



Teaching  
Regulation  
Agency



# Watermill School



# Teacher misconduct: Disciplinary procedures for the teaching profession

May 2020

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## Introduction

- 1.1. This document sets out the procedures (“the Disciplinary Procedures”) for the regulatory system relating to teacher<sup>1</sup> misconduct which operates within a legislative framework which came into force on 1 April 2012<sup>2</sup>.
- 1.2. The regulatory system is operated by the Teaching Regulation Agency (the TRA), an executive agency of the Department for Education, which acts on behalf of the Secretary of State as regulator of the teaching profession.
- 1.3. The Disciplinary Procedures set out what will happen at each stage of a teacher misconduct case, and are principally directed to teachers who are the subject of misconduct allegations, witnesses at professional conduct panel hearings, members of professional conduct panels and employers of teachers<sup>3</sup>.
- 1.4. In these Disciplinary Procedures
  - (i) a reference to the Teaching Regulation Agency or the TRA is to be interpreted as a reference to officials within that agency acting on behalf of the Secretary of State
  - (ii) a reference to a teacher is to be interpreted in accordance with the definition in regulation 2 of the [Teachers’ Disciplinary \(England\) Regulations 2012](#) (“the Regulations”)<sup>4</sup>
  - (iii) a reference to teaching work is to be interpreted in accordance with regulation 3 of the Regulations
  - (iv) a reference to a teacher includes, where appropriate, the person or persons representing a teacher in the course of misconduct proceedings
  - (v) a requirement for the TRA or its representatives to communicate with a teacher includes a requirement to send that communication to any representative acting on behalf of the teacher

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<sup>1</sup> See the definition of “teacher” in paragraph 1.4(ii).

<sup>2</sup> Sections 141A to 141E of, and Schedule 11A to, the Education Act 2002 and the [Teachers’ Disciplinary \(England\) Regulations 2012](#).

<sup>3</sup> Although they may also be of interest to members of the public and organisations who may consider making a referral of alleged misconduct to the Secretary of State.

<sup>4</sup> It should be noted that this definition is not limited to qualified teachers.

- (vi) a reference to a teacher's employer is, where appropriate, to be interpreted as including a reference to any person who has made arrangements for a teacher to carry out work at the request of or with

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the consent of a relevant employer, as defined in section 141D of the Education Act 2002<sup>5</sup>

- (vii) unless stated otherwise, a reference to a teacher's employer is to be interpreted as a reference to the teacher's previous employer<sup>6</sup> if the teacher is no longer employed or engaged as such, and a requirement to send any document or to provide any information to the teacher's employer need only be complied with if the employer's identity is known to the TRA
- (viii) a reference to the presenting officer is to the person or persons representing the TRA in the course of misconduct proceedings<sup>7</sup>, and a reference to the TRA is, where the context requires, to be interpreted as a reference to the presenting officer on behalf of the TRA
- (ix) a reference to a panel is to a professional conduct panel appointed in accordance with regulation 6 of the Regulations
- (x) a reference to the chair is to the chair of a panel
- (xi) a reference to an allegation is to be interpreted, where the context so requires, as a reference to more than one allegation
- (xii) a reference to directions is to case management directions made under paragraphs 5.58 to 5.76
- (xiii) a reference to a document or material which is to be disclosed includes anything in which information of any description is recorded, including electronic documents and sound and video recordings
- (xiv) a requirement to disclose a document or material includes a requirement to provide a copy of it
- (xv) a document is deemed to have been served or received on the fourth day after it is sent if it is sent by post, on the second day after it is sent if it is sent electronically and on the day of delivery if it is delivered by hand

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<sup>5</sup> Usually referred to as a supply agency.

<sup>6</sup> This only applies if the teacher was employed by that employer to carry out teaching work.

<sup>7</sup> See paragraph 5.20.

