



## Fitness to Teach Threshold Policy

### 1 Introduction

The General Teaching Council for Scotland (GTCS) is required to maintain and improve teachers' professional standards. An important part of that work is ensuring that teachers are fit to teach. This means that we investigate and make decisions when allegations are made about a teacher's fitness to teach. Action is taken if a teacher's fitness to teach is impaired because of his/her conduct or professional competence.

This policy sets out what GTCS will investigate under its fitness to teach (FtT) procedures. This is important information for anyone wishing to make a referral to the General Teaching Council for Scotland (GTCS) about a teacher's conduct or professional competence.

### 2 Key Principles

GTCS is committed to maintaining and improving teachers' professional standards and protecting the public. Our FtT Procedures are carried out in the public interest which means:

- Protecting the public (in particular, children and young people)
- Maintaining the public's confidence in teachers and in the integrity of the teaching profession
- Maintaining proper teaching standards
- Maintaining public confidence in GTCS as a professional regulator

We are also required to carry out our FtT procedures to ensure that any action taken is proportionate, transparent, consistent and targeted only where action is needed. This policy explains which FtT referrals we will investigate to ensure that:

- We are dealing with referrals that are within our legal powers
- We are using our FtT process only where it is necessary
- We consider referrals about teachers appropriately
- We use our resources effectively
- Our FtT caseload is managed in line with our duties as a responsible professional regulator

### 3 What Referrals we Investigate

Our FtT Rules and the legislation that governs GTCS set out the grounds on which a teacher's fitness to teach may be impaired. These are either:

- Conduct; and/or
- Professional competence,

that falls below the standards that we expect.

We do not investigate the health of teachers as we do not have a legal remit to do so (as some other professional regulators do). Fitness to teach is not about a medical assessment: it is about a teacher's conduct and/or professional competence.

Alleging that a teacher's fitness to teach is impaired is a serious matter. It is not simply that the teacher has made a mistake or done something wrong but that they have done something that is of a level of seriousness that it raises concerns about their ongoing fitness to teach.

We investigate what we call “Relevant Conduct”. This means an act of misconduct or a criminal offence where there is, on the face of it, a realistic prospect of a finding of impairment based on that act or criminal offence.

Teachers sometimes make mistakes or errors of judgement both inside and outside work. These will not always mean that the teacher’s fitness to teach is impaired and it would not be proportionate or in the public interest for us to investigate all situations where a teacher’s judgement or practice could have been better or different. This policy helps us focus on serious cases by explaining what we consider an impairment of fitness to teach to mean in the context of a teacher’s conduct.

We only investigate FtT referrals about a teacher’s professional competence (meaning referrals about a teacher’s professional knowledge, skills or abilities falling short of our Standards for Registration rather than referrals about how the teacher has behaved) from employers. This is because the employer is essential in providing monitoring and support to the teacher through a fair performance management process that focuses first on restoring the teacher’s practice. If the teacher’s practice is not ultimately restored, the process will have gathered evidence about the teacher’s practice that can then be passed to GTCS as part of a FtT referral. Any concerns about a teacher’s professional competence must therefore be referred to the employer (the relevant school or local authority) rather than coming direct to GTCS.

#### 4 What an Impairment of Fitness to Teach Means

A teacher’s fitness to teach is impaired where the individual’s conduct falls short of the standards expected.

We publish guidance on the standard of conduct expected of teachers in our Code of Professionalism and Conduct (COPAC). This guidance is general and for the reasons explained earlier in this document, we do not investigate all teacher acts that could fall short of what is set out in COPAC: we only investigate where there is a realistic prospect of a teacher’s fitness to teach being found to be impaired.

Impairment of fitness to teach is a current test which means that the concerns must affect the teacher’s fitness to teach now. This is because our FtT procedures are about looking forward in order to address a risk of harm and protect rather than about looking back in order to punish.

We assess fitness to teach by considering:

- The way the teacher has acted or failed to act
- Where the teacher is now in terms of his/her fitness to teach (which means looking at what the teacher has done to address the issues and whether it is likely that they will happen again)
- The wider public interest

The following provides a non-exhaustive list of the behaviours that **may** raise a concern about a teacher’s fitness to teach:

- Abuse of a teacher’s position of trust
- Forming inappropriate relationships with pupils/young people
- Behaviour of a violent, aggressive or threatening nature
- Sexual misconduct or indecency (including child pornography)
- Behaviour which demonstrates intolerance or prejudice of another’s background, personal circumstances, cultural differences, values and beliefs
- Substance abuse or mis-use
- Mis-use of social media where it relates to a teacher’s practice; displays discriminatory or intolerant views or includes abusive or offensive language or it raises any other serious concern
- Fraud or dishonesty that is material and demonstrates a deliberate intention to mislead
- Other serious activities which cause harm and affect public confidence

The behaviour or action must be of a level of seriousness that it raises a concern that the teacher presents a risk of harm and fitness to teach may be impaired. As well as details of the alleged behaviour, the following factors will also form part of what we consider when deciding whether a FtT

referral should be investigated. Not all the factors will apply to each case and they will be considered according to the specific case circumstances.

