Revising our Fitness to Teach Process
Response to the Consultation

Background

On 29 September 2016, we published a consultation on proposed new Fitness to Teach Rules to replace our existing Fitness to Teach and Appeals Rules which were put in place in 2012. Our consultation was profiled on our website, through our social media channels and sent by email to all of our key stakeholders. We also held face-to-face meetings to discuss the consultation with a number of our stakeholders. The consultation closed on 29 November 2016 (but we have still considered responses that were received after that date).

The Fitness to Teach Rules set out the procedure that is followed when we investigate and determine the fitness to teach of our registrants or applicants for registration. We follow this process when we receive information that indicates that a teacher may have fallen short of the standards of conduct or professional competence that we expect.

The changes proposed aim to update our procedures with a view to streamlining them, making them quicker and making them more targeted towards addressing risk of harm. We also tried to write the proposed new Rules in a simpler way so that they are more accessible and reflect best current practice.

We want to maintain confidence in teachers and GTCS with the protection of the public remaining at the centre of what we do. Our aim is to achieve new procedures that are effective, proportionate, transparent, consistent and sensitive to those involved.

This response document highlights key points we have taken from the consultation and the changes made to the draft Rules as a result. The final version of the Rules have been published alongside this consultation response but it is important to note that these are still subject to the required approval from the Lord President of the Court of Session. We have also published a new Fitness to Teach Threshold Policy which we will introduce alongside the new fitness to teach process and have referenced in our response below.

Overview of Respondents

Written submissions were received from 31 respondents; 15 responding on behalf of an organisation and 16 as individuals (attached as an Annex lists those who agreed to be named publicly). We received oral feedback from an additional organisation respondent at a face-to-face meeting but it did not submit a written response to the consultation questions.

The submissions received from organisations reflected a broad range of our key stakeholders: teacher professional associations, parent forums/councils, local authority employers, other professional regulators and other education bodies. A number of the individual respondents were GTCS registered teachers or members of the public with experience of our existing fitness to teach process.

We thank respondents for taking the time to help inform this important piece of work. All of the responses have been considered carefully and taken into account.

Overview of Responses

The summary set out below is structured in terms of the questions we posed in the consultation information. The consultation responses for which consent was provided for publication are available to read in full here [link].

General Structure and Approach

Comments provided on the structure were generally positive with a number noting that it was logical and easy to follow. A few respondents asked for support materials to be developed to increase the accessibility (e.g. a process flow) and suggested presenting the Rules in a bespoke, complete format for each case type. One respondent suggested that the format could be simplified further but did not provide any specific suggestions.

Aligning how we Manage Competence Cases Throughout the Teacher Journey

23 of the respondents agreed; 6 had no view and 2 disagreed with the proposed alignment.

A number of respondents welcomed the recognition in the differences between conduct and competence cases in the procedure followed and noted that an inquisitorial approach in the competence context would be more appropriate.

Only one of the two respondents (both individuals) who disagreed with the change provided reasons; this respondent appeared to disagree with the concept of competence cases being considered by the GTCS at all on the basis that if the right individuals are entering the profession then such issues should not arise.

Temporary Restriction Orders in Provisional Registration Competence Cases

23 of the respondents agreed; 6 had no view and 2 disagreed that a Panel considering a provisional registration competence case at a hearing should have the option to impose a temporary restriction order in order to restrict the teacher to his/her existing teaching post until the fitness to teach process has concluded.

Respondents in favour of the change generally pointed to consistency of approach and the public interest as providing a strong rationale in support of the proposal. A few respondents emphasised that a temporary restriction order should only be sought where this was necessary and proportionate in the circumstances which would not apply in every case.

Only one of the two respondents (both individuals) who disagreed with the change provided reasons, stating that a probationary teacher should be given more support and encouragement instead of being subject to a restriction order.

Move Away From the Use of the Term "Complaint"

17 of the respondents agreed; 10 had no view and 4 disagreed with the proposal to move away from the use of the term "complaint" in the context of the fitness to teach process.

