England or Wales, or if committed elsewhere would have constituted a conviction in the United Kingdom, within the meaning of paragraph 8(1) of Schedule 2 to the Teaching and Higher Education Act 1996.

Note: In the case of a possible relevant conviction, the Committee are entitled to regard a certificate of conviction from the court or an admission by the teacher as conclusive proof that the offence has been committed. The issue for the Committee then is whether the conviction or admission appears to constitute a relevant offence.

Under **Rule 11**, an Investigating Committee may, in investigating an allegation, also take into account a registered teacher’s apparent failure to comply with the Council’s Code of Conduct and Practice for Teachers. A copy of the Code is attached at Annex A to this Guidance.

The Committee should not seek to make decisions on the weight to be attached to the evidence or seek to resolve any fundamental conflicts in evidence. These

are matters which can only be resolved by referring a case to a Professional Competence or Conduct Committee.

All decision-making should take place in the context of the Council's overriding responsibility to carry out its functions in the public interest. This includes taking account of:

- The protection of members of the public.
- The maintenance of public confidence in the profession.
- The importance of upholding proper standards of conduct and competence by registered teachers.

### **Additional evidence required at a hearing**

There may be circumstances where the Investigating Committee is satisfied that there is sufficient evidence for the Committee to conclude that there is a case to answer but the Committee are of the view that there is additional documentary evidence or a particular witness which should be made available at the hearing of the case. In this event, the Investigating Committee may add a rider to its decision, identifying the evidence or witness in question.

### **Issues relating to employment**

In decision-making, it is important that the Committee bears in mind the distinction between the role of the employer, who is responsible for the procedure leading to the dismissal or resignation of a teacher, and their own role, which is to determine whether there is a case to answer with respect to registration status. It should therefore be remembered that the employment status of the teacher (i.e. whether they are currently in employment or, for instance, retired from teaching) does not affect the teacher's eligibility for registration, which is the Committee's prime concern.

In addition, the Committee should bear in mind that where a teacher has left employment, the employer's rationale for dismissing the teacher or accepting their resignation may not necessarily coincide with the Council's focus on registration. It is important, therefore, that the information forwarded by the employer is considered in the round and to recognise that there may, on occasion, be grounds to identify issues which have not been deemed relevant within the employer's procedures. In addition, it may on occasion, be appropriate for the Committee to identify more than one type of allegation in determining a case: e.g. an allegation of misconduct and/or incompetence and/or conviction.

### **Stage 2: Non-referral in exceptional circumstances**

If the Committee decides that there is a case to answer, they may nonetheless decide that there are exceptional reasons, taking into account the public interest,

why the case should not be referred for a hearing. Such reasons might include extreme delay in the issues being referred to the Council or the extraordinary personal circumstances of the teacher (for instance, if the teacher is terminally ill).

If any members of the Committee believe that such exceptional circumstances exist, the matter should be discussed and put to the vote by the Chair. It will be important to seek legal advice in these circumstances and to carefully consider the public interest in making such a decision.

## **2.5 Reasons and record-keeping**

Under **Rule 12(1)**, an Investigating Committee must give reasons for its decisions.

**Rule 12(1)(c)** additionally states that the grounds for discontinuing a case “shall not include any defect or deficiency in any procedure required to be observed by an employer or any other person under the teacher’s terms of employment or contract.”

The legal adviser will be able to advise on the form of words appropriate in either of the above circumstances and to offer advice on or assist with the drafting of the decision.

It is essential that Committees make clear their reasons for the non-referral of cases and that these reasons are framed in a way which recognises their public interest remit and which would withstand public scrutiny.

In addition to providing clear reasons, Committees may wish, in communicating that there is no case to answer or that it is not in the public interest to pursue a case, convey an expression of concern to the teacher. This might point out the potential for the Council to take further action in relation to any repetition of the matter or matters giving rise to concern, which is provided for under **Rule 2(7)**.

The Chair should ensure, through the clerk to the Committee, that the Committee’s decision and the reasons for it are recorded and that the decision form is signed by the members of the Committee in concluding consideration of the case.

## **Appendix 1**

### **Framework for assessing the relevance of convictions**

The Council has adopted the following framework for considering the relevance of convictions and disposals at the investigating stage.

#### **Who is this framework for?**

This framework is primarily guidance to the Registrar and Investigating Committees when they consider cases. However, it is also relevant to registered teachers themselves as guidance as to how the Council considers convictions and other disposals on the part of registered teachers.

#### **Structure**

Part 1 explains the Council's approach and establishes general principles.

Part 2 gives more detailed guidance on the application of the framework.

#### **Part 1: General principles**

The following principles apply to the Council's consideration of criminal offences by registered teachers:

1. The Council's investigation of a case is not a forum for running arguments which could have been put in a criminal appeal. Those considering the offence must presume that the teacher committed the offence of which he or she was convicted and should not accept argument to the contrary.
2. Those considering such cases may also presume that a conviction raises a question about the character and behaviour of the teacher. However, in evaluating the seriousness and relevance of an offence, they should not be guided by their own values or personal ethical system, but by this framework of guidance, which has been agreed by the Council.
3. The Council is not there to pass moral judgements on teachers as human beings or on their behaviour as members of society in general. The issue

for those considering the case is whether the conviction has a potential bearing on suitability for professional registration.

In deciding on such cases, full account should be taken of all the relevant information available about the offence. This information should be considered in the round and in a proportionate way, which has due regard to the public interest. Taking account of the public interest, includes taking account of:

- The protection of members of the public
- The maintenance of public confidence in the profession
- The importance of upholding proper standards of conduct and competence by registered teachers

### **The impact of a conviction on fitness for registration: general approach**

Broadly, the Council suggests that the impact of a conviction on registration is likely to be a function of:

- (i) the nature and seriousness of the offence and
- (ii) the relevance of the offence to professional registration.

### **Part 2: Applying the general principles: nature and seriousness of the offence**

Under this broad heading those considering the case should take account of all the evidence and information about the offence. This will involve consideration of the facts and circumstances of the offence, including the teacher's explanation and further information about the offence, including through any Amplified Police Report (APR) and sentencing remarks made by a Court.

Consideration of the nature and seriousness of an offence includes consideration of:

- the seriousness of the offence (its legal definition, the relevant criminal behaviour, including the degree of dishonesty, intent or recklessness involved).
- the sentence imposed.\*
- whether there is repeat offending or a pattern of offending, including the time period over which the offending occurred and the age and experience of the teacher at the time.
- evidence of rehabilitation or the lack of a capacity for rehabilitation.
- harm or loss suffered by any victim(s) of the crime and the nature of any victim(s).

**\*A schedule of criminal offences, defining offences and identifying maximum sentences is attached to assist in this consideration at Section 2.**

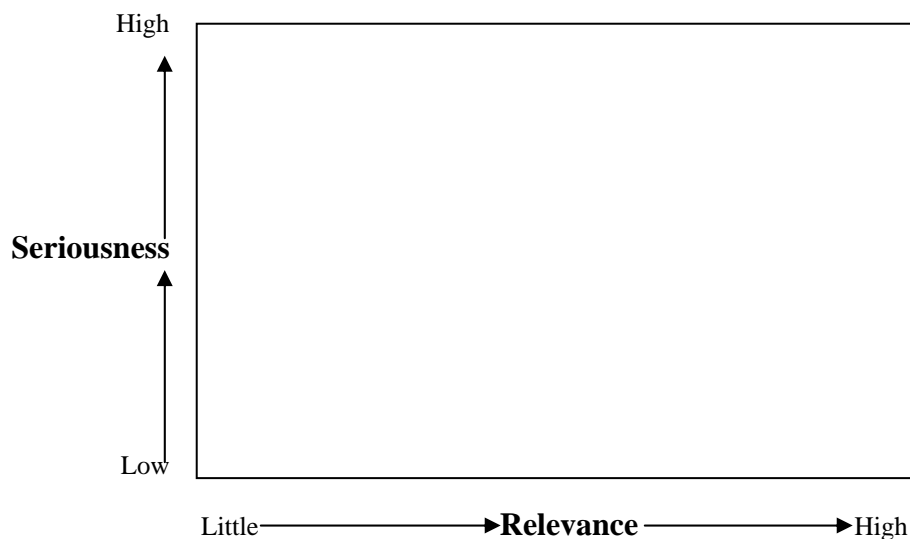
## Applying the general principles: relevance to professional registration

In assessing relevance, those considering the case should consider how, if at all:

- the behaviour which led to the conviction was not only criminal but also involved a departure from the standards required of teaching professionals (by reference to the Council's Code of Conduct and Practice for Registered Teachers at **Annex A**)
- the relevance of the offence to teaching, working with children, work within the education service (and/or work with vulnerable groups)
- the responsibility of the Council to act in the public interest, taking into account:
  - the protection of members of the public;
  - the maintenance of public confidence in the profession; and
  - the importance of upholding proper standards of conduct and competence by registered teachers

This idea is broadly illustrated by the diagram below.

### Diagram: Evaluating the potential impact of a conviction on registration



### Further guidance on referring types of offences for hearing

All criminal behaviour is a serious matter and should be avoided. However, isolated offences in certain categories, including those identified below, will not normally be considered as behaviour incompatible with being a registered teacher:

- Minor road traffic offences
- Driving a motor vehicle with excess alcohol
- Failing to provide a specimen for analysis
- Driving without due care and attention
- Drunk and disorderly
- Being drunk at a sporting event
- Using a vehicle whilst uninsured.

In relation to the type of offences above, the Council will, however, consider whether there is a trend of offending and/or re-offending, a combination of offending or particular circumstances in an individual instance of offending which merit further action.

Offences involving:

- violence
- dishonesty
- class A drugs
- serious sexual misconduct

will generally be regarded as meriting further referral within the Council's procedures.

All other offences will be considered on an individual basis using the framework of decision-making described in this guidance.

Appendix 2 below offers further guidance on the definition of specific criminal offences and related sentencing guidelines.

### **Wider application of the framework**

The principles behind the framework for assessing the seriousness and relevance of offences are also applicable to the assessment of cases of Unacceptable Professional Conduct and Serious Professional Incompetence.

In the case of Unacceptable Professional Conduct, the Committee is advised to consider:

- (i) The seriousness of the conduct, including:

- The relevant behaviour, including any degree of dishonesty, intent or recklessness;
  - Whether there is repetition of the behaviour or a pattern of behaviour, including the time period over which the behaviour occurred and the age and experience of the teacher at the time;
  - Evidence of rehabilitation or the lack of capacity for rehabilitation.
- (ii) The relevance of the conduct, including:
- Whether the behaviour involved a departure from the standards required of teaching professionals (by reference to the Council's Code of Conduct and Practice);
  - The relevance of the behaviour to teaching, working with children, work within the education service and/or work with vulnerable groups.
  - The responsibility of the Council to act in the public interest, taking into account:
    - The protection of members of the public;
    - The maintenance of public confidence in the profession;
    - The importance of upholding proper standards of conduct by registered teachers.

In considering the seriousness and relevance of alleged professional incompetence cases, the Committee is advised to consider:

- (i) The seriousness of the alleged impact, including;
- The seriousness of the incompetence;
  - The nature of the action taken by the employer;
  - Whether there is repeated incompetence or a pattern of incompetence, including the time period over which the incompetence occurred and the age and experience of the teacher at the time;
  - Evidence of improvement or the lack of capacity for improvement;
  - Harm or loss suffered by pupils.
- (ii) The relevance of the incompetence, including:
- The level of incompetence by reference to the standards required of teaching professionals (by reference to the Council's Code of Conduct and Practice);
  - The relevance of the incompetence to teaching, working with children, work within the education service and/or work with vulnerable groups;

- The responsibility of the Council to act in the public interest, taking into account:
  - The protection of members of the public;
  - The maintenance of public confidence in the profession;
  - The importance of upholding proper standards of competence by registered teachers.

## **Appendix 2**

### **Further guidance on criminal offences**

#### **Introduction**

This guidance is intended to assist those considering criminal offences and disposals in understanding the nature of those offences and the sentences which they may attract. It should be considered in conjunction with other information about the offence, as part of a rounded consideration of the case as recommended in Appendix 1 above.

#### **Part 1           Community orders**

There are a variety of community sentences which a court can impose in place of a custodial sentence. These include probation orders, community sentence orders, combination orders and curfew orders.

Investigating Committees should avoid making any assumption that offences where courts have granted such sentences are always to be treated as less serious.

This is clearly highlighted by the Court's threshold for community sentences which is set out in the Criminal Justice Act 2003 and provides:

“a court must not pass a community sentence on an offender unless it is of the opinion that the offence, or the combination of the offence and one or more offences associated with it, was serious enough to warrant such a sentence.”

#### **Part 2           Offences**

##### **2.1           Introduction**

References to '*summary*' disposals relate to matters dealt with in the Magistrates' Court.

References to disposals '*on indictment*' relate to matters dealt with in the Crown Court.

Crown Courts may impose unlimited fines. The following levels of fines may be imposed by Magistrates' Courts:

Level	£
One	200
Two	500
Three	1,000
Four	2,500
Five	5,000

The maximum sentence which can be given in a Magistrates' Court is six months' imprisonment and/or a fine on level 5 (£5,000).