- **Age of the behaviour**

As impairment of fitness to teach is a current test, the alleged conduct must affect the teacher's fitness to teach now. This means that the age of the alleged behaviour is important. The impact of the passage of time means that it is unlikely we will investigate allegations that relate to events that took place 5 or more years ago unless they are of a particularly serious nature and the public interest demands that they be investigated (for example, an allegation of historic child sexual or physical abuse).

- **Degree of harm or risk of harm to pupils or young people**

We interpret harm in a wide sense. It does not just relate to physical harm but also includes emotional and educational harm. By risk we mean something that is real and probable, not hypothetical or remote.

- **Whether the behaviour is isolated or part of a pattern**

One incident of a minor nature is less likely to amount to an impairment of fitness to teach than one incident of a serious nature or a pattern of similar behaviour. By way of example, a single incident of having been found to be driving under the influence of alcohol outside a work context would be unlikely to be an impairment. However, a serious incident or a pattern of such activity (or other minor failures) might be.

- **Whether the behaviour has been addressed and/or is unlikely to happen again**

Again, because impairment of fitness to teach is a current test, the alleged conduct must affect the teacher's fitness to teach now. This means that we consider what steps have been taken by the teacher or others (e.g. his/her school or employer) to mean that it does not affect his/her current fitness to teach and/or is unlikely to happen again. This is effectively a risk assessment and includes considering the impact of the teacher's current circumstances, for example whether he/she has since retired from teaching<sup>1</sup> or has a chronic or permanent health condition that means the risk of continued teaching is removed. We also consider whether the behaviour took place before the individual was registered or because of particularly exceptional circumstances (e.g. a health condition or lack of experience at the early stages of a teaching career).

- **Whether the allegation relates to a system failure rather than the failure of an individual teacher**

The behaviour must represent misconduct on the part of the *individual* teacher in order to impair his/her fitness to teach. We therefore consider whether the alleged misconduct has arisen from a school or local authority system failure (for example, an inadequate or absent policy or procedure).

The following provides a non-exhaustive list of the behaviours that are **not** likely to raise a concern about a teacher's fitness to teach and we will not investigate them:

- Personal bankruptcy
- Lateness or poor time-keeping
- Abandoning post, unauthorised absence or similar unless this has harmed children or young people (or such harm was probable)
- Personality conflicts or similar between colleagues where there is no evidence of bullying or harassment (that has not first been subject to the relevant employment grievance process)
- Personal relationships between colleagues
- Matters related to the use of social media or other public expression of views where it does not relate to the teacher's practice, display discriminatory views or raise any other serious concern
- Smoking tobacco contrary to an employer's policy
- Failing to prevent bullying between children or young people where on the face of it there is no evidence that the Teacher has either intended to cause harm or demonstrated a deliberate disregard for pupil safety and wellbeing

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<sup>1</sup> It is important to be mindful that, even if an individual has retired from a substantive post, as long as an individual remains on the Register, he/she remains free to seek employment as a teacher. Many teachers who retire from substantive posts go on to undertake supply teaching and other temporary teaching posts. The risk of continued teaching must therefore be assessed with this firmly in mind.

- Misuse of work property for personal use
- Minor plagiarism
- Fixed penalty notices unless pupils are involved

## 5 Referrals We Cannot Consider

As explained earlier, we cannot consider FtT referrals on health grounds or professional competence referrals from anyone other than teacher employers. We also cannot consider referrals:

- That are made anonymously (or by a person who fails to co-operate with our procedures), where the matter cannot be verified or where we cannot identify the teacher from the information provided. This is because we cannot practically investigate the referral in these circumstances.
- That have already been received and considered by us before (unless the referral contains new information and we think re-consideration is necessary in the public interest).

In addition, we cannot investigate referrals that we consider to be “frivolous or vexatious” – we explain what this means below.

There are a number of factors that could contribute to a determination that a referral is frivolous or vexatious. These factors are that the referral:

- Continually changes, apparently to prolong engagement with us
- Fails to identify clearly the substance or precise issues which require to be addressed
- Is made by a person who makes excessive contact or unreasonable demands of us or others, including abusive behaviour and threats
- Is part of a “tit for tat” referral
- Has been made before the local or other more appropriate first points of referral have been used, for example the relevant Head Teacher, the school, the employing local authority (where applicable) and/or the police
- Can be determined to be an abuse of the GTCS process, for example because it is seeking to resolve an issue that is in dispute in another forum or to give the referrer an advantage in another ongoing process

It is the referral, not the referrer that we will consider – just because someone has made a vexatious referral in the past, we will not assume that any further referral made by them will be vexatious.

