

25 October 2022

Dear Robert

### **GTC Scotland response to draft physical intervention in schools' guidance**

Thank you for the opportunity to comment on this draft document.

The teaching profession in Scotland sets high standards for itself. At the heart of our professional standards are our professional values of social justice, trust and respect, and integrity. As part of the commitment to social justice, teachers commit to respecting the rights of all learners as outlined in the UNCRC.

As the teaching profession's independent registration and regulation body, GTC Scotland has a unique role in maintaining and enhancing trust in teaching. This provides an opportunity to highlight some systemic issues that we believe influence the intention and implementation of this draft policy. Given that our feedback does not readily fit within the frame of the consultation survey, we would like the content of this letter to be included in the consultation responses.

### **Role of GTC Scotland**

To set our response to the consultation in context, it is important that we first summarise the contribution of GTC Scotland to Scotland's education system.

Our role is to register and regulate teachers and college lecturers. We do this by keeping a public register and setting and regulating the standards for entering and remaining in the teaching profession.

We ensure these standards are maintained by asking teachers and college lecturers to confirm their commitment to learning, and that standards are improved by encouraging ongoing learning. We believe doing this contributes to improving the quality of teaching and learning. We also investigate serious concerns about teachers and college lecturers.

Registering and regulating the teaching profession gives us insight which in turns allows us to advise the education system. We use our voice to speak up for high standards. High standards help instil trust in our profession and enhance the status of our profession.

GTC Scotland is governed by its Council. Over half of the Council are teachers or college lecturers, ensuring that the governance of the teaching profession is in the hands of the teaching profession.

We are independent from government and receive no funding for our core role of registration and regulation. This work is funded by the fees teachers and college lecturers pay. Our role is set out in law.

### **GTC Scotland and the regulation of teaching professionals**

One of GTC Scotland's distinct roles is that of professional regulation. This refers to the professional regulation of individuals, not the education system. The role of professional regulation is often not well understood. Bodies like GTC Scotland (such as the Scottish Social Services Council, Health Care and Professionals Council and the General Medical Council), have among their functions, the requirement to investigate incidents of serious concern about individuals in identified professional groups.

The professional regulation of individuals by a professional regulator is distinct from the role employers have over those they employ. Employers manage teacher employment matters, making decisions about disciplinary matters, including in some cases managing dismissal from employment. Professional regulation focuses on standards and suitability to be in the profession. It determines whether an individual can remain in a profession despite issues which have arisen regarding their competence or conduct (which can include conduct out with their employment). It focuses on future prevention of risk rather than 'punishing' any alleged behaviour or similar.

Professional regulation determines whether an individual may continue in their profession and therefore requires to be proportionate and targeted – as set out in GTC Scotland's underpinning legislation. That means that not all cases employers deal with are then investigated by GTC Scotland, and not all cases where an employer has dismissed an individual result in GTC Scotland removing that individual from the profession. Professional regulation can also include the investigation of individuals not currently in employment as a teacher to ensure that there is management of risk where there is no employer.

GTC Scotland, has a policy, which sets out the relevant factors in assessing which cases we investigate. For GTC Scotland this is called the 'Threshold Policy'.

GTC Scotland's Fitness to Teach process considers allegations against the civil standard of proof - the balance of probabilities - and our own rules of evidence apply to our process. This is different to criminal proceedings, where the standard of proof is beyond reasonable doubt, and where there are particular evidential requirements e.g. the requirement for corroboration. GTC Scotland can and does take forward cases that do not meet the higher standard of proof (beyond reasonable doubt) and evidential requirements that apply to criminal proceedings. This is an important public safeguard.

It is through our professional regulation work, our fitness to teach process, that GTC Scotland has gained insight into some issues in relation to physical restraint and seclusion in schools which we offer as feedback below in consideration of how the draft guidance is expected to be implemented.

### **Guidance Implementation**

We recognise that the guidance is intended to have a broad scope and therefore covers planned and unplanned events. Teaching is complex, involving complex relational and intellectual work. Teaching requires regular (often minute by minute) ethical decision-making. The professional foundations are set in the GTC Scotland Code of Professionalism and Conduct (CoPAC) and professional standards. These provide the framework for registered teachers to understand the requirements for maintaining and how to enhance their teacher professionalism throughout their career.