Courts have the power to increase sentences where offences include '*racial or religious aggravation*'. An offence is defined as racially or religiously aggravated if it is motivated by racial or religious hostility.

## **2.2 Public order and criminal damage offences**

### **(1) Drunk and disorderly**

Definition: it is an offence for any person whilst drunk in a public place to be guilty of disorderly behaviour.

Maximum sentence: level 3 fine on summary trial.

### **(2) Disorderly behaviour**

Definition: a person is guilty of an offence if he:

(a) uses threatening, abusive or insulting words or behaviour, or disorderly behaviour; or

(b) displays any writing, sign or other visible representation which is threatening, abusive or insulting,

within the hearing or sight of a person likely to be caused harassment, alarm or distress thereby.

Maximum sentence: level 3 fine on summary trial. Level 4 fine where racially or religiously aggravated.

### **(3) Threatening behaviour**

Definition: a person is guilty of an offence if he:

- (a) uses towards another person threatening, abusive or insulting words or behaviour; or
- (b) distributes or displays to another person any writing, sign or other visible representation which is threatening, abusive or insulting,

with the intent to cause that person to believe that immediate unlawful violence will be used against him or another by any person, or to provoke the immediate use of unlawful violence by that person or another, or whereby that person is likely to believe that such violence will be used or it is likely that such violence will be provoked.

Maximum sentence: six months' imprisonment and/or level 5 fine on summary trial. Where racially or religiously motivated, two years' imprisonment on indictment and/or unlimited fine or six months' imprisonment and/or level 5 fine on summary trial.

#### **(4) Disorderly behaviour with intent to cause harassment, alarm or distress**

Definition: a person is guilty of an offence if, intending to cause a person harassment, alarm or distress, they either (a) use threatening, abusive, or insulting words or disorderly behaviour, or (b) display any writing, sign or other visible representation which is threatening, abusive or insulting, thereby causing that or another person harassment, alarm or distress.

Maximum sentence: six months' imprisonment and/or level 5 fine on summary trial. Where racially or religiously motivated, two years' imprisonment on indictment and/or unlimited fine or six months' imprisonment and/or level 5 fine on summary trial.

#### **(5) Affray**

Definition: a person is guilty of affray if he uses or threatens unlawful violence towards another and his conduct is such as would cause a person of reasonable firmness present at the scene to fear for his personal safety.

Maximum sentence: three years' imprisonment and/or unlimited fine on indictment or six months' imprisonment and/or level 5 fine on summary trial

#### **(6) Violent disorder**

Definition: a person is guilty of violent disorder when three or more persons who are present together use or threaten unlawful violence and the conduct of them (taken together) is such as would cause a person of reasonable firmness present at the scene to fear for his personal safety, (each of the persons using or threatening unlawful violence being guilty of violent disorder).

Maximum sentence: three years' imprisonment and/or unlimited fine on indictment; six months' imprisonment and/or level 5 fine on summary trial.

### **(7) Being drunk at a sporting event**

Definition: a person who is drunk in a designated sports ground at any time during the period of a designated sporting event at that ground, or is drunk while entering or trying to enter such a ground at any time during the period of a designated sporting event, is guilty of an offence.

Maximum sentence: level 2 fine on summary trial.

### **(8) Criminal damage**

Definition: the offence is committed where a person who without lawful excuse, destroys or damages any property belonging to another intending to destroy or damage any such property or being reckless as to whether any such property would be destroyed or damaged.

Maximum sentence: ten years' imprisonment on indictment; six months' imprisonment and/or level 5 fine on summary trial. Where racially or religiously aggravated, fourteen years' imprisonment on indictment or six months' imprisonment and/or level 5 fine on summary trial.

## **2.3 Offences against the person**

**Definition of assault:** an assault is committed when a person intentionally or recklessly causes another person to apprehend the immediate infliction of unlawful force.

### **(2) Common assault**

Definition: the offence of common assault is committed when a person either assaults another person or commits a battery.

Maximum sentence: six months' imprisonment and/or level 5 fine on summary trial. Where racially or religiously aggravated, two years' imprisonment and/or unlimited fine on indictment or six months' imprisonment and/or level 5 fine on summary trial

### **(3) Battery (assault by beating)**

Definition: a battery is committed when a person intentionally or recklessly applies unlawful force to another.

Maximum sentence: six months' imprisonment and/or level 5 fine on summary trial.

#### **(4) Assault occasioning actual bodily harm (ABH)**

Definition: the offence is committed when a person assaults another, thereby causing them actual bodily harm. Bodily harm has its ordinary meaning and includes any hurt calculated to interfere with the health or comfort of the victim: such hurt need not be permanent, but must be more than transient and trifling.

Maximum sentence: five years' imprisonment on indictment; six months' imprisonment and/or level 5 fine on summary trial. Where racially or religiously aggravated, seven years' imprisonment on indictment or six months' imprisonment and/or level 5 fine on summary trial.

#### **(5) Harassment**

Definition: it is an offence for a person to pursue a course of conduct (a) which amounts to harassment of another; and (b) which he knows or ought to know amounts to harassment of the other.

Maximum sentence: six months' imprisonment and/or level 5 fine on summary trial. Where racially or religiously aggravated, two years' imprisonment on indictment or six months' imprisonment and/or level 5 fine on summary trial.

#### **(6) Harassment (conduct causing fear of violence)**

Definition: where a person's course of conduct causes another to fear that violence will be used against him and where that person knows or ought to know that his course of conduct will cause the other to fear that violence will be used against him.

Maximum sentence: five years' imprisonment and/or unlimited fine on indictment; six months' imprisonment and/or level 5 fine on summary trial. Where racially or religiously aggravated, seven years' imprisonment and/or unlimited fine on indictment or six months' imprisonment and/or level 5 fine on summary trial.

#### **(7) Sexual assault**

Definition: a person (A) commits an offence if he intentionally touches another person (B), the touching is sexual, (B) does not consent to the touching, and (A) does not reasonably believe that (B) consents.

Maximum sentence: ten years' imprisonment on indictment; six months' imprisonment and/or level 5 fine on summary trial.

## **(8) Wounding - grievous bodily harm**

Definition: the offence is committed when a person unlawfully and maliciously wounds another person or inflicts grievous bodily harm upon another person.

Maximum sentence: five years' imprisonment and/or unlimited fine on indictment; six months' imprisonment and/or level 5 fine on summary trial. Where racially or religiously aggravated, seven years' imprisonment on indictment.

## **(9) Wounding - causing grievous bodily harm with intent**

Definition: the offence is committed when a person unlawfully and maliciously, with intent to do grievous bodily harm, or with intent to resist or prevent the lawful apprehension or detainer of any other person, either wounds another person or causes grievous bodily harm to another person.

Maximum sentence: life imprisonment.

## **(10) Possession of a bladed instrument**

Definition: it is an offence for a person to have with him any article which has a blade or is sharply pointed in a public place without good reason or lawful authority.

Maximum sentence: two years' imprisonment on indictment; six months' imprisonment and/or level 5 fine on summary trial.

## **(11) Possession of an offensive weapon**

Definition: it is an offence for any person without lawful authority or reasonable excuse to have with him in any public place an offensive weapon.

Maximum sentence: four years' imprisonment on indictment; six months' imprisonment and/or level 5 fine on summary trial.

## **2.4 Offences of dishonesty**

### **(1) Theft (including shoplifting)**

Definition: a person is guilty of theft if he dishonestly appropriates property belonging to another with the intention of permanently depriving the other of it.

Maximum sentence: seven years' imprisonment on indictment; six months' imprisonment and/or level 5 fine on summary trial.

## **(2) Handling stolen goods**

Definition: the offence is committed where a person handles stolen goods if (otherwise and in the course of stealing) knowing or believing them to be stolen goods, he dishonestly received the goods, or dishonestly undertakes or assists in their retention, removal, disposal or realisation by or for the benefit of another person, or if he arranges to do so.

Maximum sentence: fourteen years' imprisonment on indictment; six months' imprisonment and/or level 5 fine on summary trial.

## **(3) Robbery**

Definition: the offence is committed when a person steals and immediately before or at the time of doing so, and in order to do so uses force on any person, or puts or seeks to put any person in fear in being then and there subject to force.

Maximum sentence: life imprisonment.

## **(4) Burglary**

Definition: (a) entry as a trespasser in any building or part of a building with the intention of stealing, inflicting grievous bodily harm on any person therein, raping any person therein or doing unlawful damage to the building or anything in it, (b) having entered any building or part of a building as a trespasser, steals or attempts to steal anything therein, or inflicts or attempts to inflict grievous bodily harm on any person therein.

Maximum sentence: fourteen years' imprisonment on indictment; six months' imprisonment and/or level 5 fine on summary trial.

## **(5) Obtaining property by deception**

Definition: it is an offence for a person who by deception, dishonestly obtains property belonging to another with the intention of permanently depriving the other of it.

Maximum sentence: ten years' imprisonment on indictment; six months' imprisonment and/or level 5 fine on summary trial.

## **(6) Making off without payment**

Definition: the offence is committed where a person who, knowing that payment on the spot for any goods supplied or services done is required or expected from him, dishonestly makes off without having paid as required or expected, and with intent to avoid payment of the amount due.

Maximum sentence: two years' imprisonment on indictment; six months' imprisonment and/or level 5 fine summarily.

## 2.5 Drugs offences

### **Examples:**

Class A – Heroin, Cocaine (including crack), LSD, Ecstasy.

Class B – Amphetamine (speed)

Class C – Cannabis

### **(1) Possession of a controlled drug**

Definition: a person who has possession of a controlled drug without lawful authority, has knowledge that he has the substance, and who knows or believes it is a controlled drug commits an offence of unlawful possession.

### Maximum sentences:

Class	Magistrates' Court	Crown Court
A	Six months' imprisonment and/or level 5 fine.	Seven years' imprisonment and/or unlimited fine.
B	Three months' imprisonment and/or level 4 fine.	Five years' imprisonment and/or unlimited fine.
C	Three months' imprisonment and/or level 3 fine.	Two years' imprisonment and/or unlimited fine.

### **(2) Possession with intent to supply**

Definition: it is an offence for a person to have a controlled drug in their possession, whether lawfully or not, with intent to supply it unlawfully to another.

Maximum sentences:

Class	Magistrates' Court	Crown Court
A	Six months' imprisonment and/or level 5 fine.	Life imprisonment and/or unlimited fine.
B	Six months' imprisonment and/or level 5 fine.	Fourteen years' imprisonment and/or unlimited fine.
C	Three months' imprisonment and/or level 4 fine.	Five years' imprisonment and/or unlimited fine.

### (3) Supply of a controlled drug

Definition: an offence is committed where a person unlawfully supplies a controlled drug, is concerned in the supply of such a drug to another, offers to supply a controlled drug to another, or is concerned in the making of another supply such a drug.

Maximum sentence: see table at (2) above.

## 2.6 Driving offences

### Notes:

Prescribed alcohol limits are as follows:

- Breath - 35 micrograms of alcohol in 100 millilitres of breath
- Blood - 80 milligrams of alcohol in 100 millilitres of blood
- Urine - 107 milligrams of alcohol in 100 millilitres of urine.

Obligatory disqualification = not less than twelve months (unless special reasons exist).

Discretionary disqualification = such period as a court thinks fit.

### (1) Driving or attempting to drive when unfit

Definition: a person commits the offence when driving or attempting to drive a motor vehicle on a road or other public place whilst unfit to drive through drink or drugs.

Maximum sentence: six months' imprisonment and/or level 5 fine plus obligatory disqualification.

## **(2) In charge of a motor vehicle when unfit**

Definition: a person who, when in charge of a motor vehicle which is on a road or other public place, is unfit to drive through drink or drugs is guilty of an offence.

Maximum sentence: three months' imprisonment and/or level 4 fine plus discretionary disqualification.

## **(3) Excess alcohol - driving or attempting to drive**

Definition: if a person drives or attempts to drive a motor vehicle on a road or other public place after consuming so much alcohol that the proportion of it in his breath, blood or urine exceeds the prescribed limit he is guilty of an offence.

Maximum sentence: six months' imprisonment and/or level 5 fine plus obligatory disqualification.

## **(4) Excess alcohol - in charge of a motor vehicle**

Definition: if a person is in charge of a motor vehicle on a road or other public place after consuming so much alcohol that the proportion of it in his breath, blood or urine exceeds the prescribed limit he is guilty of an offence.

Maximum sentence: three months' imprisonment and/or level 4 fine plus discretionary disqualification.

*Excess alcohol sentencing guidelines for magistrates:*

<b>Breath</b>	<b>Blood</b>	<b>Urine</b>	<b>Disqualify not less than</b>	<b>Additional Guidelines</b>
36-55	80-125	107-170	12 months	-
56-70	126-160	171-214	16 months	-
71-85	161-195	215-260	20 months	-
86-100	196-229	261-308	24 months	Consider community penalty
101-115	230-264	309-354	28 months	Consider community penalty
116-130	265-300	355-400	32 months	Consider custody
131+	301+	401+	36 months	Consider custody

## **(5) Failing to stop/report an accident**

Definition: the driver of a motor vehicle commits the offence:

- (a) If he fails to stop and, if required to do so by any person having reasonable grounds for so requiring, give his name and address and also the name and address of the owner and the identification marks of the vehicle; or
- (b) where the driver of the motor vehicle does not give his name and address and fails to report the accident.

