



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 any member of the public or employer 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

Our FtT procedures are about managing the risk that a teacher poses now and in the future: they are not about punishing teachers for past events. Linked to this, we are 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 proportionate and necessary
- We consider referrals about teachers appropriately and consistently
- We use our resources effectively
- Our FtT caseload is managed with reference to risk, 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 meaning that the teacher presents a risk now and in the future.

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. As explained earlier, 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 as well as any other contextual factors that are relevant to determining whether it is likely that they will happen again)
- The wider public interest

The behaviour or action must be of a level of seriousness that it raises a concern that the teacher presents a risk or could undermine public confidence in the teaching profession. The following provides a non-exhaustive list of the types of behaviours or activities that **may** raise a concern about a teacher’s fitness to teach:

- Abuse of a teacher’s position of trust for personal gain.
- Forming, or attempting to form, inappropriate relationships with pupils/young people.
- Behaviour of a violent, aggressive or threatening nature.
- Sexual misconduct or indecency (including child pornography).
- Behaviour which is discriminatory or 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 or other public expression/demonstration of views that undermine confidence in the teaching profession or infringe the rights of others by being of an abusive, offensive, inflammatory or discriminatory nature.
- Fraud or dishonesty that is material, of consequence and demonstrates an intention to mislead.

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 is serious and 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 the allegations represent conduct that is fundamentally incompatible with being a teacher and the public interest demands that they be investigated because trust and confidence in the teaching profession would be undermined if they were not (for example, an allegation of historic child sexual or physical abuse).

- **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. Many fitness to teach concerns have already been addressed effectively before they reach GTC Scotland meaning that the teacher does not present a risk going forward and there is no need for us to take action. We therefore consider what steps have been taken by the teacher or others (e.g. his/her school or employer) to mean that the alleged conduct does not affect his/her current fitness to teach and/or is unlikely to happen again. We also consider any other contextual factors that are relevant to determining whether the teacher presents an ongoing risk. This includes considering the impact of the teacher's current circumstances, for example whether he/she has since retired from teaching¹ or has a chronic or permanent health condition. We also consider whether the alleged conduct took place before the individual was registered or because of particular circumstances (e.g. a health condition or lack of experience at the early stages of a teaching career).

- **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 or isolated set of events is less likely to amount to an impairment of fitness to teach than a pattern of behaviour or more than one incident. By way of example, an 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 pattern of such activity (or other failures) is more likely to represent an impairment as it tends to suggest that the teacher will repeat the behaviour and that there is a more serious underlying issue.

- **Intention**

A deliberate action or behaviour is more likely to happen again than a behaviour or action that has happened by accident or otherwise without intention. A deliberate action or behaviour is therefore more likely to be serious and impair fitness to teach.

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

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

¹ 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 return 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.

- 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/demonstration of views that do not undermine confidence in the teaching profession or infringe the rights of others by being of an abusive, offensive, inflammatory or discriminatory nature.
- Smoking tobacco contrary to an employer's policy.
- Failing to prevent bullying between children or young people where there is no evidence that the Teacher has either intended to cause harm or demonstrated a deliberate disregard for pupil safety and wellbeing.
- 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 nor 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, 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 which must be considered – just because someone has made a vexatious referral in the past; it cannot be assumed that any other referral will be vexatious. Nor will this category be applied to referrals which indicate that the referrer is angry or dissatisfied (unless another of the categories above apply).

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 or an ombudsman and 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, retribution, compensation or restitution.

- 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 or enforce employment policies.
- 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 incompetence²

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.

Whilst it is a matter for the employer to decide whether it is appropriate to make a discretionary referral, with reference to the guidance set out earlier, we would expect early referrals to be made by employers by exception in cases where it is considered that the risk is so serious that immediate action needs to be taken by GTC Scotland to restrict the teacher's registration in the interests of public protection. This would apply in cases where the allegations involved represent conduct that is fundamentally incompatible with being a teacher (for example sexual abuse, violence or child protection matters).

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

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

evidence. Investigations are often concluded in this way when our enquiries establish that the matter referred has been addressed effectively at the school/employment level meaning it would be disproportionate and unnecessary for us to investigate the matter further.

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, that no harm was caused 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 as the professional regulator. We will always give reasons for our decisions to help referrers and teachers understand them in the individual case context.

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)