The respondents who provided reasons for their view in agreeing with the proposal appeared to consider generally that this change in language would better manage understanding of the nature of the GTCS fitness to teach process and address a perception of "complaint" being a loaded term that, for some, implies wrongdoing before an investigation has taken place.

The respondents who disagreed considered, in essence, that the term "complaint" fitted the context better and was more appropriate in representing the potential seriousness of the matters at issue.

There were no suggestions made as to an alternative, more suitable term.

Streamlining the Conduct Case Investigation Process

20 of the respondents agreed; 8 had no view and 3 disagreed with the changes proposed to the conduct case investigation process.

The respondents who agreed with the proposals and provided reasons generally appeared to support cases being dealt with more expeditiously; some caveating that sufficient rigour and due process must be maintained. A number of respondents highlighted the need to identify a clearer timeframe for the investigation process so that expectations as to how long things will take are clear. Five respondents provided comments on the 5 year exclusion principle, some expressing concern that there would still be a public interest in investigating older allegations (so this provision may be unnecessary) and all implying that the meaning of a "public interest exception" would need to be clearly defined.

All of the respondents who disagreed with the proposals were individuals. Two provided reasons. The first considered that the issue with the time taken to progress cases is a matter of resource rather than process so changing the process would not have the impact sought. The second was concerned that any step to speed up the process would mean matters being looked at in a "fleeting manner" which could lead to unfairness to teachers.

In addition to the points summarised above, the following recommendations for further aspects of the conduct case investigation process that should be changed were provided:

- Dedicated (and more protective) processes should be introduced in order to address situations where health is a significant factor in a case. One respondent suggested that the adversarial process is inappropriate in this context.
- More clarity should be provided on who is responsible for gathering evidence in a case; and, more specifically, the role of a complainant in this process and his/her "right of reply".
- A process should be in place to allow those subject to the fitness to teach process who have no intention of returning to the classroom as a result of illness to be removed from the Register without the fitness to teach process being pursued further.
- Consent orders should be possible in cases where only part of the allegation(s) is/are admitted.
- There should be limited investigation of complaints raised by members of the public: only where an employer has dismissed should GTCS investigate.
- The term "Relevant Misconduct" is inappropriate as it implies guilt before investigation and a determination of the facts; an alternative term should be used.
- An employer should be informed of any referral/complaint at the earliest possible stage.

Conduct Hearing Process

Of the respondents: 15 agreed; 6 agreed with some but not all; 8 had no view and 2 disagreed with the changes proposed to the conduct case hearing process.

Only one of the respondents who disagreed with the proposed changes provided a reason, stating that witness statements should be read aloud.

Of those who agreed with some of the changes but not all, a wide range of points were identified (as summarised below). Three points were commonly raised across a few respondents on the burden of proof for establishing a fitness to teach impairment, the reading aloud of witness statements and allowing a Panel to impose reasonable time limits on the parties' process of giving evidence/making submissions. In regards to these three points, three respondents disagreed that the burden of proof should be removed in the context of establishing a fitness to teach impairment: they felt this should remain with the GTCS Presenting Officer. There were mixed views expressed by 4 respondents on the reading aloud of witness statements: two felt that reading aloud was important and appropriate while the other two considered the proposed change a positive development. Four respondents expressed some concern at the proposal to allow Panels to impose reasonable time limits on the time take to present evidence/make submissions: one had particular concerns from the witness impact perspective and the others urged caution as to how this would be exercised in order to still ensure a fair hearing.