Maximum sentence: six months' imprisonment and/or level 5 fine plus discretionary disqualification.

## **(6) Failing to provide a specimen of breath for screening**

Definition: a person is guilty of an offence if he, without reasonable excuse, fails to provide a specimen of breath when required to do so.

Maximum sentence: level 3 fine plus discretionary disqualification.

## **(7) Failing to provide a specimen for analysis**

Definition: a person is guilty of an offence if, without reasonable excuse, he fails to provide a specimen when required to do so.

Maximum sentence: six months' imprisonment and/or level 5 fine plus obligatory disqualification where specimen required to ascertain the offender's ability to drive or the proportion of alcohol at the time the offender was driving or attempting to drive. In any other case, three months' imprisonment and/or level 4 fine plus discretionary disqualification

## **(8) Careless driving (driving without due care and attention)**

Definition: This offence is committed when a person's driving falls below the standard expected of a reasonable, prudent and competent driver in all the circumstances and is committed where a person drives a motor vehicle on a road without due care and attention, or without reasonable consideration for other persons using the road.

Maximum sentence: level 4 fine plus discretionary disqualification.

## **(9) Driving without insurance**

Definition: a person must not use a motor vehicle on a road unless there is in force, in relation to the use of the vehicle by that person, a policy of insurance in respect of third party risks.

Maximum sentence: level 5 fine plus discretionary qualification.

## **(10) Dangerous driving**

Definition: a person drives dangerously when the way he drives falls far below what would be expected of a competent and careful driver and it would be obvious to a competent and careful driver that driving in that way would be dangerous.

Maximum sentence: two years' imprisonment and/or unlimited fine on indictment; six months' imprisonment and/or level 5 fine on summary trial plus in both venues disqualification for at least twelve months with a requirement to pass an extended driving re-test.

## **(11) Causing death by dangerous driving**

Definition: the offence is committed when the driving of a person was a cause of the death of another person and the driving was dangerous within the meaning of the offence at (10) above.

Maximum sentence: fourteen years' imprisonment and/or unlimited fine on indictment plus mandatory disqualification for at least two years and requirement to pass an extended driving re-test.

## **Part 3 Guidance to members of disciplinary hearing committees**

### **3.1 Professional Competence and Conduct Committees**

A case referred to a Professional Conduct or Competence Committee by an Investigating Committee may be determined with or without a hearing. The starting point for a Committee to determine a case without a hearing is **Rule 17** and for substantive hearings is **Rule 33**.

### **3.2 Composition of committees**

The Rules provide for the constitution of Committees. **Rule 19(4)** empowers the Chair, after consultation with the other members of the Committee to appoint a replacement member for the remainder of a hearing, should exceptional circumstances arise.

In exercising this power, it is important that the Chair takes account of the need to ensure that the replacement member is fully apprised of the evidence. Legal advice should be sought on this matter.

### **3.3 Determining a case without a hearing**

**Rules 13-18** provide for a Professional Conduct or Competence Committee, as appropriate, to meet and determine a case without a hearing, through the consideration of case papers alone. Any request for this procedure to be invoked is:

- a) dependent upon the teacher admitting the alleged facts and admitting the allegation against them; and
- b) subject to the Registrar's decision that resolving the case in this way is in the interests of justice and in the public interest.

The procedure a Professional Conduct or Competence Committee will follow in these circumstances is set out in **Rule 17**. The Committee will be constituted in the same way as for a hearing, be advised by an independent legal adviser and will meet in private. The Chair should refer to the 'running order' provided as an aide-memoire to ensure key points are addressed in the course of the meeting.

However, **Rule 17(7)** provides specifically that:

*If at any stage of the meeting the Committee concludes that, in the public interest and/or in the interests of justice the Allegation should be considered at a hearing it shall order that the Allegation be considered at a hearing. Thereafter the procedure set down in Rules 19 to 39 shall apply.*

If, after considering the relevant papers submitted by the Presenting Officer and the teacher or their representative, the Committee feels able to conclude the case on that basis, then **Rule 18** sets out the requirements for decision-making.

**Rule 18(1)** identifies the three stages of decision-making. Firstly, the Committee must be satisfied as to the facts of the case. As for substantive hearings, the standard of proof to be applied is the civil standard; namely, the balance of probabilities (see **Rule 27(1)**).

Secondly, if so satisfied, the Committee must determine whether it is satisfied that those facts amount to Unacceptable Professional Conduct, Serious Professional Incompetence or Conviction of a Relevant Offence. This is a matter for the Committee's judgement in the light of the findings of fact.

Provided that the Committee is satisfied that Stages 1 and 2 have been completed, it should then move to Stage 3 and consider what sanction, if any, should be imposed.

**Rule 18(1)(c)** states that *"if the facts amount to Unacceptable Professional Conduct, Serious Professional Incompetence or Conviction of a Relevant Offence"*, then the Committee shall:

- "(i) consider the previous history and character of the Registered Teacher and any mitigating circumstances;*
- (ii) consider any previous Disciplinary Order imposed by the Council or other relevant body;*
- (iii) determine whether to make a Disciplinary Order against the Registered Teacher; and, if so*
- (iv) specify the terms of any Disciplinary Order."*

Under **Rule 18(2)**, the Committee must announce its determination of a finding of Unacceptable Professional Conduct or Serious Professional Incompetence or Conviction of a Relevant Offence and its determination of a Disciplinary Order, if any, in public. It may also, under **Rule 18(3)**, give the reasons for any or all of its determinations, or for specifying the terms of any Disciplinary order, in public.

The procedure for notifying the teacher and other relevant parties of the decision mirrors that for substantive hearings, as set out in **Rule 40**.

The teacher's right of appeal, if aggrieved by a Disciplinary Order, is to the High Court and may be exercised within 28 days from the date a notice of the Order is served on them, as set out in **Rule 55**.

### **3.4 Hearings: promoting an investigative approach**

All those involved in disciplinary hearings are expected to assist the Committee to determine the relevant facts.

**Rule 33(1)** supports this approach by requiring the Chair to:

*"direct the parties to adopt an investigative rather than an adversarial approach"*

The purpose of this provision is twofold:

- 1. To ensure that the proceedings do not become adversarial in nature.**

Should the Chair consider that the approach being taken by either party is obstructive or adversarial, they should intervene to point this out and draw attention to the relevant provision in the Rules. If this does not resolve the matter, it may be necessary for the Committee to adjourn to consider the issue in private. The Chair may then decide to issue appropriate directions to the parties as to the future conduct of the hearing.

## **2. To ensure that all relevant issues are explored fully.**

The procedure provides at **Rule 34(4)** that the Chair and/or members of the Committee may take an active role in the proceedings through questioning any witness appearing either on behalf of the presenting officer or on behalf of the teacher; which may also extend to questioning the teacher when he/she elects to give evidence in person.

Where the Chair and members consider that all the relevant issues have not been raised or fully explored in the course of oral evidence, they will need to make sure that such issues or deficiencies are, as far as possible, covered through their questioning.

It is particularly important that members seek to ensure that the relevant issues are explored where either a teacher does not appear at the hearing or appears but is not represented.

The Committee must also remember that they have the power under **Rule 50** to require any person (other than the registered teacher) to attend and give evidence through the issue of a witness summons, although in practice it is hoped that this will be needed in exceptional circumstances only.

### **3.5 Procedure at hearings**

*Sections 3.5 - 3.7 of this guidance deal with the various stages of the hearing process. In practice, these stages are represented within a script available for the Chair and other members of the Committee on the day of the hearing. Chairs must use the script to ensure that the Council's Rules are complied with and there is a consistency of approach across Committees.*

#### **Introductions**

**Rule 33(2)** provides in part that:

*"The Chair shall introduce the members of the Committee ..."*

In making these introductions, the Chair should indicate whether individual members are teacher or lay members.

**Rule 33(2)** also provides that:

*"The Chair shall ... confirm the identity of the teacher against whom the allegation is made"*

Appearing before a hearing Committee is likely to be a stressful experience for the teacher involved. It is important that the Chair is sensitive to this and seeks to put the teacher at their ease so that they can participate fully in the process.

The Chair should also confirm at this stage whether any special arrangements requested by the teacher to enable their participation in the hearing have been made and whether there are any outstanding requests to this effect.

### **3.6 Determining whether there is a public or private hearing**

The presumption in the Rules is that hearings are normally held in public. Hearings should therefore take place in public unless the Committee determines otherwise. However, the Committee may decide to exclude the public and the press from all or part of the hearing where they consider that a public hearing may adversely affect the fairness of the proceedings.

In all cases where the teacher requests a private hearing or for certain parts to be held in private, the Committee should be satisfied that to agree to this would not be contrary to the public interest.

*The Committee should make a decision about the public/private nature of the hearing irrespective of whether the teacher or their representative has made representations on this point. There is opportunity to discuss this matter in the preliminary meeting.*

If, in response to the Notice of Proceedings, the teacher has indicated that there are reasons why the hearing (or part of it) should be held in private or if the Committee itself wishes to discuss this possibility, an adjournment should be called in order that this issue may itself be considered in private. The teacher and their representative and the presenting officer should then be invited to make any comment or submission on the issue before the Committee retires to decide the matter.

In deciding whether the hearing or part of it should be held in private, the Committee will need to weigh up any potential damage to the private life of the teacher and/or third parties were the hearing to be held in public, as against the extent of any prejudice to the legitimate public interest in the proceedings were they to be held in private.

**Rule 35** makes specific provisions with respect to the possibility that children and vulnerable adults may be called to give evidence and the means for that evidence to be heard; including by video link, pre-recorded evidence, through interpreters, in private session before the Committee or with the attendance of an 'appropriate adult'. The Council expects that child and vulnerable witnesses will only be called in exceptional circumstances, where this is essential to the case and would not prejudice the welfare of those witnesses.

Once a decision has been made with respect to the public/private status of the hearing, the Chair should indicate in public session whether any part of the hearing is to be held in private. The Chair should keep this issue in mind in order that this decision is implemented in practice throughout the hearing. The legal adviser will assist in this.

### **3.7 The calling of witnesses**

The Committee should ask at the outset of the hearing for an indication from the parties as to which witnesses are to be called.

**Rule 34(5)** provides that

*“Except as may be determined by the Committee, witnesses may not be present at the hearing until they have completed giving evidence and been formally released by the Chair.”*

See 3.13 below for further guidance on managing the giving of evidence by witnesses.

### **3.8 Evidence and documentation; adhering to timescales for the provision of evidence**

The Committee may consider oral, documentary or other evidence which appears relevant to consideration of the case. The legal adviser can advise the Committee on any issue which arises as to the admissibility of, or the weight to be given to, any item of evidence.

The Chair should confirm that the teacher and their representative are in possession of all relevant documentation, by reference to the colour and number of pages in sections of the bundle, and whether the bundle is agreed.

The Chair should also check at the start of the hearing whether either party wishes to rely on or to introduce any statements not already included in the papers. If either party does wish to do so, then the Committee will need to refer to **Rule 29** in considering the nature of any such document, the reasons for it being produced at a late stage and whether its admission would be likely to assist in the fair disposal of the hearing. It may be necessary to allow a brief adjournment for the parties to read the document in question. This is also the point at which any other issues relating to the documentation can be clarified.

**Rule 29(1)** states that documents or witness statements not served on the parties with the Notice of Proceedings shall be submitted “to the Council and the other party to the proceedings ... **at least 4 weeks prior to the hearing**”.

**Rule 29(2)** urges the parties “whenever possible” to “agree a bundle of relevant documents and ... then the Presenting Officer shall forward a copy of the agreed bundle to the Council **at least 2 weeks prior to the hearing**. Where such a bundle is received ... a copy shall be sent by the Council to the Members, the Legal Adviser and the parties **7 days prior to the hearing**”.

In the event of a dispute between the parties as to the relevance and/or admissibility of documents, **Rule 29(3)** provides for a bundle of the disputed documents to be prepared by the party who seeks to rely on them, for that then to be served on the other party and the Legal Adviser **14 days prior to the hearing**. Following this, at the commencement of the hearing, the party concerned must make an application to the Committee to determine the relevance and/or admissibility of the disputed documents and admit them under **Rule 28**.

In the absence of an agreed bundle, **Rule 29(4)** requires the Presenting Officer to prepare a bundle of relevant documents which they must forward to the Council **14 days prior to the hearing**. The Council will send a copy of that bundle to the Committee, the Legal Adviser and the Registered Teacher **7 days prior to the hearing**.

**Rule 29(5)** deals with arrangements to advise the Council and the other party of documents or physical evidence which “it is not appropriate or practicable ... to be copied” (e.g., inappropriate material downloaded onto a school computer). The party possessed of this documentation or other physical evidence “shall, **at least 4 weeks prior to the hearing** of the case write to the Council and the other party to the proceedings”, giving the necessary notification of its nature, why it has been withheld and explaining arrangements for its inspection under **Rule 29(6)**.

