



## Consultation on GTC Scotland on Fitness to Teach and Appeals Rules GTC Scotland Response

### Background

We launched a consultation on new Fitness to Teach and Appeals Rules (the Rules) which set out how we will investigate and determine the fitness to teach of individuals who are applying for registration or who are already registered where it is alleged that they have fallen short of the standards of conduct or professional competence that GTC Scotland expects.

The changes proposed in the draft Rules bring our disciplinary, probationer panel and appeals board procedures into line with the Public Services Reform (General Teaching Council for Scotland) Order 2011 and current law. By proposing the changes, we have also tried to make our procedures and the rules themselves simpler to better meet current needs. Our aim is to achieve new procedures that are effective, proportionate, transparent, consistent and sensitive to those involved.

Our consultation ran from 1 September 2011 to 17 October 2011.

Following analysis of responses to this consultation exercise, we have published a revised, final proposed version of the Rules which is available to download on the right. This version will now be sent to the Lord President of the Court of Session for his approval.

The reasons for the changes that have been made are set out in detail [below] [*to be adjusted according to website layout*].

### Overview of respondents

Submissions were received from 6 respondents; 5 responding on behalf of an organisation and 1 individual.

The organisational respondents were:

The Association of Teachers and Lecturers  
The General Teaching Council for Wales  
School Leaders Scotland  
The Educational Institute for Scotland  
Voice

We thank all respondents for taking the time to help inform, and improve, our proposed Fitness to Teach and Appeals Rules.

### Overview of responses

#### (a) Structure and presentation

Only one respondent noted a slight concern with the structure and presentation of the rules in terms of the consistency and clarity of numbering used throughout.

#### (b) Quorum for panels

Three respondents disagreed with the proposal that the quorum of the panels should be 3 with a majority of registered teachers. One respondent did not provide a reason or alternative solution

for this response and one suggested that 5 with a majority of registered teachers was more appropriate. The remaining respondent suggested that having 3 was appropriate but that the majority of registered teacher requirement was unnecessary and could be removed in order to provide more flexibility and maintenance of the public interest.

(c) Providing notice and hearing procedures generally

Two respondents provided views on the “General” section of the Rules. The first was to congratulate GTC Scotland generally on the adoption of the term “Fitness to Teach” throughout. The second considered that what was meant by a “recording of proceedings” could be further clarified.

(d) Investigating complaints – early consideration

No respondents disagreed with the proposal that a complaint should be considered as early as possible. One respondent suggested that GTC Scotland set down a time period within which the initial consideration of a complaint would take place to try to make the process run as quickly as possible.

(e) Investigating complaints – case to answer test

No respondents disagreed with the proposal that an Investigating Panel will be concerned with whether or not there is a “case to answer” in deciding whether or not to refer a complaint to a Fitness to Teach Panel for further consideration.

(f) Investigating complaints – use of reprimand consent orders

One respondent suggested that it was not appropriate for an Investigating Panel to have the option of issuing a reprimand consent order to an individual. The respondent was concerned that this process could lead to inconsistency between the practise of Fitness to Teach and Investigating Panels as to case outcomes and may lack transparency meaning that it was not in the public interest. The respondent added that if such a process was adopted, very clear guidelines would need to be followed by the Investigating Panel to ensure that the use of reprimands across the investigating and adjudication stages was consistent.

(g) Investigating complaints – other comments

The following additional comments were made on the investigating complaints procedures proposed:

- One respondent commented that the period in which matters could be subject to re-consideration should be longer than the 3 years proposed while two others considered this provision to go against principles of natural justice;
- One respondent commented that the provision set out in the Rules that “in order to investigate the complaint, GTC Scotland may seek further information from any source” amounted to potential “fishing expeditions” which was concerning and inappropriate.

(h) Adjudicating complaints – witness statements and evidence

Two respondents disagreed with the proposal that witness statement evidence be admitted at hearings and one further respondent considered that witness statements should have to be agreed by both parties in order to be admitted into evidence.

One of the respondents that disagreed with the admission of statements into evidence suggested that more use of witness statements could be made as part of hearing proceedings. The same respondent also suggested that if witness statements were to be admitted, less weight should be given by a panel to them as against other evidence.

The other respondent that disagreed was concerned that witnesses providing evidence at hearings could provide evidence beyond what was contained in their original witness statement.

(i) Adjudicating complaints – case management

The following comments were made about the proposed case management discussions/directions:

- Care should be taken to ensure these do not result in delays and do not lead to “plea bargaining”; and
- All evidence to be led at a hearing should have been discussed or made available at the case management discussion stage.