Summary of additional comments:

- Any use of electronic communication at a hearing should be subject to an additional criterion that the method used enables visual contact.
- An adjournment of a hearing should be subject to a requirement for the impact of any such adjournment on witnesses to be considered.
- Panels should be given appropriate training to ensure hearings are conducted fairly and lawfully.
- Provision should be made to ensure witnesses are not present in the hearing room until they give evidence.
- The process regarding the addition of a further referral when a case is at the hearing stage requires more clarification.
- A Panel should be required to hear from all parties before taking a decision to cancel a case.
- Recordings of hearings should be made available to anyone making such a request (subject to payment of a reasonable fee) and consideration should be given to live-streaming hearings.
- The information published as part of the hearing process should be reviewed. The individual can be exposed to a level of public interest (through the press) which is totally disproportionate and makes the process unnecessarily oppressive with the possibility of real and lasting harm.
- The role of GTCS should not be like a procurator fiscal but should be to find the facts and not assume the teacher is guilty. When in doubt the teacher should be given the benefit of the doubt. The process needs to be proportionate; allowing people to make mistakes and recover.
- There should be a reasonable time period set for a hearing decision to be issued: it is accepted that the current 14 day period may be too short but there is a need to ensure consistency of approach.

Internal Appeals Process

12 respondents agreed; 12 had no view and 7 disagreed with the proposal to remove the internal appeals process.

Those who agreed were concerned about the inherent conflict of interest in GTCS operating such a process; the Ontario College of Teachers and Education Workforce Council Wales noted that they have no internal appeals mechanism and an appeal to a court is the appropriate approach.

Of those who disagreed, the reasons provided were as follows:

- A Court of Session appeal route is prohibitive on cost grounds for those who are unrepresented and all internal options should be exhausted first.
- Teachers and Head Teachers should have some say in the process.
- The proposed right of review should be extended to cover all cases.
- There should be an appeal process in the interests of natural justice.

An additional comment provided in this context was to the effect that there should remain a right of appearance as part of the right of review.

Vulnerable Witness Definition

11 respondents said that the definition of a vulnerable witness should change; 5 said it should stay as it is currently and 15 had no view.

Of the respondents who said that the definition should change or offered comments, a wide range of views were offered as follows:

- The Ontario College of Teachers define a “vulnerable witness” as “a witness who, in the opinion of the Committee, will have difficulty testifying or will have difficulty testifying in the presence of a party for appropriate reasons related to age, handicap, illness, trauma, emotional state or similar cause of vulnerability.
- Physical disabilities should afford reasonable adjustments, not lead to classification as a vulnerable witness.

- The definition should include those with impairments of intelligence and physical disabilities such as sight or hearing impairment. GTCS must be mindful that parents are automatically vulnerable at such hearings as they are likely to have less understanding of the process and terminology used, and are under particular stress.
- The definition is unnecessary: all witnesses are potentially vulnerable and wider discretion should be provided to Panels to take any steps considered necessary to support them in giving evidence (not just to those who meet a "vulnerable" definition).
- Anyone who was a child at the time of events should be classified as vulnerable.
- The definition of a child should be an individual under 16, not 18.
- The objective of the hearing should be to establish the facts of a case without impediment and broadening the definition of who can benefit from special measures to support them (with the widened definition proposed) should facilitate this.
- Medical evidence should be required where appropriate.
- It would be helpful to state that Respondents are also protected by these provisions where applicable.
- A Respondent should not be permitted to directly question or cross-examine any vulnerable witness (not just in the circumstance where the allegations are of a sexual nature).

No respondent who considered that the definition should remain as it is provided reasons for this.

General/ Other Comments

There were a range of comments provided generally on the fitness to teach process; and on the general parts of the Rules as follows:

- Concern was raised about an increasing trend towards employers referring cases to GTCS in circumstances where this appears unnecessary: there is a need for more employer guidance on this area to be issued by GTCS.
- Concern was raised about where, in essence, the GTCS fitness to teach process sits and what the meaning of a "risk of harm" means.
- There is a need to balance expediency and efficiency with the need to ensure fairness and justice throughout the process.
- There is not a clear rationale for changing the current "overarching" objective to a "general" objective.
- GTCS should explore data sharing arrangements with other education agencies related to fitness to teach issues.
- More should be done to help parents raise competence concerns with employers. GTCS should run an appeals process where a parent disagrees with the decisions made by an employer as regards the management (and referral to GTCS) of a competence matter.
- The Rules should be clearer as to what happens where a case involves both conduct and competence elements.
- Consideration needs to be given to the management of competence in the context of promoted teaching staff.
- The orders for expenses provisions should be strengthened so that they may be applied to complainants/witnesses.
- All papers/witness statements should be circulated during all parts of the process to all concerned (including complainants). Panel members should also be identified to all parties.
- All stages should have an appeal process for all. Complainants should be able to respond prior to a decision being made. GTCS senior management should be able to review cases and while not dictating an outcome to the panel be able to highlight areas that may need further interpretation, clarification or evidence which may have a bearing on their final decision. Any breaches of policy should always be taken seriously but where it is concerning someone in a senior role even more so.
- Information about what a teacher is accused of should not be published on the GTCS website beforehand. If somebody is found to be impaired or unfit then by all means publish that but do not

