



## Professional Competence Cases Practice Statement

### Introduction

This document provides guidance to support the rational and consistent determination of fitness to teach professional competence cases.

Professional competence hearings are arranged where GTC Scotland receives a recommendation from an employer or previous employer of a Teacher that:

- (a) alleges that the Teacher's professional competence falls below the standards expected;
- (b) recommends how a Fitness to Teach Panel should dispose of the Teacher's case (e.g. removal from the Register);
- (c) explains why the employer has formed this view;
- (d) has attached to it supporting evidence,

and the Teacher concerned decides to challenge that recommendation.

The recommendation of the employer is set out in a "Case Overview Report" (the format of which is prescribed by GTCS) and, as noted above, must be accompanied by supporting evidence. The Teacher's opportunity to respond to that recommendation is through our hearing process.

GTCS expects that the Teacher will have been made aware of a professional competence recommendation by his/her employer well before it is submitted to GTCS. When GTCS receives the recommendation with the required Case Overview Report, it is sent to the Teacher. He/she is given 28 days to consider the recommendation and decide whether he/she wishes to challenge it through the Fitness to Teach Panel hearing process.

Where the Teacher either does not respond or indicates that he/she does not wish to challenge the recommendation, a Panel can direct that the recommendation be accepted without a hearing being held. In these circumstances, the Case Overview Report (with accompanying evidence) is provided to a Panel for it to decide whether or not to make such a direction. Given that the Teacher has not indicated his/her wish to challenge the recommendation and/or participate in a hearing (or has directly stated as such) it is generally expected that the recommendation will be accepted, unless there are exceptional circumstances which mean that a Panel considers it to be in the public interest for a hearing to be held.

Where a Panel considers that a hearing should be held or the Teacher has stated that he/she wishes to challenge the recommendation, a full hearing will then be arranged. The Teacher is given the opportunity to complete a response form, which mirrors the Case Overview Report in advance of the arranged hearing.

There are 3 parts to the Panel's decision-making process in the context of fitness to teach professional competence cases. A Panel has to decide:

- 1 Whether the Teacher's professional competence falls below the standards expected of a registered teacher;
- 2 Whether the Teacher's fitness to teach is impaired or he/she is unfit to teach; and
- 3 If it finds that fitness to teach is impaired, what disposal to impose in view of the identified impairment.

This document sets out general and specific guidance for Panels covering the matters described above. The guidance will also be relevant to Panels when considering whether to issue a conditional registration consent order in a professional competence case.

No matter what the particular context is, Panel members must always exercise their own judgement in making decisions and must consider the particular circumstances of each case. This guidance is not designed to constrain that process and does not provide exhaustive or prescriptive lists of the principles and factors that may require to be considered. However, to ensure a general consistency of approach by Panels in determining cases, decisions should be made with due regard to this guidance and where it is departed from, an explanation as to why should be included in the Panel's written decision.

### **Public Interest**

Reference is made to **the public interest** at a number of points in this guidance and it should also be borne in mind throughout the decision making process. Assessing the public interest will involve consideration of the following:

- The protection of members of the public (in particular, children and young people);
- The maintenance of the public's confidence in registrants and in the integrity of the teaching profession;
- The maintenance of the public's confidence in GTC Scotland as a professional regulator;
- The need to declare and uphold proper teaching standards; and
- The deterrent effect that the determination may have upon other GTC Scotland registrants.

### **Hearing Procedure**

The Teacher must receive notice no fewer than 28 days' notice of a full hearing.

Full hearings in the professional competence case context operate in an inquisitorial (inquiring) rather than adversarial way. This means that there is not generally a Presenting Officer presenting a case against the teacher (as there usually is in the context of conduct hearings). Instead, it is for the Panel to question the Teacher (and any other individuals providing information to the Panel) effectively and appropriately in order to seek out the information needed to make its decision. In most cases, representatives from the employer will attend the hearing to provide the Panel with information: the Panel may, where it sees fit, seek information from any other person and question them accordingly. The Panel may structure the hearing as it sees appropriate according to the particular case.

### **Unrepresented or Absent Teachers**

As noted in the separate Practice Statement on Postponements, Adjournments and Proceeding in the Absence, if a hearing is to proceed in the absence of the Teacher, the Panel must ensure that the hearing is conducted as fairly and in as balanced a way as the circumstances permit.

Where a Teacher is unrepresented, a Panel has a similar obligation to ensure that the proceedings are fair by facilitating the proper and effective participation of the Teacher in hearing proceedings. Whilst a Panel must never take a role in advising the Teacher on how to present his/her case, it should ensure that steps are taken to inform and encourage him/her at the hearing as required.