- (xvi) the date a document is sent is the date it is despatched, whether by post, e-mail or otherwise
  - (xvii) a reference to a number of days or weeks is to a number of calendar days or weeks unless otherwise stated
  - (xviii) a reference to the GTCE is to the General Teaching Council for England<sup>7</sup>.
- 1.5. Any procedures or requirements set out in the Disciplinary Procedures, except for matters which are a requirement of the Regulations, may be waived or varied if
- (i) there is agreement between the TRA and the teacher prior to a professional conduct panel hearing commencing
  - (ii) a panel so directs, either in the course of a professional conduct panel hearing or at a case management hearing convened to consider the matter; or
  - (iii) exceptionally, the TRA considers it necessary to do so in the interests of justice.
- 1.6. If there is a material difference between the provisions in these Disciplinary Procedures and the provisions in the Disciplinary Procedures that were applicable when a referral of alleged misconduct was made to the Secretary of State, the earlier provisions will apply to the case unless, in the interests of justice or the public interest, the TRA or the panel directs otherwise.
- 1.7. To the extent necessary in order to ensure the fairness of proceedings for the parties and the public at large, the TRA and panels shall, in making decisions and directions, take notice of the procedures followed in the Criminal Courts (under the Criminal Procedure Rules) and the Civil Courts (under the Civil Procedure Rules).

## **Summary table of misconduct proceedings**

1.8. The following table sets out in brief the process which is followed in the course of misconduct proceedings.

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<sup>7</sup> The GTCE was responsible for regulation of the teaching profession prior to the Regulations coming into force.

## **The System of Teacher Regulation**

### **Action on receipt of referrals**

The TRA receives referrals from employers, the public, the police, the Disclosure and Barring Service (“the DBS”) and other regulators and interested organisations.

On receipt of a referral the TRA will check

- (i) that it relates to a person who has been employed or engaged to carry out teaching work in England; and

- (ii) that the alleged conduct is capable of amounting to unacceptable professional conduct, conduct that may bring the teaching profession into disrepute or conviction, at any time, of a relevant offence and that a prohibition order may therefore be appropriate.

If the TRA is satisfied following initial assessment of the case that either

- (i) it does not have jurisdiction; or
- (ii) the alleged conduct cannot amount to unacceptable professional conduct, conduct that may bring the teaching profession into disrepute or conviction, at any time, of a relevant offence

the TRA will not carry out an investigation and the referrer and the person whose conduct has been referred will be notified.

In all other cases, the TRA will inform the teacher, the referrer and the teacher's employer and will carry out an investigation<sup>8</sup>.

### **Interim Prohibition Orders**

As an initial step, the TRA will determine whether an Interim Prohibition Order ("IPO") should be considered to prevent the subject of the referral from teaching until the case is concluded.

An IPO can be made at any stage in the misconduct proceedings without the need for a hearing once the seriousness of the allegation has been established. Once the teacher is informed that the TRA is considering making an IPO, the teacher has ten working days to respond and provide any evidence that the teacher considers will be relevant to the TRA's decision.

If an IPO is made the TRA will inform the teacher, the referrer and the teacher's current employer. The employer must take action to ensure that the teacher does not carry out teaching work unless and until the IPO is lifted. The teacher may apply to the TRA for a review of the IPO within six months of the date it was made and subsequently at six monthly intervals.

If the TRA has informed the teacher that it is considering making an IPO but decides not to make one the TRA will inform the teacher.

### **Investigation stage**

If the TRA decides to carry out an investigation, it will formulate the allegations to be put to the teacher and inform the teacher that the teacher has 28 days to submit representations and evidence. The TRA considers the evidence, and if appropriate seeks advice from experts from the teaching, medical, legal or other professions. When the TRA has completed its investigation, it will decide whether to refer the case to a professional conduct panel hearing.

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<sup>8</sup> At this stage the letter may include no, or only limited, details of the matters referred to the TRA.