(In some circumstances material which is not suitable for photocopying and distribution will be available for inspection by the Committee on the day, having previously been available for the parties to inspect.)

**Rule 29(7)** confers upon the hearing committee alone the discretion to admit any document not previously served in accordance with any preceding paragraph.

The timescales specified within **Rule 29** are clearly specified in order to ensure that the hearing proceeds in a timely fashion which safeguards the fairness of the proceedings and their proper disposal. These timescales have been discussed and agreed with the Council’s regulatory partners, representing the interests of employers and teachers. A Committee is entitled to regard any failure to adhere to these timescales as a serious matter and may hold to account those not complying by seeking explanations for any delay. A committee may decline to accept late documentation where the delay in its submission appears to be unwarranted, having taken legal advice on the matter. **Rule 29(8)** permits a committee, after hearing representations and in the interests of a fair hearing, to waive or amend the periods of time set in the Rule for the disclosure of documents but this is not intended to encourage parties to ignore the Rules for the submission of documents.

Cases which are delayed or part-heard over long periods of time undermine the Council’s aims of: a) determining cases in a timely fashion, and b) achieving the most cost-effective discharge of its regulatory functions. Rescheduling cases may affect the Council’s ability to consider them within a reasonable time and help ensure evidence is ‘fresh’ in the minds of the teacher and witnesses.

Seeking consistency in adherence to the timescale requirements of **Rule 29** enhances the fairness and transparency of the proceedings and avoids a culture of postponement and delay. Committees should ensure that the good order of the proceedings is maintained in this crucial area.

### **3.9 Case management hearings**

From time to time, cases can be held up by the consideration of multiple preliminary applications, relating to issues such as a teacher’s registration status, the service of documents, the late submission of documents, disputes as to the nature of allegations or evidence, requests for all or part of a hearing to be held in private or other legal argument. Recourse in exceptional circumstances to the procedure for allowing case management hearings will enable a Committee to issue directions on relevant matters, in the interests of a substantive hearing proceeding without delay.

**Rule 32(1)** makes provision for the parties, at any time after the issue of a Notice of Proceedings but not less than 21 days before the first day of a substantive hearing, to apply to the Registrar for pre-hearing directions as to the management of the case.

Under **Rule 32(2)**, if the Registrar is presented with an application for directions agreed between the parties and decides that they will assist in “the just and expeditious disposal of the case”, then he is empowered to make such directions as requested.

If, however, the parties cannot agree directions, then under **Rule 32(3)** the Registrar may either refuse an application or refer it to a Committee for a hearing convened solely for the purpose of giving pre-hearing directions.

**Rule 32(4)** defines a Committee for this purpose as being:

*“(a) a Committee Member (who shall be a Registered Teacher Member or a Lay Member) and who, where appropriate and if possible, but it shall not be a requirement, shall be a Member of the Committee which hears the substantive case”*

and also provides that the Committee, as so defined, shall be:

*“(b) advised by a Legal Adviser, who if possible, but it shall not be a requirement, shall be the Legal Adviser who advises the Committee that hears the substantive case.”*

It is expected that the parties will appear in person before the Committee. However, **Rule 32(5)** provides, alternatively, for a directions hearing to be conducted either by telephone or video-conferencing. In all circumstances, the Registered Teacher and the Presenting Officer must be given at least 1 week’s notice of the hearing and, under **Rule 32(6)**, any proposed directions sought must be notified to the Registrar, the Legal Adviser and the relevant other party 3 days before the day of the hearing.

**Rule 32(7)** affords the Committee the discretion to determine the appropriate procedure for conducting the hearing, subject to the broad principles set out in **Rule 32(8)**; namely, that:

*“The Committee shall invite each party to make representations as to the directions sought and shall give an opportunity for the other party to respond. The Legal Adviser shall give his or her advice as to the directions sought and provide an opportunity for both parties to comment on the legal advice provided to the Committee.”*

Following this, the Committee has to determine the directions to be given and provide written reasons for its decisions. A formal record of the directions issued must then be served on the parties within 7 days, including the day of the case management hearing itself.

**Rule 32(10)** offers an indicative, rather than an exhaustive, list of matters on which a Committee may be minded to issue directions.

In order to uphold the authority of the Committee, the presumption must be that any resultant directions are binding on the parties, although there is no sanction available in the event of non-compliance. In the event that a party does fail to comply, **Rule 32(12)**

permits a Committee to “draw such inference as it considers appropriate in relation to the admissibility of evidence or any other relevant matter”.

As confirmed by **Rule 32(13)**, these case management provisions are without prejudice to the ability of a hearing committee, at any time after the substantive hearing has begun, to give directions for the management of the case as it sees fit.

### **3.10 The allegation against the teacher**

**Rule 33(3)** provides that:

*“The Chair shall read the Allegation against the Registered Teacher, or shall ask the Legal Adviser to read them, and the Chair shall ask the Registered Teacher whether the facts of the Allegation are admitted and, if so, whether the Registered Teacher admits Unacceptable Professional Conduct or Serious Professional Incompetence or that they have been convicted of a Relevant Offence, as the case may be.”*

It should be remembered that the allegation(s) and particulars of the allegations are confined to those matters contained in the Notice of Proceedings. In the event of any doubt, the Legal Adviser may assist.

**Rule 33(8)** provides that:

*“Subject to the requirements of a fair hearing, in the interests of justice the Committee may amend an Allegation or the particulars of an Allegation, at any stage prior to making its findings of fact.”*

This provision is intended to allow for the clarification of existing allegations. It will be important for the Committee to seek advice in these circumstances from the Legal Adviser, in order to ensure that new matters are not being added to the allegations of which the teacher and/or their representative were previously unaware.

### **3.11 Admissions by the teacher**

**Rule 33(4)** provides that:

*“Where the Registered Teacher indicates that he or she admits the facts of the Allegation, the Chair will ask the parties whether they have agreed a statement of facts for the Committee to consider and if so:*

- (a) the Presenting Officer will be invited to read out the agreed statement of facts; and*
- (b) the Presenting Officer and the Registered Teacher shall be permitted to make representations to the Committee and may adduce evidence on the question of whether the facts that have been proved amount to Unacceptable Professional Conduct or Serious Professional Incompetence or conviction of a Relevant Offence, as the case may be; and*
- (c) the Committee shall, having taken advice from the Legal Adviser, proceed to determine whether they are satisfied that the facts that have been agreed by the parties amount to Unacceptable Professional Conduct, Serious Professional Incompetence or a conviction of a Relevant Offence, as the case may, regardless of whether an admission to that effect is made by the Registered Teacher.”*

Where the Committee are satisfied that the facts are agreed and do amount to Unacceptable Professional Conduct, Serious Professional Incompetence or conviction of a Relevant Offence, they may then proceed to Stage 3 of decision-making as described at 3.8 below.

### **3.12 Proceeding with hearing a disputed case**

**Rule 33(5)** provides that:

*“Where the facts are not admitted or where some material facts remain disputed -*

*(a) the Presenting Officer shall be permitted to make an opening statement about the Allegation and the Registered Teacher shall have the opportunity to reply either in person or through their representative;*

*(b) the Presenting Officer and the Registered Teacher may present relevant written evidence relating to the facts alleged and whether those facts amount to Unacceptable Professional Conduct or Serious Professional Incompetence or conviction of a Relevant Offence, and may call witnesses ... “*

It should again be remembered that the allegation(s) and particulars of the allegations should be confined to those matters contained in the Notice of Proceedings and to seek the Legal Adviser’s view in case of doubt. It is expected that opening statements should be brief and to the point.

It may be that there are preliminary issues raised by the teacher as to whether the case is properly brought or whether the allegations are deficient. The Chair may wish to suggest to Committee Members that these issues are given immediate consideration at this stage with or without an adjournment. The Committee may obtain legal advice at any stage. Such advice must be declared in the presence of the parties, in accordance with **Rule 49(2)(a)**.

### **3.13 Managing the giving of evidence by witnesses**

The Presenting Officer should be asked to call his or her witnesses in the order decided by the Presenting Officer. The Chair must always ensure that witnesses take their place at the designated seat in the hearing room before giving evidence. Evidence may be given under oath or affirmation. The Chair should clarify the witness’s preference and ensure that before giving their evidence the witness affirms the truth of their evidence or swears to that effect, in accordance with **Rule 34(1)**.

Because they will not have been in the room at the start of proceedings, the Chair should introduce the members of the Committee and the other parties to the witness.

At the appropriate time, the process of introductions should be followed in respect of the teacher’s witnesses.

**Rule 34(2)** provides that:

*“Unless the Committee directs otherwise, a witness statement which contains a statement of truth and which is signed by the witness, will be read by the witness”.*

Copies of the witness statements will have been supplied to the other party and the Committee Members. If there is no such statement, then the witnesses will give their evidence by answering questions from the party calling them. The other side may then question the witnesses.

Whilst the reading aloud of witness statements has advantages in terms of transparency, hearing committees should consider whether it is necessary for statements to be read out in all circumstances. Relevant factors in considering the matter include:

- the views of the parties
- where statements are long and likely to occupy a considerable proportion of the hearing time
- the effect of reading long statements upon the witness and the parties

This is a matter which the committee should consider in their pre-meeting. It should also be remembered that it may be possible for certain sections of statements to be read out, having sought the views of the parties on the matter.

Before so deciding, the Committee should seek the views of the parties and consider advice from the legal adviser. Where witness statements are not read out, the Committee may also decide that witness statements should be made available for inspection by the press and the public, subject to the exclusion of content to be heard in private. Where the exclusion of private content is complex, it may not be possible to provide the statement in edited form.

The Chair should ensure that there is opportunity for the party who called the witness to be allowed to re-examine on areas of questioning covered by the other party or the Committee. However, such questioning should be confined to any ‘new’ areas arising from re-examination and should not repeat the original questions posed. Exceptionally, the Committee may allow further questioning on the new areas by both parties.

**Rule 34(4)** provides that:

*“The Registered Teacher or his or her representative, the Presenting Officer and the Members of the Committee may, subject to Rule 35 and as permitted by the Chair, question any witness.”*

The Chair should ensure that this stage is limited to questioning of the witnesses and not to the making of statements.

After giving evidence, the Chair should clarify whether the parties or the Committee may wish to re-examine the witnesses. If not, the Chair may then ask whether the witnesses wish to remain in the hearing room or to be released.

Witnesses must not be permitted to return to the recess room and discuss their evidence with any other witnesses yet to be called. This is particularly important if it

proves necessary to adjourn the hearing part-way through the giving of evidence. In such circumstances, witnesses must be reminded that they remain under oath until they have completed their evidence and have been released.

Exceptionally, witnesses may be recalled, at the discretion of the Committee or at the request of one or other of the parties. This would be appropriate if it became necessary to resolve any conflict in the evidence.

If a witness is recalled, it is for the Committee to determine the scope of any further questions but both parties must have an opportunity to ask further questions.

### **3.14 Summing up**

**Rule 33(5)(c)** provides that:

*“The Committee may allow the Presenting Officer and the Registered Teacher or their representative an opportunity to sum up”.*

Normally the Committee should permit both parties to sum up, ensuring the Presenting Officer is asked to speak first, followed by the teacher or their representative.

Both parties should be reminded that any summing up must be confined to relevant matters which have been considered during the hearing. The Chair should ensure that under no circumstances is new evidence introduced during summing up.

### **3.15 Time management**

**Rule 33(6)** provides that:

*“The Committee may, subject to the requirement of fairness, after hearing representations from both parties, and at any stage of the proceedings:*

- (a) adjourn the case on such terms as the Committee think appropriate;*
- (b) discontinue the proceedings pursuant to Regulation 11(4) of the Regulations;*
- (c) determine whether sufficient evidence has been adduced to find the facts proved or support a finding of Unacceptable Professional Conduct, Serious Professional Incompetence or conviction of a Relevant Offence as alleged in the Notice of Proceedings.”*

With regard to **Rule 33(6)(a)**, during the hearing it is important that the Chair allows sufficient breaks to avoid loss of concentration and fatigue on the part of witnesses. It may also be necessary to take adjournments during a hearing for the Committee to deliberate in private and/or to take advice on legal or procedural matters.

The Chair should ensure that a break for lunch is taken in the middle of the day. To allow the parties access to local amenities, the recommended lunch break is normally not less than 40 minutes.

In accordance with the standard declaration in the Chair’s script, the Chair must aim to bring the day’s proceedings to a close by 5.00 p.m. and should always conclude them

by 5.30 p.m. A Committee should continue after 5.00 p.m. only if the proceedings can be entirely concluded within the succeeding half-hour.

The 5.00 p.m. time limit is in place, first and foremost, to protect the interests of hearing committee members themselves, as a safeguard against them feeling driven by time constraints, after a full and intensive hearing day, to rush decision-making and thereby running the serious risk of arriving at less than fully considered – and potentially appealable – outcomes. It is also intended to reflect due consideration for the parties and supporting GTC staff in attendance.