While GTC Scotland's framework provides an underpinning for teachers to understand their professional responsibilities and the proposed physical intervention guidance aims to further develop upon these in specific situations related to physical intervention, the guidance itself does not provide sufficient clarity or depth in approach. For instance, the guidance focuses on planned interventions, including adhering to care plans, however there is little advice or guidance for teachers when managing unplanned events that may require split-second decisions on physical intervention. The guidance does not provide teachers with the toolkit they require to have confidence to deal with these situations appropriately, and in line with what may be expected of them in terms of their professionalism.

We note paragraph 33, in the section "Positive relationships, behaviour and wellbeing", references professional standards but does not reflect the existence of CoPAC. In addition, paragraph 34 refers to professional standards of other bodies, not all of which are regulators. It would be helpful to clarify the intent of the standards referenced – that is, whether they are all professional standards that are regulated. The

current framing implies they all have the same use to the professional groups to which they apply, and this is inaccurate.

Our fitness to teach work often involves the investigation of matters involving the use of restraint and/or seclusion. From our experience, the cases that we see indicate that teachers do not always have the support they require for the duties they undertake. For instance, access to meaningful and regular effective professional learning relevant to their current specific role or responsibilities. Noting the advice contained in the draft guidance about professional learning requirements, it would be helpful to define how this is expected to be implemented. What national offer might be in place, for example, and how is this provided? We anticipate that the draft guidance in its current form without associated implementation support is unlikely to fulfil the intended purpose and have the desired impact.

### **System Regulation**

For the education system to work well, individual bodies need to work in partnership. This relies, for instance, on effective information sharing to ensure each part of the system can play its distinct role. It requires trust that partners will do what is expected of them and manage situations effectively where mistakes have been made, or things have gone wrong. For example, that employers fully and effectively investigate serious disciplinary matters and discharge their duty to refer the matter to the professional regulator where appropriate. A further example would be bodies and regulators taking steps to ensure appropriate reporting. This 'joined up' approach is key to ensuring a trusted and effective system and enhancing public confidence.

This prompts the question about who regulates the education system to ensure this trust and confidence is maintained in the round, presenting transparent evidence that the appropriate checks and balances are in place. It also leads to the question of who has a role in situations where trust has broken down. Which bodies are responsible for ensuring that employers of teachers, for example, work within statutory requirements and effective action, referrals are being made to the appropriate regulatory body, ensuring information sharing between regulatory bodies, act as good employers and services operate in the best interests of service users. From our unique viewpoint, in which we work in partnership with many other education bodies, we are not aware of any body that looks at regulation of the education system holistically, to not only ensure that the individual bodies which comprise the system are fulfilling their individual roles, but to assure that the whole system is functioning as required.

We note the section discussing 'Education Scotland Inspections' summarises the role of inspection as part of the check and balance process. While inspection has a particular role in this space, we believe greater clarity is required about inspection as compared and contrasted with regulation expectations. Noting the difference outlined in the 'Recording, reporting and monitoring' section with the expectations for the involvement of the care inspectorate, we would also expect the possibility of a referral to GTC Scotland to be included in the guidance under circumstances which present a risk of potential future harm to learners so that we can take proportionate action as regulator of the teaching profession.

Finally, but importantly, we would note that the content of this draft guidance and the concerns we have in this context overlaps with a need to consider the adequacy of current national child protection guidance in the education setting. [Statutory guidance](#) is in place in England that seeks to ensure children are kept safe in schools and colleges. We would suggest that there is a need to consider whether a similar overarching and comprehensive statutory guidance framework should be in place in Scotland.

Thank you for the opportunity to offer some feedback in relation to this draft guidance. GTC Scotland has a unique role in the Scottish education landscape as the teaching profession's independent registration and regulation body and we have therefore offered reflections from this perspective. We would be very happy to further discuss any of the elements we have raised in this response.

Trust in the teaching profession is essential to an effective education system. As a self-regulating profession, teachers set their own standards of competency and conduct, professional standards and values. A challenge highlighted by UNESCO on World Teacher's Day this year was that teacher leadership and innovation should be encouraged and better harnessed in the transformation of education. With this in mind, the insight of teachers themselves on this draft guidance is vital.

Yours sincerely

A handwritten signature in cursive script that reads "Pauline Stephen". The ink is dark and the signature is fluid, with the first and last names clearly distinguishable.

Pauline Stephen  
Chief Executive and Registrar