For the avoidance of doubt, we can also only investigate a registered teacher’s fitness to teach in the public interest and for public protection, we are not a complaints body nor an ombudsman. This means that we cannot:

- Investigate teachers who were registered a long time ago or who have never been registered
- Investigate schools, colleges, local authorities or similar and how they are run
- Review how a school, Local Authority, Board of Governors or other educational body has dealt with a situation or complaint
- Address disputes or grievances with teachers and provide redress
- Overturn the decisions of a school or Local Authority or make the school or Local Authority do something to address the concerns you have about the educational service provided
- Intervene in employment matters between an employer and a teacher
- Make a teacher apologise for an action or do something
- Facilitate mediation between a teacher and others to resolve a dispute

## 6 When and How to Refer to GTCS

Anyone can make a referral to GTCS if they have concerns about the fitness to teach of a teacher. Referrals should be made using our online referral form which will guide you through the information we require. We have an online referral form that has been designed for members of the public to use as well as one that is designed for employers.

As indicated in our online referral form for members of the public, we expect any fitness to teach concern that relates to the school or employment context to be raised with the school or employer in the first instance. Many concerns can be more quickly and satisfactorily resolved at this local level and there is no need for them to come to us. Where a concern is of a more serious nature, the school or employer should appropriately investigate the matter and ultimately make a referral to us where this is appropriate (see below).

Similarly, where what is alleged is of a potentially criminal nature, we would expect that matter to be raised with the police to enable a criminal investigation to be carried out as soon as possible.

Employers must legally refer a case to us if:

- A teacher is dismissed on grounds of misconduct or incompetence
- A teacher resigns or otherwise stops working for the employer in circumstances where, but for leaving that employment, the employer would have or might have dismissed the teacher on grounds of misconduct or incompetence<sup>2</sup>

The legal obligations placed on employers to refer a matter to us in the particular circumstances noted above take effect as soon as the teacher's employment is terminated. There is therefore an expectation that an employer will make the referral to us almost immediately following the teacher's dismissal or resignation. Employers should not wait for any employment appeal process to be concluded before making the referral but, if such a process is ongoing, this should be pointed out as part of the referral.

At any time, an employer can make a referral to GTCS on a discretionary basis if they have serious concerns about the conduct of a teacher, even if formal disciplinary action has not yet been concluded.

It is a matter for the employer to decide when to make a discretionary referral. As a matter of best practice, we would anticipate that employers would seek to make a referral at an early stage where they have referred the teacher to Disclosure Scotland or the behaviour involved raises child protection concerns in order that immediate protective steps may be taken by us.

The guidance set out at Part 4 above should also assist employers in determining when it is appropriate to make a discretionary referral to GTCS.

## 7 What Happens to a Referral?

When GTCS receives a FtT referral, we will apply this policy and decide whether it should be investigated.

If we determine that the matter should be investigated, we will then conduct an investigation (which will take a period of time – normally 4 to 6 months). We will notify both the referrer and the teacher under investigation and in certain circumstances we will also notify an employer (if the referrer is not also the employer). We may conclude the investigation at any time if we identify that any factor applies that means the case should not be investigated in line with this policy or we are unable to obtain sufficient evidence.

Should we decide that the referral should not (or no longer) be investigated, we will close the case and take no further action. We will notify both the teacher and the referrer of this and provide reasons for our decision. The referral information will be retained by us in line with our records retention policy and it may be taken into account if further referrals are made about the teacher.

It is important to recognise that if we decide not to progress a referral, it does not mean that we are saying that the event alleged did not happen or that nothing was done wrong: it means that we have applied this policy and decided that it is not something that we think it is appropriate for us to investigate. We will always give reasons for our decisions to help referrers and teachers understand them in the individual case context.

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<sup>2</sup> Public Services Reform (General Teaching Council for Scotland) Order 2011. Article 25

## 8 Where else can I go?

If you now think that making a fitness to teach referral to GTCS is not the right thing to do, we know that you will likely still have a concern that you will want to raise elsewhere or may need some help or support in working out what to do next. We have signposted below some of the organisations that may be the appropriate referral point for you, or that may be able to provide you with further assistance.

For concerns about a school:

Refer the concern to the school to see if they can sort things out first. If you aren't happy, you can refer to the relevant local authority, the Scottish Council of Independent Schools (where it's an independent school) or Education Scotland.

Education Scotland: <https://education.gov.scot/>

Scottish Council of Independent Schools: <http://www.scis.org.uk/>

For concerns about a local authority:

Refer to the relevant local authority complaints process for their response first. If you aren't happy with that, you can go to the Scottish Public Services Ombudsman: <https://www.spsso.org.uk/>

For help and support:

Enquire, the Scottish advice service for additional support for learning: <http://enquire.org.uk/>

Citizens Advice Service: <https://www.citizensadvice.org.uk>

Scottish Law Centres (look online to find your local centre)