publish all the accusations, because it may be the case that these are not upheld, but the Respondent's name/reputation is still harmed by the publicity.

- More should be done in terms of the process to be undertaken by local authorities before bringing a case forward with greater consistency across authorities in terms of their processes and procedures in order to provide more clarity and ultimately support the process of applying the rules. This requires more training and discussion between GTCs and local authorities.
- Fitness to teach is complex and is a subjective matter. It is rarely black and white. Teachers should be offered a change of school etc before these procedures are enacted. It is important that personality clashes etc are not used as a means of finding fault.
- Disclosure of any criminal offence should be in line with Disclosure Scotland Guidance – it would be helpful to make that clear within the Rules.
- In Rule 1.7.10, "detrimental to proceedings" is unclear in scope – it would be helpful to be clear on what this means in practice.
- Rule 1.7.34 – a referral should also outline the alleged facts on which the new referral is based, for clarity.
- The option to revoke a conditional registration order should be added to Rule 3.6.1.
- The opinions of internal staff members relating to conduct should not be ignored as part of the process.
- GTCS has missed an opportunity to include a restorative process within the Rules. If the goal is the prevention of harm, then reflection, remediation, insight and remorse are all factors that can reduce the risk of repeated misconduct. Reflection, remediation, insight and remorse can all be enhanced through dialogue with those effected by the misconduct. This is therefore something that the rules should explicitly allow and encourage. At any stage, with the mutual agreement of the respondent and the person referring the case to the GTCS, it should be possible for the process to be put on hold for an agreed time to allow for mediation. At the end of that period, each participant can write a report of that mediation process which will be made available to any officer or panel making decisions about the case.
- There should be a rule forbidding panels from making comments about witnesses beyond comments about the reliability of their evidence. If panels publish judgements about a witness that go beyond this then this will cause witnesses to be reluctant to give evidence or bring information to the GTCS.

Equality and Diversity Comments

We asked for feedback on any equality and diversity implications arising from the changes proposed to help us carry out an equality impact assessment. The following comments were provided:

- A more in depth review of the rules and their implementation is required to determine if there will be any discriminatory impact. Consultations should be undertaken with members of protected groups, as well as the associations/organizations that advocate on their behalf, to determine if there will be any discriminatory impacts made by the Rule changes.

- Special regard should be paid by GTCS panel members to any referrals concerning issues surrounding anyone with a protected characteristics and their family members with protected characteristics. Close regard should also be paid to families of children whom have used internal and external complaints process and had findings upheld in respect of teacher behaviours. In particular any family where there has been a finding of discrimination, combined with subsequent staff conduct issues.

- The Equality Act requires that organisations make anticipatory adjustment for disability – i.e not just when a need for a specific individual is identified. Generally speaking this is best achieved by having practices that are inclusive – i.e. unlikely to require adjustments. The Equality Act also requires that practices do not cause disadvantage to any group with one of the protected characteristics. Inclusive practice can also protect against disadvantage not covered by the Equality Act, such as disadvantage caused by financial capacity. The current situation whereby the content of hearings is only publicly available to those who can attend in person is discriminatory in a number of ways. The most obvious of these concerns the economic difficulty that some people might have