If the TRA decides not to refer the case to a professional conduct panel hearing, no further action is taken.

The TRA will inform the teacher, the referrer and the teacher's employer of the outcome.

### **Hearing and Decision**

When a case is referred to a professional conduct panel hearing, the teacher and referrer are informed and invited to provide any further evidence. A panel (at least three members including at least one teacher and one non-teacher) hears evidence (from the teacher and other witnesses) and decides whether

- (i) the alleged facts have been proved and, if so,
- (ii) whether they amount to unacceptable professional conduct, conduct that may bring the teaching profession into disrepute or conviction, at any time, of a relevant offence and, if so,
- (iii) whether to recommend to the Secretary of State that a prohibition order should be made and, if so, whether the teacher should be

permitted to apply to have the order set aside after a specified period<sup>9</sup>.

Where agreed, a panel may consider a case in a meeting<sup>10</sup>.

If the panel finds that the teacher is guilty of unacceptable professional conduct, conduct that may bring the teaching profession into disrepute or conviction, at any time, of a relevant offence but the Secretary of State decides not to prohibit the teacher, the teacher, the referrer and the teacher's employer are informed in writing and the decision is published on the GOV.UK website. No further action is taken.

If the Secretary of State decides to prohibit the teacher, the teacher, the referrer and the teacher's employer are informed in writing and the decision is published on the GOV.UK website. The teacher is added to the list of prohibited teachers kept by the TRA.

If a panel does not find the facts to be proved, or finds that the facts which are proved do not amount to unacceptable professional conduct, conduct that may bring the teaching profession into disrepute or conviction, at any time, of a relevant offence, the panel's findings will be published only at the request of the teacher.

### **Review**

When a teacher is prohibited, the Secretary of State may decide that the teacher can apply to have the prohibition order set aside after the minimum period specified in the order (which will be not less than two years).

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<sup>9</sup> See regulation 6 of the Regulations and paragraph 5.117.

<sup>10</sup> See paragraphs 5.129 to 5.143.

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## Action on receipt of referrals

- 2.1. The TRA may become aware of a possible case of misconduct by a teacher from a number of sources.
- 2.2. If a teacher has been dismissed for serious misconduct, or would have been dismissed for that reason if the teacher had not resigned, the teacher's employer must consider whether to refer the case to the Secretary of State.
- 2.3. A referral may also be made by the public, the police, the Disclosure and Barring Service (DBS) and other regulators and interested organisations.
- 2.4. Local procedures for complaint resolution should usually have been exhausted before a referral is made<sup>11</sup>.
- 2.5. On receipt of a referral of alleged misconduct, the TRA will check
  - (i) that it relates to a person who has been employed or engaged to carry out teaching work in England; and
  - (ii) that the alleged conduct is capable of amounting to unacceptable professional conduct, conduct that may bring the teaching profession into disrepute or conviction, at any time, of a relevant offence and that a prohibition order may therefore be appropriate.
- 2.6. The TRA will not investigate cases in which
  - (i) the Secretary of State considers that there is no reasonable prospect of establishing jurisdiction (for example, if the teacher has never taught in a relevant setting in England, even if the teacher has taught or is teaching in another jurisdiction or setting); or
  - (ii) the alleged conduct cannot amount to unacceptable professional conduct, conduct that may bring the teaching profession into disrepute or conviction, at any time, of a relevant offence (for example because it is alleged that the teacher is merely guilty of incompetence).
- 2.7. If the case should have been referred to another regulatory body or organisation, the TRA will forward the relevant information to that body as soon as possible.
- 2.8. If the TRA considers that the teacher

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<sup>11</sup> More information about making a referral can be found [here](#).

- (i) may be guilty of unacceptable professional conduct

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- (ii) may be guilty of conduct that may bring the teaching profession into disrepute; or

- (iii) may have been convicted, at any time, of a relevant offence

and that a prohibition order may therefore be appropriate, it will begin an investigation<sup>12</sup>.