If the Committee has not reached the end of hearing evidence until late in the afternoon, the Chair must take a realistic view of what can or cannot be achieved by way of decision-making by the 5.00 p.m. cut-off. In this context, it should be remembered that proposing to make an Order with conditions will necessitate consulting with the parties, further protracting proceedings. Such consultation should not be rushed, allowing the parties sufficient time to make a considered response and the Committee, in turn, the proper opportunity to reflect on whatever representations they may receive before finalising the Order.

Every effort is made in scheduling cases to allocate sufficient time to complete a hearing. Adjournments to another date should only be agreed where this is necessary in the interests of justice: e.g., illness, the unforeseen unavailability of the teacher or witnesses or because it has not been possible to conclude the hearing within the allotted time. When calling for an adjournment, the Chair should be clear about its duration and its purpose and call the parties back at the due time.

**In order to facilitate any reconvening on another day, Members are asked to bring their diaries to the hearing.**

Under a decision of the Registration and Regulation Committee in May 2010, adjourned Committees should endeavour to ensure that, where a hearing is adjourned, the interval before it is reconvened is as short as possible and, no more than a new service standard of 4 weeks.

### **3.16 Exceptional circumstances**

With regard to **Rule 33(6)(b)**, this provision allows a Committee to determine, in exceptional circumstances, upon representations from the parties and having duly taken legal advice on those representations, that it cannot proceed with a hearing for lack of jurisdiction.

Equally, **Rule 33(6)(c)** allows a Committee to determine, in exceptional circumstances, upon representations from the parties and having duly taken legal advice on those representations, that a hearing should proceed no further, on the grounds that there is no realistic prospect of the facts in a case being found or of those facts supporting a finding of Unacceptable Professional Conduct, Serious Professional Incompetence or Conviction of a Relevant Offence.

### **3.17 Hearing evidence in private**

**Rule 33(7)** provides that:

*“The Committee may determine, at any time, to deliberate in private”.*

This is to be contrasted with the hearing of the evidence itself, which will usually be in public. If legal advice is sought and given whilst the Committee is in private session, the Chair should invite the Legal Adviser to give their advice in public, in accordance with **Rule 49(2)(a)**, with opportunity for the parties to comment.

### **3.18 Voting and decision-making**

Following completion of the procedure set out at **Rule 33**, the Chair should ask the parties to withdraw, in order that the Committee can make its decision in private in accordance with **Rule 39**.

The Chair should ensure that all members of the Committee confine their deliberations to relevant evidence which has been presented at the hearing.

As set out in **Rule 39**, the Committee is required to make its decision according to a three-stage process.

#### **Rule 39(1)(a) - Stage 1 of decision-making: determining the facts**

In reaching a decision on the case, the Committee must firstly be “satisfied” as to the facts as relevant to the allegations of misconduct, incompetence or relevant conviction as set out in the Notice of Proceedings.

In the case of a conviction, a valid certificate of conviction or an admission shall be taken as conclusive evidence of the commission of an offence which by itself is a finding of fact.

The standard of proof (**see Rule 27(1)**) required is the civil standard, “on the balance of probabilities”. The “balance of probabilities” standard means that the Committee is satisfied an event occurred if the Committee considers that, on the evidence, the occurrence was more likely than not.

The burden of proof (**see Rule 27(2)**) rests with the Presenting Officer. In other words, it is for the Presenting Officer to prove the allegation against the teacher, rather than for the teacher to disprove it.

Only once the Committee are satisfied that the facts as set out in the Notice are fully or substantially established should the Committee move to Stage 2 of the decision-making process. When the Chair and members consider that sufficient discussion has taken place to move to a vote on this stage, the Chair shall move the question of whether the facts are established in the form of a motion.

Before doing so, the Chair should advise all the members of the Committee that they are required to vote. The Committee will have an odd number of members and there is a power to bring in a replacement member in exceptional circumstances (**see Rule 19(4)**).

The resolution put and the vote of each Member on the Committee should be recorded.

### **Rule 39(1)(b) - Stage 2 of decision-making: deciding whether the facts amount to Unacceptable Professional Conduct, Serious Professional Incompetence or Conviction of a Relevant Offence**

At the second stage of decision-making, the Committee should consider whether it is satisfied that the facts found do or do not constitute Unacceptable Professional Conduct or Serious Professional Incompetence or Conviction of a Relevant Offence. The definitions of these are contained in **Rule 1** and the Chair should remind the members of the Committee of the relevant definition.

Additionally, under **Rule 38**, Professional Conduct and Professional Competence Committees may, in investigating an allegation, take into account a registered teacher's failure to comply with the Council's Code of Conduct and Practice for Registered Teachers. A copy of the Code is attached as Annex A to this Guidance and should be considered by the Committee at this stage in reaching their decision.

A vote should be taken on the motion and recorded once sufficient discussion has taken place.

### **Rule 39(1)(c) - Stage 3 of decision-making: considering a sanction**

Provided that the Committee is satisfied that Stages 1 and 2 have been completed, it should then move to Stage 3 and consider what sanction, if any, should be imposed.

**Rule 39(1)(c)** states that *"if the facts amount to Unacceptable Professional Conduct, Serious Professional Incompetence or Conviction of a Relevant Offence"*, then the Committee shall:

- (i) consider the previous history and character of the Registered Teacher;*
- (ii) consider any mitigating circumstances;*
- (v) consider any previous Disciplinary Order imposed by the Council or other relevant body;*
- (vi) determine whether to make a Disciplinary Order against the Registered Teacher and consider any relevant submissions from the parties, and*
- (vii) specify the terms of any Disciplinary Order."*

### **3.19 Mitigation**

It should be noted that issues raised in mitigation may be of relevance to any or all of the stages identified above and the Committee will wish to give the teacher and/or their representative the opportunity to raise all relevant evidence of this nature at an appropriate stage.

However, if they wish, a registered teacher may be permitted to reserve issues of mitigation until such time as the Committee has determined that it is satisfied as to the facts and that the facts constitute Unacceptable Professional Conduct, Serious Professional Incompetence or Conviction of a Relevant Offence: i.e., after Stage 2 has been reached but before a decision has been made as to sanction.

### **3.20 Indicative Sanctions Guidance**

The Council has agreed guidance for use by Professional Conduct and Professional Competence Committees when determining what, if any, sanction to impose on a registered teacher following a finding of Unacceptable Professional Conduct, Serious Professional Incompetence, or Conviction of a Relevant Offence. The guidance includes a description of factors which might lead to the imposition of a sanction - whether Reprimand, Conditional Registration Order, Suspension Order (with or without conditions) or Prohibition Order.

**In determining sanction, hearing committees should therefore consider the guidance attached as Annex B to this document.**

### **3.21 Other disciplinary orders in force**

Committees should also note that under **Rule 36(3)**:

*“In considering whether to make a Disciplinary Order in relation to a Registered Teacher whom the Committee has found guilty of Unacceptable Professional Conduct, Serious Professional Incompetence or conviction of a Relevant Offence, the Committee may take into account any Disciplinary Order(s) made in relation to the Registered Teacher.”*

Evidence of any previous Disciplinary Orders is inadmissible in the course of hearing evidence as to the allegation before a Committee, on the grounds that it may be prejudicial to the outcome. However, where the teacher before a Committee is or has been subject to a previous Disciplinary Order of the Council, it is permissible for either or both of the parties to address the Committee, prior to the determination of sanction, on the circumstances giving rise to that Order as part of relevant submissions as to the teacher’s previous history and character.

### **3.22 Communicating the decision**

Once a decision has been made, the Committee will reconvene with the parties and the Chair will give the decision by reference to the three-stage process in public.

If the Committee has determined to frame a Disciplinary Order to which conditions are attached (i.e., either a Conditional Registration Order or a Suspension Order with Conditions), then the Chair should invite representations from the parties on the terms in which it is proposed such conditions should be expressed before they are confirmed. In order to respond, the parties may request a short adjournment and the Chair should normally allow this. After receiving and considering any representations, the Committee should then publicly confirm the Order and its conditions in their final form.

It is open to the Committee to give a summary of the reasons for its decisions at the same time as giving the decision.

The aim of the proceedings is that all the relevant issues should be fully aired and discussed in an investigative manner in order that a fair and transparent decision can be taken in relation to the teacher’s registration. Within two weeks of the publicly announced decision, the teacher will receive the written decision, in accordance with **Rule 40**, which will be accompanied by a statement of:

- The allegations;
- A summary of the evidence;
- The findings of fact;
- The reasons of the Committee.

The Committee's role is to weigh the credibility of witnesses and the validity of the evidence and this is particularly important where there is a conflict of evidence. In commenting on the evidence given by witnesses, a committee may need to state that they prefer the evidence of one person to that of another person. However, the Council's view is that this is best expressed in an objective way which reflects upon the credibility of the evidence rather than the credibility of the individual. In addition, committees should not make comments about witnesses in a way which could be perceived as personally disparaging and should remember that the Council aims to treat all parties in the proceedings with dignity and respect.

Whilst general issues will arise in cases which relate to the running of the education system, the Committee must remember that their role is to determine the registration status of the registered teacher rather than to comment more widely on matters affecting the education service. The Council summarises case outcomes and draws out themes arising from disciplinary casework within the Annual Report on Registration and Regulation, a copy of which is available on the Council's website at [www.gtce.org.uk](http://www.gtce.org.uk).

### **3.23 Appeals to the High Court**

A teacher aggrieved by a disciplinary order made against them has a right of appeal to the High Court within 28 days from the date on which notice of the order is served on them (**see Rule 55**). On such an appeal, the Court may make any order which appears appropriate.

## **Part 4 Guidance on a hearing to revoke or vary conditions attached to a Disciplinary Order**

**4.1 Rule 43** provides for a Professional Conduct or Competence Committee to consider an application from a teacher to revoke or vary a condition specified in either a Conditional Registration Order or Suspension Order with conditions. Such an application must be considered by a Committee not including any member who made the original decision.

**4.2** A Professional Conduct or Competence Committee may also determine to revoke or vary a condition specified in a disciplinary order, if the conditions of Regulation 23 of the GTCE (Disciplinary Functions) Regulations 2001 (as amended) apply, on its own motion, i.e.:

- where such an order was made in relation to a criminal conviction, which was subsequently quashed or
- where the Committee has obtained evidence not considered by them before they made the order, and they are satisfied that had they been aware of it before they made the order, they would not have made it.

Where these circumstances apply, the Committee may dispense with a hearing, or, where the teacher requests an oral hearing, shall proceed as set out below

**4.3** Under **Rule 43**, certain of the Rules applying to the original hearing, continue to apply to this case, namely: the rules relating to the election of a Chair, members of the Committee, hearings, voting and decision making, representations to the Committee, absence of the teacher, notification of decision, and adjournment and resumption of the hearing.

**4.4** The procedure below is recommended for such hearings:

1. The Chair shall introduce the members of the Committee present and confirm the identity of the registered teacher who has made the application.
2. The presenting officer and the registered teacher may present written evidence and may call witnesses.
3. The presenting officer, the registered teacher, their representatives and the members of the Committee may, as permitted by the Chair, question any witnesses.
4. The Committee may allow the presenting officer and the registered teacher or their representative an opportunity to sum up
5. The Committee may adjourn the proceedings at any stage and may determine, at any time, to deliberate in private

The Committee hearing the application shall give its decision in public.

In considering references and testimonials, the committee should take into account the advice at **1.21** of the Indicative Sanctions Guidance at Annex B.

Chairs of Committees conducting a hearing of this nature should follow the script available for this purpose.

## **Part 5 Guidance on a hearing of an alleged breach of conditions attached to a Disciplinary Order**

**5.1** **Rule 44** provides that where a Professional Conduct or Competence Committee has made a Conditional Registration Order or a Suspension Order with conditions in relation to a teacher, the Committee may require the Registrar, from time to time, to request from:

*(a) the Registered Teacher in respect of whom the Disciplinary Order is made;*

*(b) any person who is, at the time the request is made -*

*(i) an Employer employing the Registered Teacher in the capacity of a Registered Teacher, or*

*(ii) an Agent with whom the Registered Teacher has made an Arrangement,*

*such reasonable information as will enable the Council to determine whether the conditions of the order have been, or continue to be, complied with.*

**5.2** Where, as a result, the Registrar receives the information requested and is of the opinion that the conditions have not been complied with, or the registered teacher fails to comply with a reasonable request for such information, the Registrar shall refer the matter to a Professional Conduct or Competence Committee, not including any member of the original Committee which made the order, who shall make a determination as to whether the teacher has failed to comply with the condition.

**5.3** A Professional Conduct or Competence Committee shall not make an order relating to an alleged breach of conditions without a hearing. Certain rules applying to the original hearing continue to apply to this case: namely, the rules relating to the election of a Chair, members of the Committee, hearings, voting and decision making, representations to the Committee, absence of the teacher, notification of decision, and adjournment and resumption of hearing.

**5.4** The procedure below is recommended for such hearings:

1. The Chair shall introduce the members of the Committee present and confirm the identity of the registered teacher against whom the allegation of breaching a condition or conditions is made.
2. The presenting officer and the registered teacher may present written evidence and may call witnesses.
3. The presenting officer, the registered teacher and/or their representative and the members of the Committee may, as permitted by the Chair, question any witnesses.
4. The Committee may allow the presenting officer and the registered teacher or their representative an opportunity to sum up.