(j) Adjudicating complaints – public hearings

No respondent disagreed with the proposals made in the Rules on when hearings will take place in private and public. One of the respondents did highlight that publicity surrounding cases does sometimes cause concern, particularly where there is no finding of guilt.

(k) Adjudicating complaints – removal with consent

One respondent disagreed with the proposal that individuals subject to the complaint adjudication process should be able to remove themselves from the Register following the procedure laid down in the Rules. The respondent was concerned that any such process would lack sufficient transparency to protect the public interest.

(l) Adjudicating complaints – range of disposals

One respondent suggested that it should only be possible to prohibit any individual removed from the Register from seeking restoration to the Register for a maximum of 5 years. No other respondents disagreed with the proposals.

(m) Adjudicating complaints – cost recovery

Three respondents said that there should be no circumstances in which GTC Scotland should seek to recover hearing costs from respondents. The other three respondents provided no views on the matter.

(n) Adjudicating complaints – other comments

One respondent suggested that the time periods for the provision of notice should be extended in various places from 7 to 14 days.

(o) Adjudicating probationary service

One respondent commented that:

- The hearing notice period and deadline for receipt of written responses from the respondent should both be extended; and
- The words “relevant and fair” should be added to Rule 4.5 so that it reads as follows:

*“The Panel may admit and consider at any hearing envisaged in terms of this Rule 4 any relevant and fair information (oral, documentary or other) from any party that it considers relevant to its determination of the case. The panel may of its own volition (acting through the Servicing Officer as is seen fit), or on the application of any party, ask any person to provide information that it considers relevant at the hearing or otherwise and may then admit and consider that information in determining the case.”*

## (n) Appeals – Convener sift

One respondent commented that the sifting out of appeals that were considered “frivolous or vexatious” by the Convener is unnecessary given that an appeal should be supported by ground in any case. No other respondent disagreed with the proposals or provided comments.

## (p) Appeals – outcome

No respondents disagreed with the proposal that, in terms of the outcome of an appeal, an Appeals Board should only be able to refer the matter back to the panel of first instance with a direction as to how they should proceed

## (q) Appeals – other comments

One respondent provided the following additional comments on the appeals section of the Rules:

- A time period should be specified within which GTC Scotland requires to lodge answers to an appeal;
- The information to be considered by the Appeals Board in an appeal should be provided to the appellant no fewer than 14, rather than 7, days before the appeal hearing;
- The words “relevant and fair” should be added to Rule 5.4, paragraph 4 so that it reads as follows:
 

“The Appeals Board may admit and consider relevant and fair information where such information has not been disclosed in advance where either (i) the Appellant consents to this; or (ii) the Appeals Board is satisfied that the admission of the information is necessary to ensure the fairness of the proceedings and, where there is possible prejudice to the Appellant, that this is outweighed.” and
- The wording used in Rule 5.7 to some extent contradicts 5.4, what is outlined in Rule 5.7 is the approach that should be followed.

## Summary and GTC Scotland Conclusions

The vast majority of consultation responses were supportive of the proposals put forward. Responses to the comments received are set out below.

## (a) Structure and presentation

The numbering and format of the Rules has been updated to increase consistency and clarity throughout.

## (b) Quorum for panels

We have reflected on the consultation responses received but still consider that the quorum for panels provided in the Rules (3 with a majority of registered teachers and at least one lay person present) is appropriate and practical bearing in mind the types of cases that are to be considered. We also consider the approach to be in line with that followed by our peer regulators. As we noted in the consultation document, standard operational practice for Fitness to Teach Panels that are considering cases concerned with misconduct issues or the competence of fully registered teachers, will be to run with panels comprising 5 members unless exceptional circumstances arise.

## (c) Providing notice and hearing procedures generally

We have not made any changes in view of the responses provided in this respect. We consider that the meaning of a “recording of proceedings” is sufficiently clear in and of itself.

(d) Investigating complaints – early consideration

We will be setting broad timescales for the consideration of complaints generally but do not consider it appropriate or necessary for these to be articulated in the Rules.

(e) Investigating complaints – case to answer test

No comments received.

(f) Investigating complaints – use of reprimand consent orders

We have added a further provision to seek to ensure that Investigating Panels must be reasonably satisfied that, in offering a reprimand consent order, if the case had been referred to a Fitness to Teach Panel, the same decision would not have been reached. We consider that this provides comfort that there will be consistency of approach between the Investigating and Fitness to Teach Panels. The Investigating Panel will also have guidance available to it which will again help to ensure consistency of practice across GTC Scotland’s fitness to teach function. Reprimand consent orders will be published and we consider that this retains a similar level of transparency than under our current processes.