- 2.9. The TRA will decide whether to carry out an investigation within three working days of receipt of a referral or as soon as possible thereafter provided it has sufficient information to do so.
- 2.10. If the TRA determines that it requires further information before deciding whether to carry out an investigation it will request it within three working days of doing so or as soon as possible thereafter.
- 2.11. When the TRA decides whether to carry out an investigation it will inform the teacher, the referrer and the teacher's current employer of its decision.
- 2.12. The teacher will, when informed of a decision to carry out an investigation, be provided with a copy of the referral form or other document in which the alleged misconduct was referred to the TRA.
- 2.13. If the TRA is unable to take the decision referred to in paragraph 2.11 within four weeks of receiving a referral it will inform the teacher that a referral has been made and that the TRA is considering it, unless it is not in the interests of justice to inform the teacher.
- 2.14. If the allegation against a teacher includes safeguarding matters, namely the risk of harm, or actual harm, to a child, the TRA will forward all relevant information to the Disclosure and Barring Service to enable it to carry out its own investigation.

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<sup>12</sup> A fuller description of these terms, and details of the factors that are relevant when considering whether a case should be investigated, can be found in the advice document "Teacher Misconduct: the prohibition of teachers".

## Interim prohibition orders

- 3.1. If the allegation is of particularly serious misconduct, the TRA will decide whether to consider making an interim prohibition order (“IPO”) prior to the investigation being completed.
- 3.2. An IPO prevents a person from being employed or engaged to carry out teaching work<sup>13</sup> until a misconduct case against the person has concluded.

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- 3.3. Once a referral has been made, the TRA can impose an IPO at any time without the need for a hearing including if, at any stage during the progress of a case, the TRA receives new information justifying the imposition of an IPO.
  - 3.4. In considering whether to make an IPO, the TRA will balance the public interest in doing so against the interests of the teacher and the public interest in allowing the teacher to continue to carry out teaching work.
  - 3.5. In carrying out the balancing exercise referred to in paragraph 3.4 the TRA will have regard to the need for proportionality and to the adverse consequences for the practice and reputation of the teacher if an IPO is imposed.
  - 3.6. If the TRA receives information which justifies the lifting of an IPO it will do so without the need for the teacher to make an application for a review in accordance with paragraph 3.16<sup>14</sup>.

### Summary table of Interim Prohibition Orders

- 3.7. The following table sets out in brief the process which is followed when an IPO is considered.

<b>Interim Prohibition Orders</b>
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<b>Normally within 3 working days of receipt of a referral</b>
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The TRA decides whether to consider making an IPO to prevent the teacher from carrying out teaching work until the case has concluded.
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An IPO can also be made at any stage once the seriousness of the allegation has been established, without the need for a formal misconduct hearing.
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<sup>13</sup> See the definition of “teaching work” at paragraph 1.4(iii).

<sup>14</sup> The criteria for making an IPO can be found in the advice document “Teacher misconduct: the prohibition of teachers”.

**Within 1 working day of that decision**

If the TRA decides to consider an IPO it will send written notification to the teacher.

**Within 10 working days of receiving letter**

The teacher may submit written representations and additional evidence.

**Within 5 working days of receipt of representations or evidence provided, or expiry of the 10 working day time limit**

The TRA reviews all representations and evidence and decides whether to make an IPO.

**Within 2 working days of the decision**

If an IPO is made the teacher, the referrer and the teacher's employer are informed and the teacher's name is added to the list of prohibited teachers.

If the TRA decides not to make an IPO, the teacher is informed.