5. The Committee may adjourn the proceedings at any stage and may determine, at any time, to deliberate in private.

The Committee hearing the application shall give its decision in public.

In considering references and testimonials, the Committee should take into account the advice at 1.21 of the Indicative Sanctions Guidance at Annex B.

If a breach of conditions is found proved, Regulation 21 of the GTCE (Disciplinary Functions) Regulations 2001 (as amended) provides for a Committee to impose a Suspension or Prohibition Order.

Chairs of Committees conducting a hearing of this nature should follow the script available for this purpose.

## **Part 6 Guidance on hearing an application to restore eligibility to register following Prohibition**

- 6.1** **Rule 46** provides for a Professional Conduct or Competence Committee to consider an application from a teacher for the restoration of their eligibility to register following a Prohibition Order. Such an application may only be made following the expiry of the minimum period specified in the order and must be considered by a Committee not including any Member who made the original decision.
- 6.2** Where, under **Rule 46(1)(b)**, the teacher does not request a hearing, the Committee will consider such an application in the context of any information provided by the Registrar and Presenting Officer and determine whether the matter may be resolved through the consideration of written evidence. Where it is not so satisfied, a hearing will be convened.
- 6.3** Certain Rules applying to the original hearing continue to apply to this case: namely, the rules relating to the election of a Chair, members of the Committee, hearings, voting and decision making, representations to the Committee, absence of the teacher, notification of decision, and adjournment and resumption of hearing.
- 6.4** The procedure below is recommended for such hearings:
1. The Chair shall introduce the members of the Committee present and confirm the identity of the teacher making the application.
  2. The presenting officer and the teacher may present written evidence and may call witnesses.
  3. The presenting officer, the teacher, their representatives and the members of the Committee may, as permitted by the Chair, question any witnesses.
  4. The Committee may allow the presenting officer and the teacher or their representative an opportunity to sum up.
  5. The Committee may adjourn the proceedings at any stage and may determine, at any time, to deliberate in private.
- 6.5** Under **Rule 46(4)**, the Committee hearing the application shall, in making its decision:
- (a) *satisfy itself as to the facts or the particulars supporting the application; and*
  - (b) *determine whether or not it is satisfied that the Applicant –*
    - (i) *has been of good character since the Prohibition Order was made,*
    - (ii) *has demonstrated their willingness, and the ability, to maintain in the future the standards of conduct expected of Registered Teachers, and*
    - (iii) *has demonstrated that they are a suitable person to be re-admitted to the Register.*

**6.6** The Committee will therefore need to consider, through written and oral evidence, the relevance of:

- any activities undertaken by the teacher in the period since the Prohibition Order was imposed.
- any references and testimonials and any evidence from character or other witnesses called on behalf of the presenting officer or the teacher.

Teachers making an application for restoration are required to complete a proforma setting out the basis of their application for restoration and identifying three referees who can comment on the applicant's character. The Council will ensure that such referees are provided with a copy of the full written decision in the case in order that they are aware of the circumstances within which the reference is sought.

**6.7** In considering the relevance of activities undertaken since the Prohibition Order was imposed, the Committee should be mindful of equal opportunities considerations (e.g. child care responsibilities) which may impact upon the teacher.

**6.8** In considering references and testimonials, the Committee should take into account the advice at 1.21 of the Indicative Sanctions Guidance at Annex B.

**6.9** In assessing whether the teacher has demonstrated their suitability to be readmitted to the register, the Committee should consider the teacher's attitude to the events which gave rise to the Prohibition Order and, in particular, consider whether they are satisfied that:

- (i) the teacher shows an understanding of why their actions led to the Prohibition Order.
- (ii) they regret those actions.
- (iii) there are reasonable grounds to believe that this understanding will impact positively upon their future practice.

**6.10** If the Committee is satisfied in relation to the matters in 6.9 above, then it may determine that the teacher is eligible for registration, which has the effect of bringing the period of prohibition to an end at that point. If, however, it decides that the teacher's eligibility to register should not be restored, the teacher remains prohibited and may not, under **Rule 46(6)**, make a further application "*within 12 calendar months of the date on which the original application was determined or within such other time limit as the Committee shall determine*".

**6.11** Chairs of Committees conducting a hearing of this nature should follow the script available for this purpose.

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## Annex A



# **Code of Conduct and Practice for Registered Teachers**

Effective from October 2009

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## Introduction to the Code of Conduct and Practice

**This Code sets out expectations of conduct and practice for registered teachers. Its purpose is to guide teachers' everyday judgements and actions, and provide the GTCE with principles to use in regulating the profession. The GTCE developed the Code with teachers and others with an interest in teaching and learning. It reflects the standards that teachers expect of themselves and others expect of the profession.**

### Teaching – a skilled and trusted profession

Teachers have a profound and lasting influence on the development and life chances of children and young people. Their knowledge, skill, judgement, creativity and commitment play a vital role.

Given the importance of teaching to children and young people, and society as a whole, it is essential that teachers continue to maintain standards of teaching practice and professional conduct.

### How standards are maintained

As members of a skilled and trusted profession, teachers are responsible for reflecting on their own conduct and practice and ensuring that they meet the standards required of them.

Expectations of teachers are set out in national standards<sup>1</sup>, statutory duties and employment contracts. Teachers' actions are also guided by a set of professional values that inform everything they do. One distinct value that teachers share is a commitment to continual learning and development – for children and young people, colleagues and themselves. Teachers' work is also shaped by other important values of public life, including: selflessness; integrity; honesty; objectivity; accountability; openness; and leadership<sup>2</sup>.

In addition to commitment on the part of teachers themselves, successful teaching and learning rely on the reciprocity, goodwill and support of others. Employers and school leaders have a critical role to play in supporting teachers to meet their obligations and to continually develop their practice.

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<sup>1</sup> Important documents which articulate expected standards of teacher practice include: the School Teachers' Pay and Conditions Document; the National College for School Leadership National Standards for School Leaders; and the Training and Development Agency's Professional Standards for Teachers.

<sup>2</sup> These are the seven principles of public life identified by the Nolan Committee.

## The role of the GTCE

As the professional and regulatory body for teaching, the General Teaching Council for England (GTCE) has an important role in strengthening teacher professionalism. Launched in September 2000, the GTCE is independent from Government, and made up of practising teachers and others in society involved in teaching and learning in different ways<sup>3</sup>. It aims, in the public interest, to:

- contribute to improving standards of teaching and the quality of learning; and
- maintain and improve standards of professional conduct among teachers.

The GTCE is the awarding body for qualified teacher status (QTS) in England and maintains a register of qualified teachers. All teachers (including supply and temporary teachers) in maintained schools and pupil referral units, and in non-maintained special schools must be registered with the GTCE. Other qualified teachers, including some of those who work in the independent sector, choose to register. Trainee teachers, instructors and overseas trained teachers are required to be registered with the GTCE on a provisional basis.

## Professional regulation

The GTCE is responsible for assuring the maintenance of standards of practice and conduct among those on its register. One important way in which it does this is through professional regulation.

The purpose of professional regulation is to protect children and young people and safeguard the standing of the profession by assuring that the conduct and practice of those on the register does not fall seriously short of expected standards.

The GTCE investigates and may take action against registered teachers who are dismissed by their employers for incompetence or misconduct, or who resign in situations where dismissal is a possibility. This Code also applies to trainee teachers, instructors and overseas trained teachers who are provisionally registered with the Council. The GTCE investigates and may take action against trainees who are required to leave a course for reasons of misconduct, or who choose to discontinue their studies in circumstances in which they could have

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<sup>3</sup> The GTCE's aims and functions are set out in the Teaching and Higher Education Act 1998 amended by the Education Act 2002. The essential duties of GTCE are to provide advice to the Secretary of State and others on section 2(2) matters, to fulfil registration functions and to provide an annual report to the Secretary of State. The most significant powers of GTCE are to produce and enforce the Code of practice [section 5] and to promote the standing of the teaching profession [including, but not limited to, giving advice, organising conferences and lectures and arranging for the publication of information].

been required to leave. However the provisions of the Code that relate to professional competence do not apply to trainees since they are not yet qualified.

This Code of Conduct and Practice sets out the principles that the GTCE will use as part of a fair and robust disciplinary procedure.

### The focus and interpretation of the Code

The Code focuses on behaviours and the way in which teachers conduct themselves on a day-to-day basis. It reflects the professional values outlined above and the Statement of Shared Values for Integrated Working, drawn up by the GTCE, the General Social Care Council and the Nursing and Midwifery Council in 2007.

The Code includes examples of instances in which teachers' conduct or practice has fallen seriously short of expected standards and the GTCE has taken disciplinary action. These examples are intended to give an indication of how the GTCE may interpret the Code in its disciplinary proceedings.

The Code sets out expectations of reasonable standards of behaviour but does not limit a teacher's right to a private life.

The Code refers throughout to 'the school'. However, it applies to all registered teachers, whatever their institutional setting.

### How the Code was developed

The teaching profession has had a Code in place since 2004<sup>4</sup>. In 2007, the GTCE began a process to update and refresh the Code, to ensure that it continues to support teacher professionalism in a changing context<sup>5</sup>.

This revised Code has been produced following wide consultation with teachers and others with an interest in teaching and learning. The consultation process comprised a series of structured discussions with groups of stakeholders before drafting, and a detailed, systematic national consultation on the draft Code.

The GTCE has also carried out an Equality Impact Assessment to assess the possible impact of the Code, either positively or negatively, on different groups, whether by ethnicity, disability or gender. The GTCE has concluded that the likely impact is positive, given the expectations of practice that it sets out. The GTCE

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<sup>4</sup> Prior to 2004, the GTCE had a Statement of Professional Values and Practice which influenced the standards for achieving qualified teacher status and passing induction.

<sup>5</sup> In revising the Code, the GTCE has undertaken a range of activities, including: a review of lessons from the current regulatory process; commissioned research into the nature of modern professionalism; and a national consultation process. The reports of the exploratory, stage of the engagement on the code and of the structured consultation on the draft code are available on the GTCE website.

will monitor the impact of the Code in accordance with its responsibilities as a public body.

## **Eight Principles of Conduct and Practice**

### Registered teachers:

1. Put the wellbeing, development and progress of children and young people first
2. Take responsibility for maintaining the quality of their teaching practice
3. Help children and young people to become confident and successful learners
4. Demonstrate respect for diversity and promote equality
5. Strive to establish productive partnerships with parents and carers
6. Work as part of a whole-school team
7. Cooperate with other professional colleagues
8. Demonstrate honesty and integrity and uphold public trust and confidence in the teaching profession

# **1. Put the wellbeing, development and progress of children and young people first**

## Registered teachers:

- Use their professional expertise and judgement to do the best for the children and young people in their care
- Take all reasonable steps to ensure the safety and wellbeing of children and young people under their supervision
- Follow their school's child protection policies and procedures
- Establish and maintain appropriate professional boundaries in their relationships with children and young people
- Demonstrate self-awareness and take responsibility for accessing help and support in order to ensure that their own practice does not have a negative impact on learning or progress or put children and young people at risk of harm
- Use appropriate channels to raise concerns about the practice of other teachers or professionals if this has a negative impact on learning or progress or risks harming children and young people.

## **2. Take responsibility for maintaining the quality of their teaching practice**

### Registered teachers

- Meet the professional standards for teaching relevant to their role and the stage they have reached in their career
- Develop their practice within the framework of their school's curriculum
- Base their practice on knowledge of their subject area/s and specialisms, and make use of research about teaching and learning
- Make use of assessment techniques, set appropriate and clear learning objectives, plan activities and employ a range of teaching methodologies and technologies to meet individual and group learning needs
- Reflect on their practice and use feedback from colleagues to help them recognise their own development needs; actively seek out opportunities to develop their knowledge, understanding, skills and practice
- Meet the requirements laid down by their professional body, the GTCE, to maintain their registration status.

### **3. Help children and young people to become confident and successful learners**

#### Registered teachers

- Uphold children and young people's rights<sup>6</sup> and help them to understand their responsibilities
- Listen to children and young people, consider their views and preferences, and involve them in decisions that affect them, including those related to their own learning
- Have high expectations of all children and young people, whatever their background or aptitudes, and find activities that will challenge and support them all
- Promote children and young people's confidence and self-awareness by clarifying how assessment will be used to support improvement, providing clear and specific feedback, and celebrating their success
- Communicate clear expectations about pupil behaviour to ensure disruption to learning is minimised and children and young people feel safe and secure
- Help children and young people prepare for the future by engaging them with the implications of changes in society and technology and offering them impartial advice and guidance about their future options.

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<sup>6</sup> Every Child Matters (ECM) sets out ways in which organisations that provide services to children need to work together to protect children and young people from harm and ensure that, whatever their background or their circumstances, they have the support they need to be healthy, stay safe, enjoy and achieve, make a positive contribution and achieve economic wellbeing. The five ECM outcomes reflect the rights set out in the United Nations Convention on the Rights of the Child (UNCRC), which came into force in the UK on 15 January 1992.