(g) Investigating complaints – other comments

- We have amended the re-consideration provision to make it clear that a Panel may only re-consider a complaint where it is considered fair and just to do so.
- We have amended the wording that sets out the steps to be taken by GTC Scotland to investigate a complaint received to “GTC Scotland will carry out such further investigations as it considers appropriate in seeking to determine his/her fitness to teach in light of the allegations made” in seeking to address the concerns raised.

(h) Adjudicating complaints – witness statements and evidence

In the interests of ensuring that our hearings run as efficiently as possible, we still consider it appropriate to enable witness evidence to be submitted in statement form. Given that witnesses may still be called to provide evidence in person for cross-examination or any other purpose and that the statements will be read out at the hearing, we consider that the Rules strike an appropriate and fair balance to all those involved.

(i) Adjudicating complaints – case management

The intention of introducing case management discussions is to seek to ensure that, particularly in more complex hearing circumstances, steps are taken well in advance to try to ensure hearing time is used as effectively as possible, and that the case is proactively managed from an early stage. We consider that far from resulting in delays, such discussions will be to the positive benefit of all parties and will mean hearing time is used better, in turn leading to more efficient and expeditious proceedings generally.

The intention is not to use case management discussions as a forum for the exchange of evidence between parties. The Rules set out that a full hearing notice must set out the evidence to be led against a Respondent and require these details to be similarly shared by the Respondent in advance of the hearing. We consider that this is essential for hearing proceedings to be fair.

(j) Adjudicating complaints – public hearings

No comments received to be addressed.

## (k) Adjudicating complaints – removal with consent

We have very carefully considered our proposal to allow individuals to consent to be removed from the Register in the context of fitness to teach proceedings. We consider that the procedure laid down builds in sufficient safeguards to ensure that this is delivered in the public interest. For the procedure to be used, Respondents must accept the terms of the removal with consent order which will include, as noted in the consultation document, admitting the allegation(s) made against them. In seeking to ensure transparency and in addressing the concerns raised, we have made it clearer that the order will be referred to a procedural hearing (which would ordinarily be held in public) for a Fitness to Teach Panel to announce its terms and will also be made available to the public.

## (l) Adjudicating complaints – range of disposals

We have decided that it should only be possible to prohibit any individual removed from the Register from seeking restoration to the Register for a maximum of 2 years and have amended the Rules accordingly.

## (m) Adjudicating complaints – cost recovery

We have given very careful consideration to the matter of costs recovery. On balance, we have decided that it is appropriate for us to include a provision to enable costs recovery in very exceptional cases. We have determined that this is essential if GTC Scotland is to be financially protected from any extreme situation where a Respondent acts in a vexatious or unreasonable manner in proceedings. We have drafted the provision to ensure that it is very narrow in scope.

## (n) Adjudicating complaints – other comments

We consider that all of the time periods for provision of notice set out in the Rules are fair and appropriate. We have set the time periods in line with current practice, as well as with reference to peer regulators.

## (o) Adjudicating probationary service

- Probationer panels have been run to date on the basis that 21 days notice is provided to probationers of the hearing date and that they must lodge any written submissions not less than 14 days before the hearing date. These time periods have been considered appropriate to date in striking a fair balance between giving a probationer time to prepare their case as well as dealing with cases quickly, which is in the interests of all involved. It is important to also note that there is provision within the Rules for individuals to seek a postponement should their circumstances mean that the standard time periods are inappropriate.
- Rule 4.5 (now Rule 4.3.3 in the revised draft) has been amended in light of the comments made.

## (n) Appeals – Convener sift

We do not agree that the sifting process is unnecessary if an appeal has to be supported by grounds. We consider that an appeal could specify grounds but still be vexatious or frivolous.

## (p) Appeals – outcome

No comments made.

## (q) Appeals – other comments

- We have prescribed a 28 day period within which GTC Scotland requires to lodge answers to an appeal in the revised draft of the Rules.
- We do not consider it appropriate to revise the time periods specified in the Rules. As noted above, these are in line with current practice.
- We have adjusted both Rule 5.4 and 5.7 to ensure that the requirements of relevance and fairness are taken into account when considering whether evidence should be admitted at an appeal hearing and in making the provisions coherent.