**Within 6 months, and at further 6-monthly intervals** The teacher may request a review of the IPO.

- 3.8. If the TRA decides to consider making an IPO, it will send a letter to the teacher within two working day which will
- (i) inform the teacher that consideration is being given to the imposition of an IPO
  - (ii) set out the information that has led the TRA to consider imposing an IPO, and enclose the bundle of documents which will be considered by the TRA in deciding whether to make an IPO; and
  - (iii) invite the teacher to make written representations regarding the allegation and to provide any additional evidence that the teacher wishes the TRA to consider.
- 3.9. The teacher must serve any written representations and additional evidence on the TRA within ten working days of the teacher receiving the letter referred to in paragraph 3.8.
- 3.10. Once the teacher's representations and evidence have been received or the time limit of ten working days has expired, whichever is earlier, the TRA will, within a further five working days, review all the evidence before it and decide whether to make an IPO.

- 3.11. If the TRA makes an IPO, the TRA will send written notice of it to the teacher, the referrer and the teacher's employer within two working days.
- 3.12. An IPO takes effect on the date on which notice of the IPO is served on the teacher.
- 3.13. When an employer is notified of an IPO relating to a member of its staff, it must take action immediately to ensure that the person concerned does not undertake teaching work at their establishment whilst the IPO remains in effect.
- 3.14. As soon as the IPO takes effect, the teacher's name will be added to the list of prohibited teachers kept by the TRA, which will state that the order is an interim one.

### **Review of an interim prohibition order**

- 3.15. If an IPO is imposed, the teacher does not have a right of appeal.
- 3.16. The teacher may however make a written application to the TRA to review the IPO
  - (i) within six months after the IPO has been made; and
  - (ii) at subsequent six-monthly intervals.
- 3.17. The teacher must set out the grounds on which the application is made.
- 3.18. The TRA will consider the evidence provided by the teacher alongside other evidence from the investigation.
- 3.19. If the TRA is satisfied that it is no longer in the public interest to prohibit the teacher pending the conclusion of the case, it will lift the IPO.
- 3.20. If the TRA decides to lift the IPO
  - (i) the TRA will send written notice to the teacher, the referrer and the teacher's employer within two working days of the decision being made; and
  - (ii) the teacher's name will be removed from the list of prohibited teachers maintained by the TRA.
- 3.21. If the TRA decides that the IPO should remain in place
  - (i) the TRA will send written notice to the teacher, the referrer and the teacher's employer within two working days of the decision being made; and

- (ii) no further application for a review may be made within six months from the date on which the decision was made.

## Investigation

- 4.1. Following a decision that an allegation should be investigated, the TRA will consider all relevant information which is before it.
- 4.2. The TRA will investigate the case by considering the evidence against the criteria set out in the advice document “Teacher misconduct: the prohibition of teachers”.
- 4.3. The TRA will, if it considers it necessary to assist the investigation, seek additional evidence by making reasonable requests of relevant parties for further information or documents.
- 4.4. As soon as it is reasonably able to do so the TRA will send a letter to the teacher which will
  - (i) set out the allegation
  - (ii) subject to paragraphs 4.5 to 4.6, enclose copies of documentation in its possession which is relevant to the allegation, including details of any relevant criminal convictions obtained
  - (iii) invite the teacher to make written representations regarding the allegation, normally within 28 days from service of the letter, and to provide any other relevant evidence which the teacher wishes the TRA to consider; and
  - (iv) provide details of where to access the Disciplinary Procedures.
- 4.5. The TRA may be in possession of documents or other physical evidence prior to writing to the teacher which it is not appropriate or practicable to copy or send to the teacher, for example pornographic material or information stored on a computer hard drive.
- 4.6. In a case to which paragraph 4.5 applies, the TRA will provide the teacher with
  - (i) a description of the evidence
  - (ii) an explanation of the reason why it is not appropriate or practicable to copy or send it to the teacher; and
  - (iii) details of the arrangements which may be made for inspection of that evidence by or on behalf of the teacher.

4.7. The TRA may conduct such further enquiries and carry out such further investigations as it considers appropriate until the conclusion of any professional conduct panel meeting or hearing.