## **4. Demonstrate respect for diversity and promote equality**

### Registered teachers

- Act appropriately towards all children and young people, parents, carers and colleagues, whatever their socio-economic background, age, gender, sexual orientation, disability, race, religion or belief
- Take responsibility for understanding and complying with school policies relating to equality of opportunity, inclusion, access and bullying
- Address unlawful discrimination, bullying, and stereotyping no matter who is the victim or the perpetrator
- Help create a fair and inclusive school environment by taking steps to improve the wellbeing, development and progress of those with special needs, or whose circumstances place them at risk of exclusion or under-achievement
- Help children and young people to understand different views, perspectives, and experiences and develop positive relationships both within school and in the local community.

## **5. Strive to establish productive partnerships with parents and carers**

### Registered teachers

- Provide parents and carers with accessible and accurate information about their child's progress
- Involve parents and carers in important decisions about their child's education
- Consider parents' and carers' views and perspectives, including those that relate to their children's development
- Follow school policies and procedures on communication with and involvement of parents and carers, including those that relate to sensitive areas such as attendance and exclusion.

## **6. Work as part of a whole-school team**

### Registered teachers

- Endeavour to develop productive and supportive relationships with all school colleagues
- Exercise any leadership and management responsibilities in a respectful, inclusive and fair way, and in accordance with contractual obligations and national standards
- Uphold school policies and procedures, and raise any concerns about the life or running of the school in a responsible and appropriate way
- Contribute to colleagues' learning and development; provide honest, accurate, and justifiable comments when giving references for, or assessing the performance of, colleagues
- Participate in whole-school development and improvement activities
- Recognise the important role of the school in the life of the local community, and take responsibility for upholding its reputation and building trust and confidence in it.

## **7. Cooperate with other professionals in the children's workforce**

### Registered teachers

- Seek to understand the roles of other professional colleagues in the children's workforce
- Communicate and establish productive working relationships with other professional colleagues
- Ensure that they are clear about their own professional contribution to joint working, seeking clarification where this is needed
- Understand that in sharing responsibility for children and young people's wellbeing and development they should always act within their own competence and responsibilities.

## **8. Demonstrate honesty and integrity and uphold public trust and confidence in the teaching profession**

### Registered teachers

- Exercise their responsibilities in relation to the examination and assessment of achievement and attainment in a fair, transparent and honest way
- Demonstrate honesty and integrity in management and administrative duties, including in the use of school property and finance
- Understand that their duty to safeguard children and young people comes first, but otherwise acknowledge the rights of children and young people, families, and colleagues to confidentiality, in line with statutory requirements and school policies
- Represent their professional status accurately and avoid taking advantage of their professional position
- Maintain reasonable standards in their own behaviour that enable them to maintain an effective learning environment and also to uphold public trust and confidence in the profession.

## **The use of the Code in the GTCE's disciplinary procedures**

### **How cases are referred to the GTCE**

#### **Misconduct and incompetence**

Employers (including of supply and temporary teachers) are required to notify the relevant authority when registered teachers are dismissed or cease employment for reasons of misconduct or incompetence, or where they resign in circumstances where dismissal was a possibility.

Where employers judge misconduct to involve a risk of harm to children and young people, they are required to refer cases to the Independent Safeguarding Authority (ISA). Other misconduct cases, and all cases of incompetence, should be referred direct to the GTCE. The GTCE expects that teachers referred on grounds of incompetence will have already been the subject of significant action under formal capability procedures.

Training providers must notify the relevant authorities if trainees are required to leave a programme for reasons of misconduct or they choose to discontinue their studies in circumstances in which they could have been required to leave. Where training providers consider that misconduct involves a risk of harm to children and young people, they must refer cases to the ISA. All other cases should be referred direct to the GTCE.

Members of the public may make an allegation of professional misconduct, but not of incompetence, directly to the GTCE.

#### **Criminal activity**

Under the provisions of Home Office Circular 45/86, teaching is a 'notifiable' occupation. This means that the police report any conviction or caution of a teacher to the Criminal Records Bureau. Offences involving a risk of harm to children, or to vulnerable adults, are considered by the ISA. All other convictions and cautions are passed to the GTCE, who have a role in determining if a caution or criminal offence is relevant to a teacher's registration.

### **The GTCE's disciplinary procedures and sanctions**

The Council has a rigorous and fair process in place to investigate and hear cases. Investigating and hearing committees comprise a majority of teacher members, as well as others involved in teaching and learning. Hearings normally take place in public. In certain circumstances, where it is in the public interest and the interests of justice, the Council may resolve a case without a hearing.

If a hearing committee finds that the facts amount to unacceptable professional conduct, serious professional incompetence or that the teacher has committed a relevant criminal offence, it may issue one of the following sanctions:

- A Reprimand, which remains on the Register for two years
- A Conditional Registration Order, which applies conditions to a teacher's continuing registration
- A Suspension Order, suspending the teacher's registration for up to two years, and which may also have conditions attached, or
- A Prohibition Order, excluding the teacher from the register. Under this order, a teacher may be permitted to apply for restoration of their eligibility to register after two years, or after some other specified time. However, in certain cases, no application may be allowed.

## **Examples of circumstances in which the GTCE has taken disciplinary action**

This section provides examples of instances in which registered teachers have fallen seriously short of the expected standards of conduct and practice set out in this Code, and have had disciplinary action taken against them by the GTCE. The list of examples is not exhaustive, but is intended to help teachers and others to understand how GTCE disciplinary committees might interpret the principles set out in the Code.

### **1. Put the wellbeing, development and progress of children and young people first**

The GTCE has taken action against teachers who have: engaged in inappropriate relationships with pupils; failed to follow child protection procedures; failed to safeguard the health and safety of pupils on school trips.

### **2. Take responsibility for maintaining the quality of their teaching practice**

The GTCE has taken action against teachers who have: demonstrated systematic inability to establish clear learning objectives or engage pupils in appropriate learning activities; failed to operate effective assessment procedures, mark student work or differentiate between the learning needs of pupils; taught with inadequate levels of subject knowledge.

### **3. Help children and young people to become confident and successful learners**

The GTCE has taken action against teachers who have: repeatedly failed to adapt schemes of work to meet the needs and abilities of individual pupils;

continually failed to provide adequate feedback to students; persistently failed to maintain student behaviour and interest.

#### **4. Demonstrate respect for diversity and promote equality**

The GTCE has taken action against teachers who have: behaved towards pupils, parents or carers in a manner which is discriminatory in relation to gender, marital status, religion, belief, race, ethnicity, class or sexual orientation; sworn at pupils or colleagues or made disparaging personal remarks about their appearance or background; intimidated or provided inadequate support to children with special educational needs.

#### **5. Strive to establish productive partnerships with parents and carers**

The GTCE has taken action against teachers who have: engaged in inappropriate contact with parents and carers; made racist or sexist comments about parents or carers; lent school property to parents and carers without permission.

#### **6. Work as part of a whole-school team**

The GTCE has taken action against teachers who have: failed to follow absence reporting procedures; demonstrated inability to lead a school or adequately manage a curriculum area; failed to follow appropriate procedures for the recruitment, promotion, reward or discipline of staff.

#### **7. Cooperate with other professional colleagues**

The GTCE has taken action against teachers who have: failed to follow child protection procedures, where the involvement of outside agencies was required; failed to follow procedures for providing a statement of special educational needs; failed to work collaboratively with colleagues outside the school in relation to school trips.

#### **8. Demonstrate honesty and integrity and uphold public trust and confidence in the teaching profession**

The GTCE has taken action against teachers who have: used school administrative staff and facilities for private purposes; accessed inappropriate material on the internet using school equipment; falsified coursework or otherwise improperly benefitted pupils in examinations; and falsified qualifications, references or misrepresented the pattern of employment in applying for posts.

Also relevant under this principle are examples of where the GTCE has taken disciplinary action with respect to criminal offending. Examples of relevant

offences have included: benefit fraud; indecent assault; inflicting grievous bodily harm; possession of prohibited firearms or illegal drugs.

Further information<sup>7</sup>

Further information about the GTCE and its regulatory and disciplinary role and procedures can be found on its website: [www.gtce.org.uk/standards/regulation](http://www.gtce.org.uk/standards/regulation).

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<sup>7</sup> The disciplinary functions of the Council are prescribed by the General Teaching Council for England (Disciplinary Functions) Regulations 2001 and the General Teaching Council for England (Disciplinary Functions) Amendment Regulations 2003.

## **Annex B Indicative Sanctions Guidance**

### **1.1 Introduction: purpose of the guidance**

This guidance has been developed by the GTC for use by its Professional Conduct and Professional Competence Committees (“hearing committees”). The guidance is for use when hearing committees are considering what sanction, if any, to impose on a registered teacher following a finding of:

- Unacceptable Professional Conduct
- Serious Professional Incompetence, or
- Conviction of a Relevant Criminal Offence.

It outlines the decision-making process and factors to be considered and draws on an analysis of past cases. Previous decisions of hearing committees are available to GTC Members through the Record of Decisions, which is available on the Members’ extranet.

Hearing Committee members are obliged to exercise their own judgement in making decisions since they are acting in a judicial capacity, within a framework set out by the Council. This guidance is a ‘living document’, which will be updated and revised as the need arises.

### **1.2 Considering the application of a sanction**

If a teacher has been found guilty of Unacceptable Professional Conduct, Serious Professional Incompetence or Conviction of a Relevant Criminal Offence, the Committee must decide if a sanction needs to be applied with respect to the teacher’s registration. The interests of the public, the profession and the teacher need to be weighed in this decision.

The Council’s Disciplinary Rules do not require the Committee to impose a sanction in every case where Unacceptable Professional Conduct, Serious Professional Incompetence or Conviction of a Relevant Offence are found. It is thus open to a Committee to conclude a case without a Reprimand, the lowest level of sanction. But as with their other decisions the Committee would need to be satisfied that it is sufficient in the public interest to do so and to make clear their reasons. A teacher found guilty of Unacceptable Professional Conduct, Serious Professional Incompetence or Conviction of a Relevant Offence has no right of appeal where no sanction is issued.

Where a disciplinary sanction is appropriate, a number of options are available to the Committee. Sanctions should be considered in the following order:

- (a) Reprimand
- (b) Conditional Registration Order
- (c) Suspension

(d) Prohibition

A Suspension Order may also specify any conditions with which the registered teacher must comply before he or she becomes eligible again for registration.

### **1.3 The purpose of sanctions**

The primary purpose of sanctions is not to be punitive but to protect the interests of the public, although they may have a punitive effect.

#### *Definition of the 'Public Interest'*

There is clear judicial authority that the definition of the public interest in the context of professional regulation includes:

- (a) The protection of members of the public.
- (b) The maintenance of public confidence in the profession.
- (c) Declaring and upholding proper standards of conduct and competence.

The public interest may also be served by applying conditions relating to the teacher's return to work if he or she lacks certain skills, competencies or knowledge.

#### *Proportionality*

In deciding what sanctions to impose the Committee should apply the principle of proportionality, weighing the public interest (as defined above) against the interests of the teacher. In addition they will need to consider any mitigation in relation to the seriousness of the behaviour in question.

The extent to which mitigation should influence judgement on a finding of Unacceptable Professional Conduct/Serious Professional Incompetence/Conviction of a Relevant Offence and then on sanction, is dependent on the individual circumstances in the case and is at the discretion of the Committee. Paragraphs 1.20 – 1.22 contain further information on considering mitigation, references and testimonials and apologies, which are relevant in this area.

The paragraphs below outline each sanction, stating the philosophy behind them and some broad criteria as to their use.

Note: in all cases, it is essential that committees give clear reasons for their decisions. It is also desirable for the committee to express an opinion about the teacher's behaviour as part of their decision.

## **1.4 General considerations relating to Reprimands**

Where the Committee decide that it is not sufficient to conclude a case with no sanction, they may impose a Reprimand. A Reprimand may be appropriate where the offence is at the lower end of the spectrum in order to mark the fact that the behaviour was unacceptable and must not happen again. A Reprimand allows continues registration and remains on the register for a two year period. Like all disciplinary orders, a Reprimand is disclosed to an employer enquiring about the teacher's registration status.

## **1.5 General considerations relating to Conditional Registration Orders**

A Conditional Registration Order allows a teacher to maintain their status as a registered teacher subject to meeting certain conditions over a prescribed timescale. This timescale may be for a specific period or without limit of time. Conditions may apply to cases of Unacceptable Professional Conduct, Serious Professional Incompetence and Conviction of a Relevant Offence and may involve expenditure on the part of the person.

Where the Committee consider that conditions are appropriate but that the protection of the public, including pupils, is better served by the teacher not remaining in registration during the period to which the conditions apply, they should consider imposing a Suspension Order with conditions. The effect of this is that the teacher is suspended from the register for the period of the Suspension Order and subject to meeting the conditions specified. If the conditions are not met by the end of the stipulated period, the suspension will continue until such time as the conditions are met.