In both of these circumstances, further advice will be provided to the Panel as to the appropriate steps to take in the context of the particular case.

### **Part 1 – Fact-Finding**

Part 1 of the decision-making process in a professional competence case will involve the Panel in fact-finding: it will need to decide whether the Teacher (who could be provisionally or fully registered) has fallen below the standard of professional competence expected. It is therefore important to understand what the expected standard is.

When a teacher first seeks registration with GTCS, he/she is required to meet (as a minimum and as a baseline for registration) the Standard for Provisional Registration (the “SPR”). This standard is what is expected in order to successfully complete an initial teacher education programme in Scotland.

Having gained provisional registration, the teacher is required to complete a period of probationary service in order to continue his/her professional learning journey. He/she must demonstrate at the end of that period that he/she meets the Standard for Full Registration (the “SFR”) in order to then achieve full registration. The SPR and the SFR together make up the Standards for Registration, which are contained in a document which sets out these standards side by side, illustrating the professional development required to progress from one to the other.

Probationary service can be undertaken in one of two ways: the Teacher Induction Scheme; or the Flexible Route. The GTCS Policy and Guidance on Provisional Registration and Probationary Service sets out information on these routes, including the length of the probationary service required under each and the time limits in which probationary service must be completed (which operate on a sliding scale: depending upon the route followed and number of days required).

Generally, a recommendation in relation to the professional competence of a provisionally registered teacher will be raised once a teacher has completed all or a significant portion of the probationary service period required. In exceptional cases, professional competence recommendations may be raised at an earlier stage.

Once a teacher has achieved the SFR and gained full registration, he/she is required to continue to meet and maintain this standard. The SFR is therefore the baseline standard of professional competence expected of a fully registered teacher. The GTCS Framework on Teacher Competence sets out the staged process that should be followed by an employer in seeking to manage fully registered teacher professional competence issues.

When an employer refers a professional competence case to GTCS, it will have identified the areas of the SPR and/or SFR it alleges that the Teacher has failed to maintain or is failing to meet in the Case Overview Report. In deciding whether or not to uphold the recommendation set out in that report, a Fitness to Teach Panel (a “Panel”) will need to carefully consider the evidence it has before it (as discussed further below) and reach a judgment as to whether it finds the allegations related to the Standards proved or not.

### **Panel Questioning**

Given the inquisitorial nature of full hearings in professional competence cases, great importance is attached to the Panel’s questioning of both the Teacher and the employer representatives (as well as any other witnesses the Panel considers relevant).

In advance of the hearing, the Panel will have been provided with: the relevant Case Overview Report (including accompanying evidence) and the Teacher’s Response Form (including any accompanying evidence). In the context of provisionally registered teachers, the Panel will also have been provided a copy of the Teacher’s online GTCS profile.

The Panel will need to read and consider all of the material provided carefully, in advance, in order to determine what questions it is appropriate and necessary to ask at the hearing.

The Panel should take care to ensure its questions:

- Follow a structured approach and indicate that the Panel is working together in a logical and systematic way
- Are relevant to determining where the Teacher sits with reference to the Standards and what factors have impacted the Teacher in meeting or maintaining them
- Are appropriately comprehensive so that it obtains a “full picture” (i.e. all of the issues and factors that the Panel considers relevant are addressed), allowing the Panel to reach a fair and informed decision

- Have a clear purpose and are concise: the Teacher, employer representative or other witness should be in a position to easily understand the question asked, which should be short and simple, addressing one point at a time only
- Are open and not leading
- Maintain and support its role as an independent decision-maker; not an advocate for the Teacher or any other party
- Avoid value judgements, any suggestion of bias and any opinion

The Panel must also ensure that the evidence is tested effectively and fairly, free from any bias towards a particular person or perspective.

Some suggested questions that may provide a starting point for the Panel in approaching the questioning session are set out in Part A of the attached Appendix (note these are very general in nature and a Panel should always consider carefully what it is appropriate to ask in the context of each case).

As matters can sometimes be quite contentious between the Teacher and the employer representatives, it is important that a Convener conducts the questioning session with great care; ensuring that he/she retains authority throughout and that the Teacher and employer representatives do not engage in a dialogue between themselves.

### **Late Papers**

The Rules require that all papers be provided well before the day of a hearing. This is an important part of ensuring that the process is fair.

If there is an attempt to submit documentary evidence (papers) after the required deadlines, the Panel should hear representations on the issue and should expect an explanation and justification as to why the item is being submitted late. The Panel should then carefully consider whether to allow the papers to be admitted or not, taking account of any detriment that would be caused and what is in the interests of fairness. Further advice will be provided to Panels taking account of the particular circumstances.