with attending a hearing in Edinburgh. This might involve extended travel, accommodation in the city and, most expensively, time off work. Many people will simply not be allowed time off work to attend. The restriction also discriminates against people who are carers. This is particularly important to the GTCS as the parents of some vulnerable victims will also be their carers. Those with a disability which prevents them from complying with the likely expectations of the panel (e.g. staying quiet, keeping still, not expressive their views) are likely to feel uneasy about attending. Very often physical disability will prevent attendance at a hearing in Edinburgh, even if all attempts are made to make the building and hearing room physically accessible. If the GTCS has a policy that hearings should take place in public, then inclusive practice should include making the proceedings accessible to all – by live streaming public parts of hearings (preferably in video) and making recording of all public parts of hearing available to all online or on request by other appropriate means. Similarly, the proposal to dispense with the reading of witness statements and replace this with copies of the statement given only to those able to attend creates exactly the same discrimination. Additionally, there is the additional discrimination arising from the fact that even when people can attend, they may not be able (through physical or neurological difference) to read the statement while also concentrating on what is going on in the hearing – in fact it would be a very special person who was able to do this effectively. If the intention is that witness statements should be public then inclusive practice would dictate that all witness statements intended to be public were available for anyone to download from the internet or request by other appropriate means.

- An additional area of discrimination is the current requirement that panels only consider evidence "in writing". As stated previously, this creates discrimination for those who cannot provide their evidence in writing.

Summary and GTCS Conclusions

A summary of our response to the comments received (as summarised above) is set out below.

General Structure and Approach

In revising the Rules following the consultation, we have simplified some of the language used in the Rules further, sought to make some provisions clearer and added some additional headings with a view to increasing accessibility.

We will be updating our fitness to teach website content in due course and we will build a variety of support materials and guidance for parties, employers and witnesses to sit alongside the new Rules: this will include a process flow diagram. We will provide abbreviated versions of the Rules (that provide only those sections relevant for each specific case type i.e. professional competence, conduct and subsequent registration) if this is identified as useful.

Aligning how we Manage Competence Cases Throughout the Teacher Journey

There was significant support for the alignment we proposed in this context and we are going to proceed with this change. We have made some changes to ensure the process to be followed in competence cases is set out more clearly in the Rules and added an option to allow conditional registration orders to be agreed by consent in this context.

Temporary Restriction Orders in Provisional Registration Competence Cases

There was significant support for bringing consistency in this context and we are therefore going to introduce the option of imposing a temporary restriction order in provisional registration cases. We would emphasise that, in line with best regulatory practice and in particular the principle of proportionality, temporary restriction orders are only ever sought where this is necessary and proportionate in the circumstances which does not apply in every case.

Move Away From the Use of the Term "Complaint"

The majority of respondents agreed that the term “referral” better aligned with the nature of our fitness to teach process: which is forward-looking and about public protection. We would stress that changing the terminology from “complaint” to “referral” is not intended in any way to diminish the potential seriousness of the matters at issue. The intention of changing the term is to distinguish the nature of our process from, for example, service complaints process where the focus is on looking back at what happened and providing redress. Whilst we recognise that there were some mixed views in this area, we still think that changing the terminology to “referral” is the right thing to do.

Streamlining the Conduct Case Investigation Process

A significant majority of respondents agreed with the changes we proposed in seeking to streamline the conduct case investigation process and we are going to proceed with them. We would emphasise that these changes are designed to make the process run more smoothly and allow us to focus our resources more towards addressing cases that present a risk of harm, they are not about rushing cases through without the appropriate level of investigation and rigour.

In due course we will be publishing estimated timeframes for the various stages of the fitness to teach process so that expectations as to how long things will take are clear and we improve the service that we provide.

In relation to the detailed comments provided, we would respond as follows:

- We would stress that we will still investigate allegations where the events are more than 5 years old where there is a public interest in doing so. We continue to be of the view that excluding from investigation cases that relate to events that occurred 5 or more years ago (and it is not in the public interest for the complaint to be investigated) represents best regulatory practice and ensures a clarity and transparency of process.

