



## Temporary Restriction Orders Practice Statement

Article 21 of the Public Services Reform (General Teaching Council for Scotland) Order 2011 enables the General Teaching Council for Scotland (“GTCS”) to restrict an individual’s registration pending the conclusion of an investigation into any circumstances which on the face of it might cause it to remove the individual’s name from the Register.

The restriction of an individual’s registration in this way is achieved through the imposition of a Temporary Restriction Order (a “TRO”). The Fitness to Teach Rules (the “Rules”) set out that TROs are adjudicated by Fitness to Teach Panels (“Panels”). In the interests of consistency and transparency, this practice statement provides further guidance about the procedure and the factors that Panels should bear in mind in deciding whether or not to impose a TRO. Although this guidance does not purport to be exhaustive or prescriptive as to the factors that may need to be considered, it is designed to provide a useful starting point for Panels to refer to and to use with a view to ensuring a general consistency of approach.

### **The Effect of a Temporary Restriction Order**

A TRO does not remove a Teacher’s name from the Register nor does it in any way indicate that a Teacher will come to be removed from the Register in future.

The effect of a TRO is set out in the Requirements for Teachers (Scotland) Regulations 2005: while a Teacher’s registration is marked as restricted, he/she may only be employed as a teacher by his/her existing employer and in his/her existing teaching post. In practical terms, this means that if the Teacher is currently employed as a teacher in Scotland he/she may continue to be employed in that post (subject to any conditions put in place by his/her employer); if the Teacher is currently unemployed he/she will be unable to gain employment as a teacher in a Scottish local authority school.

A TRO will remain in place until the case is finally disposed of unless a request is made for it to be reviewed earlier. If a request is made for a TRO to be reviewed, a review hearing will be arranged and the guidance provided below would also apply to any such hearing.

### **Procedure**

When a Panel is asked to consider whether a Teacher should be made subject to a TRO, the parties will be given notice of this and will have 7 days to:

- Provide written representations to the Panel on the matter; or
- Request a hearing to make oral representations to the Panel on the matter.

#### TRO Consented to

If a Teacher informs the Servicing Officer that he/she consents to the imposition of a TRO, a Panel Convener may direct that a TRO be imposed without the need for a temporary restriction hearing. Where the Teacher so consents, the Servicing Officer will contact the Convener as soon as possible by email or telephone to confirm whether he/she is content that the TRO be imposed.

#### TRO not consented to

If a hearing is not requested by either party and a Panel does not consider a hearing necessary, a Panel will meet in private to consider whether to impose a TRO based on the written representations made.

Where the Teacher requests a hearing or a Panel considers a hearing necessary, a temporary restriction hearing will be arranged and the parties will be provided with no fewer than 7 days’ notice of it. The default position is that these hearings take place in private.

A Panel's consideration of whether or not to impose a TRO involves two key stages:

Stage 1: determining whether the 'legal test' is met: are there "circumstances which on the face of it might cause GTCS to remove the Teacher's name from the register"?

Stage 2: determining whether or not a temporary restriction order should be imposed in the circumstances

The parties will have been asked to comment on each of the above stages as part of any written representations provided. If a hearing is held, the parties will have the opportunity to make submissions in person to the Panel at each stage. The factors relevant to each stage are explained in further detail below.

### TROs and full hearings

A Panel has the power to impose a TRO at any point in full hearing<sup>1</sup> proceedings if it considers it appropriate to do so in the circumstances. For example, where a full hearing is to be adjourned, a Panel may decide to impose a TRO in the interim period. In these circumstances, the same factors as described below should be considered. In this event, the Panel should also still hear submissions from both parties on the matter.

### Postponement/ adjournment applications for temporary restriction hearings

Given the importance of expediency in dealing with TROs and the context within which these sit, it should be noted that postponement and adjournment applications will only usually be granted in compelling circumstances. More information about postponements and adjournments may be found within the GTCS Postponements, Adjournments and Proceeding in the Absence Practice Statement.