### **Assessing the Evidence and Making Findings**

A Panel must make its decision based on evidence: it must not speculate, guess or take into account outside influences.

Once the Panel is satisfied that it has asked all of the questions it needs to and has all of the evidence it reasonably thinks necessary to make a decision, it will need to carefully assess all of that evidence.

The first step for a Panel is to consider what (if any) admissions have been made by the Teacher regarding his/her alleged failure to maintain or meet the SPR and/or SFR. If the Teacher has made no such admissions or any areas of the standards remain in dispute, the Panel will need to reach a conclusion (based on its assessment of the evidence) as to whether it considers that it is currently met or not.

Assessing the evidence will require a Panel to determine what evidence it accepts because it believes it to be true and what evidence it rejects because it believes it to be false or unreliable.

Assessing the evidence of the witnesses that the Panel has heard from (i.e. the Teacher, employer representatives and any others whom the Panel has considered relevant) will require the Panel to consider credibility and reliability. A credible witness is an honest one, doing his/her best to tell the truth. A witness is reliable if he/she recalls events accurately (i.e. not affected by things like: failure of memory; a defect of observation or a misconstruction of what was observed).

In assessing the credibility and reliability of the witnesses in a probationary service hearing, a Panel may find it helpful to ask itself the following questions:

- How did the witness give his/her evidence? Do you believe that he/she is telling the truth?
- What was the demeanour/attitude of the witness in giving his/her evidence? [Note: this should be approached with caution: demeanour can be a very unreliable factor to use to determine credibility as it can be affected by things like: a disability, personal characteristics/disposition or culture]
- How well placed was the witness to form an objective view on what happened?
- How reliable (or accurate) is the witness' recollection of events?
- Is the evidence given by him/her inherently probable or improbable?
- Is the evidence consistent with facts which are known or certain?
- Is the evidence consistent with what the witness has stated on other occasions?
- Does the witness have a motive or interest in the outcome?
- How does the evidence compare with other evidence available?

Once the Panel has reached conclusions on what evidence it is going to accept and what it is not, it should then consider what weight it attaches to the evidence that it has accepted. The "weight" of an item of evidence means the degree of reliance which the Panel places upon it in order to determine whether the allegations made have been proved or not.

The final stage in the process will be for the Panel to decide (bearing in mind its determinations as to the relative weight of the evidence) how powerful and convincing the body of evidence is and whether, taking each section of the relevant standard in turn, it considers it more likely than not that the standard has either been met or not met. Where a Panel does not consider it has sufficient evidence to reach a conclusion either way, this should be stated instead.

## Part 2 - fitness to teach

If the Panel has decided that the Teacher has fallen below the standard of professional competence expected, it will need to make a determination on the Teacher's fitness to teach. This is a matter of judgement for the Panel and is not something that is proved in the same way as findings of fact are.

The Public Services Reform (General Teaching Council for Scotland) Order 2011 (the "Order") states that an individual is unfit to teach if GTC Scotland considers that his/her conduct or professional competence falls *significantly* short of the standards expected of a registered teacher. An individual's fitness to teach should be considered impaired where GTC Scotland considers that the individual's conduct or professional competence falls short of the standards expected of a registered teacher.

It is important that the Panel bears in mind that it should apply the fitness to teach tests described above to the Teacher *currently* (i.e. at the time the case is being considered and for the foreseeable future rather than, for example, at the time that the professional competence issues arose). This is consistent with the principle that professional regulation is about looking forward in order to protect rather than about looking back in order to punish and also aligns with relevant case law (a summary of which is provided in Appendix 2). Assessing fitness to teach should be approached holistically, taking account of: (i) the way in which the Teacher performed with regard to his/her professional competence; (ii) any information available as to where the Teacher is now with regards to his/her professional competence and how he/she is likely to perform in future; and (iii) wider public interest considerations.

In putting the above into practice in the context of a professional competence case, the Panel should consider:

- 1 Whether the shortfalls in performance identified at Stage 1 are remediable; whether they have been remedied; and whether there is a likelihood of reoccurrence; and
- 2 If the conclusion at bullet point 1 above is that the shortfalls are remediable, have been remedied and that reoccurrence is not likely: whether there is nevertheless an overriding public interest in making a finding that fitness to teach is impaired or that the Teacher is unfit to teach in the circumstances. Guidance on what consideration of the public interest involves is set out above.