- We recognise that there are an increasing volume of cases where health is a significant factor. We would note, however, that we have no legal remit to regulate health and we could not lawfully introduce a fitness to teach health process unless our governing legislation was changed. We think that we need to do more to ensure that cases are not referred to us by employers where health is patently the cause of the conduct or competence issue: in these circumstances employer capability processes should apply. We also think that we need to introduce (through the Registration and Standards Rules) an option to allow a teacher to remove him/herself from the Register (notwithstanding that he/she is subject to the fitness to teach process) where medical evidence submitted satisfies us that the teacher has a significant and permanent health condition that means he/she is no longer medically fit to teach. We think that the process must be followed in the public interest in the remaining cases (i.e. where health is a factor but is not of a significant or permanent nature and is not the cause of the conduct/competence issue) subject to reasonable adjustments tailored to the specific circumstances; privacy may be an example of such an adjustment, as may adjusting the format of the hearing appropriately (for example, adopting an inquisitorial/Panel inquiry approach).

- We have sought to make it more clear that it is a GTCS appointed investigating officer (or similar) who is responsible for gathering evidence in a case following referral. It is for him/her to identify what evidence should be gathered in the case (including from any individual who has made the referral). GTCS investigates conduct referrals received from a wide variety of sources: employers, criminal justice agencies and members of the public and will continue to do so in the public interest.

- We do not think that it is in the public interest for consent orders to be issued where only part of the allegation is admitted. We think that where any part of an allegation that has progressed to this stage in the process is disputed, it is important that a Panel (at a hearing) considers the evidence and makes a determination on the case as a whole. We therefore consider that a hearing process must apply in these circumstances.

- We have changed the term “Relevant Misconduct” to “Relevant Conduct” as we agree that this is more appropriate.

- A teacher’s employer will be informed of any referral that we investigate when the teacher is informed. We do not think it is always appropriate to notify an employer of a referral that we decide not to investigate: we will publish further information for employers to clarify what we will do and why in this context.

Conduct Hearing Process

There were mixed views on the proposals that we made about the conduct hearings process. We have set out below our response to the detailed comments submitted.

- In terms of the reading aloud of witness statements, we would point out that Panels currently have the option to proceed without reading witness statements aloud and have done so on a number of occasions. The proposed change to the Rules is to set out more clearly what Panels should do in this context. Reading witness statements aloud at hearings is, and will remain, the default position.

- We think that the provision that allows Panels to impose reasonable time limits on the time taken to present evidence/make submissions reflects what Panels already do in practice and it is in the interests of transparency to make this clear in the Rules. We would stress again what was said in the consultation document: a Panel may only set such time limits where it is reasonable and fair to do so, taking account of natural justice and human rights law. We have added a reference to fairness to the provision in seeking to make this point clear.

- We think that removing a burden of proof in the fitness to teach (rather than facts) context is legally correct. The courts have made it clear in professional regulation cases that an impairment of fitness to practice is not “proved” in the same way that facts are and we think that retaining a burden of proof in this context is therefore wrong. We think that fitness to teach is already considered by Panels in a holistic sense and do not envisage any change in practice to how this area is approached.

- We do not think that any use of electronic communication at a hearing must enable visual contact: we have had several examples of instances where participation at a hearing by telephone has been better than no participation at all. We will continue to have a Practice Statement in place to provide Panels with guidance on the use of electronic communications at hearings and we think that this provides a fair and appropriate framework.

- The provision on the adjournment of hearings contains a reference to the consideration of the consequences for witnesses. The relevant Practice Statement further emphasises this.

- Panels are provided regular training; conducting hearings lawfully and fairly is central to all such training.

- We have inserted a provision to ensure that witnesses are not present in the hearing room until they have given evidence (as in the current Rules).

- We have added a requirement that Panels must hear from the parties before deciding to cancel a case.