### **Consideration of evidence and the use of experts**

4.8. The TRA may, if it considers it necessary to assist the investigation, seek advice from a relevant expert or experts<sup>15</sup>.

4.9. The TRA may require any person to produce documents or other material evidence for the purposes of its investigation, in accordance with regulation 5 of the Regulations.

4.10. Subject to paragraphs 4.5 to 4.6, the TRA will send to the teacher any additional relevant documents and other evidence which it has considered in

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the course of its investigation which has not already been provided to the teacher in accordance with paragraphs 2.12 and 4.4.

(i) The TRA will invite the teacher to make representations and submit further evidence within 14 days from the date of service of that invitation; or

(ii) If that period would expire before the 28-day period mentioned in paragraph 4.4(iii), the 28-day period will continue to apply.

4.11. If, at any stage before the decision referred to at paragraph 4.12 (“the case to answer decision”) would otherwise be taken, the TRA is satisfied that a case does not satisfy the criteria in paragraph 2.5, the TRA will close the case and will inform the teacher of that decision in writing.

### **Case to answer decision**

4.12. When the TRA is satisfied that it has sufficient information to do so, and has complied with paragraphs 4.4 and 4.10, it will decide whether there is a case to answer.

4.13. If the TRA decides that there is a case to answer it will refer the case to a panel.

4.14. If the TRA decides that a case should not be referred to a professional conduct panel hearing, the case will be closed.

4.15. Once the TRA has made the case to answer decision, it will send to the teacher a letter (“the case to answer letter”) notifying the teacher of its

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<sup>15</sup> For example from the teaching, medical or legal professions.

decision, normally within five working days of the case to answer decision being made.

4.16. If the case has been referred to a panel the case to answer letter will

- (i) inform the teacher that an allegation has been referred to a panel
- (ii) specify the details of the allegation; and
- (iii) state that the teacher has 14 days from the date of service of the case to answer letter to provide the TRA with a written response stating whether the alleged facts are admitted and, if so, whether the teacher accepts that they amount to unacceptable professional conduct, conduct that may bring the teaching profession into disrepute or conviction, at any time, of a relevant offence.

4.17. The TRA will inform the referrer and the teacher's employer of the case to answer decision in writing, normally within five working days of that meeting.

4.18. If at any time the teacher admits all of the matters specified in paragraph 4.16(iii), the teacher may request that the case be considered without a hearing and paragraphs 5.129 to 5.143 will apply.

4.19. The case will be considered at a professional conduct panel hearing if the teacher does not respond to the case to answer letter or, having done so, does not

- (i) request that the allegation be considered without a hearing
- (ii) admit all of the matters specified in paragraph 4.16(iii); and
- (iii) agree a statement of facts with the TRA and that those facts amount to unacceptable professional conduct, conduct that may bring the teaching profession into disrepute or conviction, at any time, of a relevant offence.

### **Agreed statement of facts**

4.20. The TRA will, normally within four weeks of receipt of a response from the teacher to the case to answer letter in which it is indicated that some or all of the allegations are admitted, send to the teacher a draft statement of facts and invite the teacher to agree to it.

4.21. The teacher will, within three weeks of service on the teacher of the TRA's draft statement of facts, serve on the TRA a response indicating which facts are agreed.

4.22. The parties will take such further steps as they reasonably can to agree a statement of facts.

### **Disclosure of relevant documents by the TRA**

4.23. Subject to paragraphs 4.24 to 4.27, the TRA will disclose to the teacher any material in its possession which has not previously been disclosed to the teacher and which might reasonably be considered to be capable of

- (i) undermining the TRA's case against the teacher; or
- (ii) assisting the teacher's case.

4.24. The TRA is not obliged to disclose any material to which legal professional privilege applies.

4.25. If the TRA considers that to disclose material which falls within paragraph 4.23(ii) would damage the public interest, it may make an application to the panel for a direction that it shall not be disclosed.