## **General Principle**

A TRO is intended to be a protective, not punitive, measure and should only be imposed when it is both proportionate and necessary in the particular circumstances.

## **Approaching the Decision**

### Stage 1 – the legal test

In deciding whether or not the legal test is met, a Panel must determine whether there are circumstances on the face of it which might cause the Teacher's name to be removed from the Register. The nature of the legal test presents a Panel with a wide-ranging discretion to impose a TRO.

As temporary restriction hearings generally occur before the investigation into the circumstances is complete, it is unlikely that all of the evidence relevant to the case will be available. This means that a Panel must reach its decision on the basis of the evidence and submissions it has available at the time of the hearing. As a result, it is not appropriate for a Panel to determine whether or not the allegations are proved in the way that it would at a full hearing.

In approaching the legal test, a Panel may have regard to the overall strength of the evidence, but should usually take the evidence at its highest. In other words, a Panel should consider whether, if the allegations set out were proved, the Teacher's name might come to be removed from the Register.

It is important to note that the test is that the Teacher's name might come to be removed from the Register, not that it necessarily will.

If the Panel decides that the legal test is not met, the hearing will be drawn to a close and no TRO will be imposed.

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<sup>1</sup> A full hearing is the substantive hearing at which the allegation made against the Teacher is considered.

If the Panel decides that the legal test is met, the hearing will proceed to Stage 2 and both parties will have the opportunity to address the Panel on whether or not a TRO should be imposed in the circumstances.

### Stage 2 – should a TRO be imposed?

Panels should balance the following factors in determining whether a TRO is necessary and proportionate in the circumstances of the case:

- the nature and severity of the circumstances alleged
- the risk of harm that the Teacher presents to children (including in terms of their education), colleagues and the wider public
- likelihood of recurrence
- severity of potential harm if the conduct was repeated
- the impact that a TRO would have on the particular Teacher (e.g. would the imposition of the TRO have financial or professional consequences, and to what extent. Alternatively, could a TRO have a positive effect on a Teacher: how would it be positive?)
- the public interest [Note: Panels should refer to the ‘General’ section of the GTCS Indicative Outcomes Guidance where a fuller explanation of the public interest is set out]
- the individual circumstances of the Teacher and whether these offset any risk of harm that he/she presents. [Note: a Panel should not accept as offsetting the risk of harm any undertakings offered by the Teacher (e.g. “I will not seek employment” or “I will not change jobs”) as these are unenforceable]
- Proportionality, bearing in mind that the consequences of the TRO for the Teacher must not be disproportionate to the potential harm

Where one or more of the elements listed below is present in a case, this may mean that it is appropriate for a TRO to be imposed as these are circumstances where the risk to the public/public interest would usually outweigh the interests of the Teacher. It must be emphasised that the below are indicative and examples only: a Panel must still apply the factors described above and use its own judgement in each individual case.

- violence
- sexual abuse
- inappropriate relationships with pupils
- other serious and/or multiple breaches of the GTCS Code of Professionalism and Conduct

### **Decision**

If a Panel imposes a TRO, it takes immediate effect (notwithstanding the Teacher’s right to appeal: see below).

If a TRO is not imposed, it does not prevent a TRO being sought again later in the process and does not mean that the allegations will not ultimately come to be proved and/or the Teacher’s name come to be removed from the Register following a full hearing. Conversely, and as has been emphasised earlier in this document, the imposition of a TRO does not indicate in any way that the allegations will be proved or that the Teacher will be removed from the Register.

A Panel must provide written reasons in respect of its decision. As a general rule, the structure should follow the stages described above and explain how the Panel balanced the relevant factors.

### **Right of Appeal and Review**

Where a TRO is imposed, the Teacher has a right to appeal that decision to the Court of Session within 28 days of receiving the decision notice.

In addition to the right of appeal, it is important to note (and as has been noted earlier in this document) that the Presenting Officer or the Teacher may apply for a TRO to be reviewed at any time. Where a TRO review application is made, a hearing would be arranged accordingly.

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