- We will be putting in place a publication policy for our fitness to teach case work. We will be reviewing what is published on our website about hearings as part of this exercise and will take into account the concerns expressed in this area (as well as the broader legal context). We do not think, however, it will be appropriate or proportionate to livestream hearings, nor provide a hearing recording to anyone making such a request, particularly given the views expressed by the Information Commissioner on the application of the Data Protection Act in this context.

- We would note that the process regarding the addition of a further referral when a case is at the hearing stage substantially replicates the equivalent provision in the existing Rules. However, having reviewed the provision and thought about how this operates in practice, we think that it would make the process simpler to remove it and allow any additional referral to follow the standard process.

- We have added that a hearing decision will normally be issued within 28 days to ensure a level of consistency and clarity of expectation.

Internal Appeals Process

We remain concerned that there is an inherent conflict of interest in GTCS operating an appeals process in respect of fitness to teach hearing decisions and that any right of review must therefore be narrow in scope. The review process that we have set out is intended to ensure that the focus is on determining whether an error in law or in fact has been made, not in re-hearing the case. We do not think that a right of appearance is necessary given this is the purpose of the review process. We have reflected carefully on whether the scope of the review process should incorporate any case in which there is not a statutory route of appeal to the Court of Session and remain of the view that it is not necessary for us to do so.

Vulnerable Witness Definition

There were a very wide range of views provided on how we should define a vulnerable witness in the context of our fitness to teach process. We are of the view that it is still helpful and important to have such a definition and that the existing definition does need some revision (but should remain broadly consistent with what is used in Scottish court settings). We have carefully considered all the comments provided and have proposed the revised provision set out below. We think that this strikes the appropriate balance and is sufficiently flexible to address the range of situations that may arise.

A Panel may, of its own volition or on the application of any party, treat as vulnerable:

(a) any witness under the age of 18; and
(b) any witness whose quality of evidence is likely to be diminished for any of the following reasons:
i. he/she has a mental disorder;
ii. he/she has a significant impairment of intelligence and/or social functioning;
iii. the allegation is of a sexual and/or violent nature, and he/she is an alleged victim; or
iv. fear or distress in connection with giving evidence.

Provided that the parties have been given the opportunity to make representations on the matter, a Panel may adopt such measures as it considers necessary to enable it to receive evidence from a vulnerable witness. These measures may include but will not be limited to –

(a) use of video links;
(b) use of pre-recorded evidence, provided always that such witness is available at the hearing for cross-examination and questioning;
(c) use of interpreters; and
(d) the hearing of evidence in private.

Where –

(a) a witness is defined as a vulnerable witness;
(b) the Teacher is not represented; and
(c) the Panel considers it necessary,

the Teacher will not be allowed to examine or cross-examine the witness. In such circumstances, examination or cross-examination of the witness will be undertaken by such means, or by such person, as the Panel considers appropriate.

General/Other Comments

Where what we have already set out above does not address the other comments received and a response appears to us necessary, we have provided a response below.

- We are putting in place a Fitness to Teach Threshold Policy alongside the new Fitness to Teach Rules to set out what we will investigate under our fitness to teach procedures. This document explains what potentially constitutes an impairment of fitness to teach and explain how consideration of risk of harm forms part of that assessment (and what it means). We envisage that this new policy will result in much greater clarity on what should enter our fitness to teach process; and what should be resolved at an earlier, local (employer) level. Increased guidance (and training) for employers on when to make a referral will be part of embedding the policy.

- The change in terminology from "overarching" objective to a "general" objective reflects the analysis of the UK Law Commissions in their April 2014 report reviewing the law on the regulation of health care professionals and (in England only) social workers. We think that the Law Commissions' rationale in using the term "general" rather than "overarching" is correct and represents best regulatory practice so we should adopt it.

- We already have data sharing arrangements in place with a number of agencies/bodies in relation to fitness to teach matters. We plan to enhance (and formalise) these arrangements in order to help us carry out our fitness to teach functions more efficiently and effectively.

- We will be liaising with stakeholders (including employers) to review how competence cases are managed (which will include considering the issue of promoted staff): we will review the information that we publish for members of the public as part of that piece of work.