4.26. On receipt of an application under paragraph 4.25, the panel will decide whether

- (i) to determine it without notice to the teacher; or
- (ii) to allow the teacher to make representations.

4.27. If the panel considers that it is in the interests of justice or the public interest to do so it may hear representations from any third party who it appears to the panel has an interest in the outcome of an application made under paragraph 4.25.

4.28. The duty to disclose material set out at paragraph 4.23

- (i) continues until the proceedings have come to an end
- (ii) applies in respect of any material which the TRA becomes aware is in its possession or falls with paragraph 4.23.

4.29. A party to whom a document has been disclosed may use the document only for the purpose of the proceedings in which it is disclosed, except where

- (i) the document has been read to or by a panel, or referred to, at a hearing which has been held in public
- (ii) the TRA gives permission; or
- (iii) the party which disclosed the document and the person to whom the document belongs agree.

# Professional conduct panels

## Constitution

- 5.1. A panel will consist of at least three members, all of whom will have been recruited through a public appointments process.
- 5.2. If the TRA considers it to be appropriate, taking into account all the circumstances of the case, it will appoint more than three members to a panel.
- 5.3. The panel will include
  - (i) at least one member who is a teacher, or who was a teacher in the five years immediately prior to the date the member was appointed as suitable to be a member of a panel - this panellist will be referred to as a teacher panellist<sup>16</sup>

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  - (ii) at least one member who has never worked as a teacher – this panellist will be referred to as a lay panellist.
- 5.4. Any or all of the remaining panel members may be
  - (i) teacher panellists
  - (ii) lay panellists; or
  - (iii) persons who have previously worked as teachers (whether or not as defined in paragraph 1.4(ii)) but do not currently meet the criteria to be a teacher panellist, and who will be referred to as former teacher panellists.
- 5.5. The TRA will appoint one panel member as the chair.
- 5.6. The TRA will take all reasonable steps to ensure that it does not appoint to a panel any member who is associated with, or has a conflict of interest with, the teacher whose case is before the panel.
- 5.7. If a panel member becomes aware of reasons why the panel member should not hear the case, the panel member must notify the TRA and withdraw from the panel.
- 5.8. If a panel member becomes aware that the panel member or another panel member might reasonably be perceived to have a conflict of interest in connection with the case, the panel member must declare this to the parties and the other members of the panel and the panel

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<sup>16</sup> The TRA's policy is also to require all teacher panellists to have carried out teaching work within the seven years prior to sitting on a panel.

will, after taking legal advice from the legal adviser to the panel<sup>17</sup>, decide whether the panel member in question should withdraw from the panel.

- 5.9. If a panel member does not consider there to be a conflict, but the teacher does, the teacher and the presenting officer may, before the commencement of the professional conduct panel hearing, make representations to the TRA and the TRA will decide whether it is appropriate for the panel member to continue.
- 5.10. If a teacher wishes to object to a panel member once the professional conduct panel hearing has commenced, the teacher may make representations to the panel and the panel will, after taking legal advice from the legal adviser to the panel, decide whether it is appropriate for the panel member to continue.
- 5.11. A panel member's membership of a teachers' trade union or professional association does not of itself constitute a conflict of interest.
- 5.12. If, in the course of a professional conduct panel hearing, a panel member is unable to continue the TRA will appoint another member in that member's

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place, ensuring that the new panel member is fully acquainted with all the documents previously before the panel, including a record of the proceedings.

- 5.13. Before the case resumes in front of a new panel member, the teacher may make representations if the teacher believes that there are grounds to appoint an entirely new panel, and the TRA will appoint a new panel if it is in the interests of justice to do so.
- 5.14. The TRA or Department for Education officials may attend a professional conduct panel hearing or meeting even if it is not held in public, but will not participate in the proceedings or play any role in the panel's decision-making.