In specifying conditions within Conditional Registration Orders, it is vital that the committee specifies clearly what the teacher must do to comply with the order and that conditions are such that the Council may determine whether or not the conditions have been complied with. Under the Council's Rules, it is the responsibility of the Registrar to make the initial decision about whether conditions appear to have been complied with and to decide whether the matter should be referred for a further hearing. For this reason, hearing committees should apply conditions which meet SMART criteria: in other words, which are specific, measurable, achievable, realistic and time defined.

Before imposing conditions involving retraining or other development, the Committee should satisfy itself that:

- (a) The problem is amenable to improvement through the means specified;
- (b) The objectives of the conditions are clear, such that the Registrar and any future Committee who examine the matter will be readily able to determine whether the objectives in applying the conditions have been achieved.

The Council will monitor whether a teacher complies with the conditions within a Conditional Registration Order and may take steps to suspend or prohibit a teacher where they are not **(See Part 5)**. Teachers may apply to the Council for a variation or revocation of any condition in an Order **(See Part 4)**.

Conditions may be wide-ranging and may, for instance, specify that:

- The teacher may not be employed to teach in certain phases or to teach certain subjects
- The teacher may be excluded from certain activities e.g. outdoor education activities or school trips
- The teacher may be excluded from any involvement with school/college finances
- The teacher may be required to undertake counselling for drug/alcohol abuse
- The teacher may only be employed as a registered teacher subject to undertaking certain retraining or updating.

The Council's policy is to monitor compliance with conditions annually for the first 5 years of any order and thereafter biennially. Compliance with conditions is a responsibility placed upon the teacher as a part of their professional response to shortcomings. It is therefore Council policy that, wherever possible, the onus should be placed upon the teacher to provide the relevant information to the Council proactively in the first instance.

Examples of Conditional Registration Orders are contained within the Record of Decisions available on the Members' extranet.

## **1.6 Further guidance on conditions relating to Serious Professional Incompetence**

When applying conditions in cases of Serious Professional Incompetence:

- (a) The Committee should decide whether continued employment should be subject to retraining or updating or whether retraining and updating may be undertaken on the job (See Note 1 below). Where the Committee is of the view that the teacher's continuing practice should be subject to retraining, they should also consider whether the teacher should be removed from practice pending such retraining. In this event, the Committee should consider whether a Suspension Order with conditions is an appropriate sanction.
- (b) In all cases, the Committee should specify as closely as possible the standards upon which the training should be based (See Note 2 below)
- (c) Given the variety of training providers and the way in which training provision operates in the education sector, it will usually not be feasible or desirable for the committee to specify a specific training

provider in an Order. The committee may therefore place the onus upon the teacher to provide details of a specific course and provider for the Registrar's prior approval

Notes:

1. Examples of conditions attached to suspension orders have included:  
  
"This Condition can be removed upon you submitting satisfactory evidence to the Registrar that you have successfully completed a re-entry or refresher course, covering the following areas of practice:
  - Lesson planning
  - Class control and management
  - Assessment techniques
2. This condition can be removed upon the teacher successfully completing an accredited programme to be approved by the Registrar of the GTCE in advance which provides evidence that she has met the core standards for qualified teaching, such course to include a programme of mentoring and supervision.
3. Relevant standards are conveniently set out in the Teachers' Standards Framework published by the DCSF. The most relevant standards are likely to be the standards for QTS and the Core Standards.

### **1.7 Further guidance on conditions relating to Unacceptable Professional Conduct**

Conditions relating to Unacceptable Professional Conduct can take a wide variety of forms. Some instances which may be helpful are set out below:

- Producing a report from a qualified medical practitioner/ psychiatrist that demonstrates medical fitness
- Exclusion from a management post (or the position of Head teacher) within a school
- Exclusion from involvement with school finances
- Provision of reports (by the Head teacher of an employing school) of satisfactory conduct (at given intervals)
- Reports relating to compliance with the school's policy relating to the use of ICT (at given intervals)
- Compliance with a court order (e.g. for the repayment of monies)
- Compliance with the procedures for reporting sickness absence

## **1.8 General considerations relating to Suspension Orders (up to 2 years)**

Suspension can be used to send out a signal to the teacher, the profession and the public about what is regarded as unacceptable behaviour or serious incompetence. Suspension from the register has a punitive effect, in that it prevents the teacher from practising (and therefore from earning a living as a teacher in maintained schools and non-maintained special schools) during the period of suspension. It also protects the public, in particular pupils, for the period of its currency.

**1.9** Suspension is likely to be appropriate for misconduct or incompetence that is serious, but not so serious as to justify prohibition (for example where there may have been acknowledgement of fault and where the Committee is satisfied that the behaviour or incident is unlikely to be repeated). The length of the suspension may be up to a maximum of 2 years and is a matter for the Committee's discretion, depending on the gravity of the particular case.

**1.10** There may be cases where conditional registration is not sufficient to serve the public interest, but where there is evidence that the teacher has the potential to be rehabilitated if prepared to undergo retraining/development. In such cases the Committee may wish to impose a period of suspension, and to add conditions in terms of retraining or other action. The Committee must be satisfied that the problem is subject to improvement as set out at paragraph 8.15 above. Suspended teachers whose suspension is subject to conditions remain ineligible for registration where they fail to comply with those conditions. As with Conditional Registration Orders, a teacher may apply at any time to vary or revoke conditions attached to a Suspension Order (**see Part 4 above**).

## **1.11 General considerations relating to Prohibition Orders**

Prohibition from the register is appropriate where this is the only means of protecting pupils and maintaining public confidence in the teaching profession. However, Committees should not feel it necessary to prohibit a teacher in order to satisfy public demand for blame and punishment.

**1.12** A teacher who has been prohibited from teaching is prohibited without limit of time. Such prohibition is subject to application from the teacher for the restoration of their eligibility to register according to a timescale determined by the committee. Under the Teaching and Higher Education Act, this timescale shall not be less than two years. If, at this point, such an application is made, a further hearing committee will need to be satisfied that the teacher's character, competence and any other relevant factors, are now sufficiently acceptable to restore the teacher's eligibility to register.

**1.13** Whether Prohibition is appropriate will depend on the particular facts of each case. GTC hearing committees have made Prohibition Orders in relation to:

- (a) deliberate actions to undermine the school and colleagues
- (b) possession of prohibited firearms
- (c) manslaughter
- (d) dishonesty
- (e) theft
- (f) fraud

These Prohibition Orders have applied a range of timescales to any restoration application, from the minimum of two years to an order without limit of time. The effect of a Prohibition Order without limit of time is that the teacher may never apply for the restoration of their eligibility to register. In these circumstances, it is particularly important that the Committee explains clearly the reasons for its decision.

**1.14** Prohibited teachers may apply for the restoration of their eligibility to register at a hearing. Upon successful application to a new hearing committee, a teacher's eligibility to register is automatically restored with effect from the date of that committee's decision. If, however, the application is unsuccessful, prohibition continues and no new application can be made within 12 months of that decision or within such other time limit as the Committee shall determine. Prohibited teachers who do not apply for the restoration of their eligibility to register remain ineligible for registration.

### **1.15 Applying a Reprimand**

***This sanction may be considered where most of the following factors are present (this list is not exhaustive):***

- Evidence that behaviour would not have seriously affected pupils
- Insight into failings
- Isolated incident which was not deliberate
- Genuine expression of regret/apologies
- Acting under duress
- Previous good history
- No repetition of behaviour since incident
- Rehabilitative/corrective steps taken
- Relevant and appropriate references and testimonials

The Committee should consider whether it is sufficient to conclude the case with a finding of unacceptable professional conduct alone or with the addition of a Reprimand. *If no, then consider imposing conditions on the teacher's registration. Note: the Committee should note that a Conditional Registration Order means that the teacher remains in registration during the period of the order. Where the Committee consider that conditions are appropriate but that the protection of the public, including pupils, is better served by the teacher not remaining in registration during the period to which the conditions apply, they should consider imposing a Suspension Order with conditions. The effect of this is that the teacher is suspended from the register for the period of the Suspension Order and subject to meeting the conditions specified. If the conditions are not met by the end of the stipulated period, the suspension will continue until such time as the conditions are met.*

### **1.16 Applying a Conditional Registration Order (with or without limit of time)**

***This sanction may be appropriate when most or all of the following factors are apparent (this list is not exhaustive):***

- Behaviour is not fundamentally incompatible with continuing to be a registered teacher
- No evidence of harmful deep-seated personality or attitudinal problems
- Committee satisfied teacher has insight and does not pose a significant risk of repeating behaviour
- Identifiable areas of practice in need of retraining
- Potential and willingness to respond positively to retraining
- Pupils will not be seriously disadvantaged/affected either directly or -indirectly as a result of conditional registration itself
- The conditions will protect pupils during the period they are in force
- It is possible to formulate appropriate and practical conditions to impose on registration

The Committee should consider whether it is sufficient to conclude the case with conditions imposed on registration? *If no, then consider suspending the teacher from the register.*

### **1.17 Applying a Suspension Order (up to 2 years)**

***This sanction may be appropriate when some or all of the following factors are apparent (this list is not exhaustive):***

- A serious instance of unacceptable conduct but where a lesser sanction is not sufficient
- Behaviour is not fundamentally incompatible with continuing to be a registered teacher
- No evidence of harmful deep-seated personality or attitudinal problems
- The Committee is satisfied teacher has insight and does not pose a significant risk of repeating behaviour

The Committee should consider whether it is sufficient to conclude the case with suspension? *If no, then consider the teacher must be prohibited.*

### **1.18 Applying a Prohibition Order**

***This sanction is likely to be appropriate when the behaviour is fundamentally incompatible with being a registered teacher and involves any of the following (this list is not exhaustive):***

- Serious departure from the Code of Conduct
- Seriously affecting the education and/or well being of pupils, either deliberately or through incompetence and particularly where there is a continuing risk
- Abuse of position/trust (particularly involving vulnerable pupils) or violation of the rights of pupils.
- Dishonesty (especially where persistent and covered up)
- Persistent lack of insight into seriousness of actions or consequences
- Evidence of harmful deep-seated personality or attitudinal problems

### **Supplementary guidance**

#### **1.19 Further guidance on considering conviction cases**

Convictions refer to a determination by a criminal court in the British Islands, or a finding by an overseas court of an offence, which, if committed in England and Wales, would constitute a criminal offence. A conviction itself

gives the Committee jurisdiction even if the criminal offence did not involve misconduct in the course of teaching.

In the case of a conviction, the Committee is bound to accept the fact that the teacher has been convicted as conclusive evidence that they were guilty of that offence. In such cases the proceedings are concerned only to establish the gravity of the offence and to take due account of any mitigating circumstances.

In a conviction-related hearing, the presenting officer will be invited to adduce evidence as to the circumstances leading up to the conviction, character and previous history of the teacher. The teacher will then have the opportunity to address the Committee by way of mitigation and present any evidence in respect of this.

The purpose of a hearing in relation to a conviction is not to punish the teacher a second time for the offences of which he or she was convicted, but to protect the pupils who might be taught by the teacher and to maintain the high standards and good reputation of the profession. The Committee's role is therefore to balance the nature and gravity of the offences and their bearing on the teacher's fitness to practise against the need for the imposition of a sanction and its consequences upon the ability of the teacher to practise his or her profession. A committee should not distract itself by the thought that a teacher has already been punished under the criminal justice system, since its remit is the different one of considering the teacher's registration status.

**A schedule of criminal offences, defining offences and identifying maximum sentences is attached at Part 2 Appendix 2 of this guidance.**

### **1.20 Mitigation**

In any case before them, the Committee will need to have due regard to any evidence presented by way of mitigation by or on behalf of the teacher. This could include evidence of a previously unblemished career, time lapsed since the incident/s, any apologies to the complainant/person in question or efforts to avoid such behaviour reoccurring. Mitigation could also relate to the circumstances leading up to the incident/s in question as well as the character and previous history of the teacher.

### **1.21 Guidance on considering references and testimonials**

Often the teacher will present references and testimonials as to his or her standing in the community or profession. As with other mitigating or aggravating factors these will need to be weighed appropriately in the consideration of the case. The quantity, quality and spread of references and testimonials will vary from case to case and this will not necessarily depend on the standing of a teacher. There may be cultural reasons for not requesting them and the Committee should also be aware of this. In addition, acquiring references and testimonials may pose a difficulty for newly arrived overseas qualified teachers.

Finally, references and testimonials will have been provided in advance of the hearing and therefore may not stand as an accurate portrait in light of the facts found proven. The Committee will need to consider all such factors when looking at references and testimonials.

### **1.22 Guidance on expressions of regret and apology**

The expectation that a teacher will be able to stand back and accept that with hindsight, they should have behaved differently, and that it is expected that he or she will take steps to prevent a recurrence - is an important factor in a hearing. But the Committee should be aware that there may be cultural differences in the way that insight is expressed, for example, how an apology or expression of regret is framed and delivered and the process of communication.

The main consideration for the Committee therefore, is to be satisfied of the protection of pupils and that the teacher has recognised that steps need to be taken, and not the form in which this may be expressed.

### **Arrangements for review**

This guidance is reviewed from time to time in the light of changes to the context and caselaw of professional regulation and is, in any event, always reviewed in the light of changes to the GTC's legislation and its Disciplinary Procedure Rules.