- We have clarified that a joint hearing may be held where a case involves both conduct and competence elements (which we would note is rare). A competence case would not be subject to the same initial consideration and investigation processes as would apply in the conduct context: it would only be where a hearing was required for both aspects that it may be appropriate to have these considered together. As in the current Fitness to Teach and Appeals Rules, it will be for a Panel to determine how to conduct any such joint hearing (subject to principles of fairness as well as the general objective).

- We do not think it would be in the public interest for the orders for expenses provisions to be applied to complainants/witnesses.

- An individual who has referred a fitness to teach allegation to us is not a party to the case. Once a case is referred to GTCS, GTCS determines what investigation should be carried out in the public interest, GTCS then carries out the investigation and decides what information should be shared with witnesses for this purpose. GTCS does not take forward cases in the name of those who have made the referral: it does so in the public interest (and particularly to ensure public protection). Given this is the context, we do not think that there should be any additional appeal or review processes. In circumstances where a member of the public was of the view that GTCS had carried out its fitness to teach functions unlawfully, improperly or irrationally, judicial review (through the Court of Session) is the appropriate process to follow. We know that members of the public can find it hard to understand that our fitness to teach process is about public protection and confidence in this general sense and that it is not about redress or retribution: we will try to improve how we communicate about individual referrals (and the guidance we provide on the process) to make our role (and the role of any member of the public making a referral) clearer.

- We have added clarification that the Rules must be interpreted and applied in accordance with the Rehabilitation of Offenders Act 1974 (and related legislation) in seeking to ensure it is clear that the relevant law on “protected convictions” will be applied.

- In Rule 1.7.10, “detrimental to proceedings” is linked directly to proceedings being conducted in accordance with the general objective: we think this is sufficiently clear.

- We have added to the disposal options set out in Rule 3 to incorporate revoking and amending a conditional registration order.

- Whilst we recognise that there may be potential benefit in GTCS facilitating mediation between a member of the public and a teacher in certain circumstances as part of a reflection and remediation exercise, we think that there are significant implications of us introducing a formal mediation process and it is beyond the scope of this review exercise to take forward any such proposal. We are aware that some other professional regulators have started to explore the introduction of mediation to fitness to practise processes: we will gather information from them and keep the area generally under research and review for potential future development.

- We do not plan on introducing any provision within the Rules that restricts what a Panel may decide to set out in order to explain its reasons for a decision. We will continue to have a Practice Statement in place in this context and we will add to this to ensure that Panels are sensitive to the implications for witnesses of anything they state in decisions and make publicly available.

Equality and Diversity Comments

Based on the comments submitted in relation to equality and diversity, we think that we need to provide better information on what any party, witness or member of the public should do if they have a disability and require adjustments to be made in order to facilitate attendance or participation in the fitness to teach process. Whilst we are a small organisation and we are only in a position to offer adjustments that are reasonable, there are a number of things that we can do. For example, we have video-conferencing facilities available to facilitate remote attendance.

We are also of the view that we need to carry out more comprehensive equality monitoring in the context of our fitness to teach processes and we will be exploring ways to do so.

June 2017

Annex

List of Respondents

1 Association of Directors of Education (ADES)
2 Scottish Qualifications Authority
3 National Parent Forum of Scotland
4 Scottish Parent Teacher Council
5 Association of Headteachers and Deputes in Scotland
6 Educational Institute of Scotland
7 NASUWT Scotland
8 Scottish Secondary Teachers' Association
9 Voice Scotland
10 Ontario College of Teachers
11 Education Workforce Council Wales
12 Teaching Council, Ireland
13 Scottish Borders Council
14 Glasgow City Council
15 West Lothian Council
16 Jane and Martin Catlin
17 Susan Harkins
18 Michael Duffin
19 Professor Ben Paechter
20 Zhivko Gulaboff
21 David Innes
22 Philip Black
23 George McKinlay
24 Nicola McDowell
25 Margaret Lannon

Copies of the responses submitted will be provided on request (subject to consent to release the response having been provided).