In deciding whether the shortfalls identified are remediable; whether they have been remedied; and whether there is a likelihood of reoccurrence in terms of bullet point 1 above, the Panel may be asked to consider character evidence. Whilst it is appropriate to do so, a Panel should do so with caution. Panels must draw a distinction between evidence which has a direct bearing on the fitness to teach findings it must make and evidence which is simply about the Teacher's general character. Character evidence that is relevant to the determination of fitness to teach stage would be expected to relate to what the Teacher has done to remedy the professional competence concern(s) identified and the insight he/she has demonstrated as a result; how he/she is currently performing; and/or the absence or presence of similar events in the Teacher's history.

If the Panel decides that the Teacher's fitness to teach is impaired, it will then need to make a judgement as to the extent to which the person has fallen short of the standards expected. The critical question for the Panel in this respect will be: has the Teacher fallen *significantly* short of the Standards expected meaning that he/she is unfit to teach? It may also be the case that the public interest requires a finding to be made that the Teacher is unfit to teach as noted above.

Where a determination is made by a Panel that an individual is unfit to teach, the Order dictates that he/she must be removed from the Register. As a result, in any case where a Panel determines that an individual is unfit to teach, it need not deliberate on which sanction to impose as is envisaged below. This will only be necessary where the Panel makes a determination that fitness to teach is *impaired*. The Panel will, however, need to decide how long the Teacher should be prohibited from applying to be restored to the Register, or from making a further application for registration. This period may not be set at more than 2 years. The Panel should set the period of time according to what it considers appropriate based on the circumstances of the case.

### **Part 3 - Outcome**

Where a Panel determines that fitness to teach is impaired, it will need to determine the appropriate outcome in the case.

#### Provisionally registered teachers

A Panel has the following options in the provisionally registered context:

- To grant full registration in part or parts of the Register;
- To continue the Teacher's provisional registration and/or extend the period of probationary service requiring to be completed; or
- To remove the Teacher's name from the Register (this is also known as "cancellation").

Where the Panel determines that the Teacher has not maintained the SPR, this means that he/she lacks professional competence and the cancellation recommendation must be upheld because (as noted above) the SPR is the baseline requirement for provisional registration.

Where it is identified that the issue for the Teacher is not with the maintenance of the SPR but rather with his/her progress towards meeting the SFR, the Panel must reach a professional judgement on the level of progress that has been made and whether the nature and extent of the areas of shortfall mean that he/she lacks professional competence.

A Panel will need to weigh up:

- The level of progress that has been made and the nature and extent of the areas of shortfall that it has identified
- Whether it is satisfied that the Teacher has shown sufficient insight and has a realistic plan that he/she is committed to achieving which will address the shortfalls identified within the period of time that a continuation or extension of probationary service would reasonably provide
- Whether any disability, illness or other similar mitigating factor has been made evident and has had a material bearing on the progress made to date
- The nature of the support given to the Teacher and whether there were issues in this regard that had a material bearing on the progress made to date

- Whether the support issues identified are reasonably remediable
- The risk of harm that the Teacher may present to the education of pupils were his/her registration to be continued/extended
- The maintenance of the public's confidence in Teachers as well in GTCS as a professional regulator

A Panel should approach weighing up the above (together with any other factors relevant in the particular case) in a fair and proportionate way, taking account of the particular context.

In order to grant full registration to the Teacher, the Panel would need to be satisfied that the Teacher has completed the required period of probationary service and has demonstrated that he/she currently meets the SFR. Given that the employer recommendation before the Panel will be that the Teacher has not met the SFR, it is only likely to be in exceptional circumstances that a Panel would have sufficient evidence before it to reject the professional judgement of the employer entirely and be satisfied that the SFR has been met. This option is, however, open to the Panel should it be so satisfied with reference to all parts of the SFR.

Where a Panel decides to cancel (remove) registration, a Panel has the option to set a period of time in which the Teacher would be prohibited from making a re-registration application subsequent to this. The period of prohibition can be set at up to 2 years. A Panel should always set the period of time according to what it considers appropriate based on the circumstances of the case.

#### Fully registered teachers

A Panel has the following options<sup>1</sup> in respect of professional competence matters in the fully registered context:

- To make the Teacher's registration subject to a conditional registration order; or
- To remove the Teacher's name from the Register.

A conditional registration order imposes specified conditions that the teacher must comply with in order to maintain registration. It is for the Panel to decide in each case what conditions should be imposed and for what period of time. A conditional registration order is therefore a means of controlling and/or restricting the Teacher with a view to ensuring that any corrective action appropriate in the circumstances is taken and that the Teacher then maintains his/her professional competence.

A conditional registration order may be the appropriate case outcome where the following indicating factors are present:-

- It is possible to identify specific areas of the Teacher's practice that are remediable and that could be effectively, appropriately and practically controlled or restricted by imposing a conditional registration order;
- Conditional registration will adequately protect learners from risk of educational harm;
- The Teacher shows the potential and willingness to respond positively to the imposition of conditions on his/her registration;
- The Teacher shows sufficient insight to suggest that he/she will be able to comply with conditions; and
- A conditional registration order will maintain public confidence in teachers and the teaching profession.

If a conditional registration order is decided upon, in determining what conditions to impose, the Panel should consider:

- Will the Teacher realistically be able to comply with the conditions proposed and can he/she be trusted to do so?
- Are the conditions proportionate and appropriate in the context of the case?
- Do the conditions provide the level of public protection required?

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<sup>1</sup> Note that the options do not include a reprimand: a reprimand is reserved for fitness to teach conduct matters and is not an appropriate measure in the context of professional competence exclusively.

- Will the conditions still be effective even if the Teacher's employment situation changes or has any such change been appropriately accommodated within them?
- Are the conditions measurable so that they may be monitored effectively?
- Are the proposed conditions framed so that it is clear what the Teacher needs to do in order to comply with those conditions?
- Are the conditions all directed at the Teacher and not elsewhere, for example at an employer or doctor?
- Has an appropriate time period been provided for the conditions proposed?

The Panel must also generally be mindful that conditions must be compatible with Article 8 of the European Convention on Human Rights, the right to have respect for privacy and family life.

Example style conditions are provided in the "Conditions Bank" set out in Appendix 1 to the Fitness to Teach Conduct Cases - Indicative Outcomes Guidance (the exemplar conditions are of general potential application). Please note that the Conditions Bank is intended to be neither prescriptive nor definitive; they are intended to assist in the drafting and formulating process only and should always be considered with careful reference to the guidance set out above.

It may be appropriate to remove a Teacher from the Register where:-

- The public interest requires removal of registration; and/or
- A conditional registration order is inappropriate or impractical in the circumstances of the case with reference to the guidance set out above.

Once the Teacher has been removed from the Register, the Teacher remains removed unless and until a re-registration application is made by him/her and a Fitness to Teach Panel is satisfied at a hearing that the application should be granted in line with the separate Practice Statement on Subsequent Registration Applications. Registration following removal by a Fitness to Teach Panel is not automatic and is not at all guaranteed. A person will only ever be granted registration where he/she demonstrates to a Panel's satisfaction that he/she is now fit to teach.

Where a removal decision is reached, a Panel has to decide how long the Teacher should be prohibited from making a re-registration application subsequent to this. The period of prohibition can be set at up to 2 years. A Panel should always set the period of time according to what it considers appropriate based on the circumstances of the case.

It must be emphasised that the above is general guidance only. A Panel should always set the period of time according to what it considers appropriate based on the circumstances of the case.

**Approved 14 June 2017**

### Question Bank

Below is a question bank that provides some example questions that might be helpful as a starting point. Some of the questions are specifically for use in the provisionally registered teacher context. The list is not prescriptive or case specific and a Panel should always formulate its own questions (and adapt the below) as appropriate to the particular circumstances.

Questions for Teacher	Questions for Employer Representative(s)
<p>Where do you feel you are in relation to the SFR (and/or SPR)?</p> <p>Why do you feel you were unable to meet the SFR?</p> <p>If you agree that you do fall short of the SFR, what specific areas do you need to work on? What steps would you take to address these if your registration was continued?</p> <p>The Case Overview report alleges that you do not meet [insert area of the SFR e.g. classroom organisation/behaviour management], can you give some examples of how you (would) achieve success in this area?</p> <p>Why do you think your employer has made the recommendation that we are considering today?</p> <p>What preparations did you make for the transition from student to a probationary teacher? How do you think you managed this transition?</p> <p>What were your relationships like with others in the school?</p> <p>Do you feel you have had the opportunity to say everything you want to say? Is there anything else you would like to add?</p>	<p>What were your expectations of the Teacher through his/her probationary period? Looking back now, how realistic do you think these were?</p> <p>Do you think there was appropriate support given to assist the Teacher meet/maintain the SFR? Can you describe the support given for us?</p> <p>Were you aware of any factors that may have impacted on the Teacher's ability to meet/maintain the SFR (e.g. support change, timetable change, illness)?</p> <p>Where do you feel the Teacher currently is in relation to the SFR and why?</p> <p>Why have you decided to recommend cancellation?</p> <p>What were the relationships like between the Teacher and others in the school?</p> <p>At what stage were concerns initially noted with the Teacher and what was done to try to resolve these concerns?</p> <p>Is there anything further you would like to add?</p>