### **Legal adviser to the panel**

- 5.15. The TRA will appoint a legal adviser to the panel, who will not be a member of Department for Education or Government Legal Department staff.
- 5.16. The legal adviser will not be a person who has previously advised or addressed the panel in any capacity other than as a legal adviser

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<sup>17</sup> See paragraphs 5.15 to 5.19.

5.17. The legal adviser's role will be to advise the panel on

- (i) questions of law
- (ii) mixed questions of law and fact
- (iii) matters of practice and procedure
- (iv) interpretation of Departmental policy
- (v) any relevant previous panel or court decisions; and (vi) any other issues relevant to the case.

5.18. The legal adviser may also

- (i) remind the panel of evidence given in the case
- (ii) ask questions of witnesses and the parties in order to clarify the evidence or arguments; and
- (iii) help the panel to formulate and record the reasons for its decisions, without taking part in the decision-making process.

5.19. If the teacher is not represented, the legal adviser will provide advice to the teacher regarding the procedure for presenting the teacher's case, without acting as an advocate for the teacher.

### **Appearance before the panel**

5.20. The TRA will appoint a presenting officer to present the case before the panel, who may be an official of the Department for Education, a lawyer from the Government Legal Department or an external lawyer.

5.21. The teacher may be self-represented before the panel or be represented by any person of the teacher's choice, including a legal representative.

### **Summary table of panel decisions and recommendations**

5.22. The following table sets out in brief the process for a panel reaching its decision and, if appropriate, making a recommendation to the Secretary of State.

#### **Professional conduct panels**

Following a decision to refer a case to a professional conduct panel hearing, the TRA will set a provisional date for the professional conduct panel hearing. The provisional date is normally 30 weeks from the date of the case to answer decision.

The TRA sends to the teacher a Notice of Hearing at least ten weeks before the hearing.

The teacher has four weeks from service of the Notice of Hearing to respond.

If the parties agree case management directions, the TRA may confirm those directions or apply to the panel to make them. The panel may make case management directions of its own motion.

The panel must consist of at least three members, will be comprised of teacher and lay (i.e. non-teacher) members and can include a former teacher, all of whom have been publicly appointed. A legal adviser will also be appointed to advise the panel and will be present at the professional conduct panel hearing.

If the panel finds that some or all of the alleged facts are proved and that the teacher is guilty of unacceptable professional conduct, conduct that may bring the teaching profession into disrepute or conviction, at any time, of a relevant offence, it must make a recommendation to the Secretary of State.

Once the panel has made its recommendation the Secretary of State decides whether to make a prohibition order, usually within three working days of the panel making its recommendation.

Notification of the Secretary of State's decision is sent to the teacher, usually within two working days.

In cases in which there is a decision of the Secretary of State as to whether to impose a prohibition order, that decision, the reasons for it and a summary of the evidence are published on the GOV.UK website within two weeks of the decision being made.

## Notice of Hearing

5.23. The TRA will send a notice (a "Notice of Hearing") to the teacher at least ten weeks before the date of the professional conduct panel hearing unless otherwise agreed with the teacher.

5.24. The Notice of Hearing will

- (i) specify the time and date of the professional conduct panel hearing, the address at which it will take place and the identity of the panel members
- (ii) specify the details of the allegation against the teacher which is to be pursued at the professional conduct panel hearing
- (iii) identify the witnesses, if any, that the TRA proposes to call to give evidence at the professional conduct panel hearing

- (iv) have annexed to it any relevant documents which the TRA is required to disclose pursuant to paragraph 4.23 and which have not previously been disclosed to the teacher
  - (v) request the information set out in paragraph 5.29; and (vi) set out the requirements in paragraphs 5.35 to 5.37.
- 5.25. The TRA will send a copy of the Notice of Hearing, but not the annexes thereto, to the teacher's employer.
- 5.26. The TRA will publish a notification of the professional conduct panel hearing on the GOV.UK website approximately one week in advance of the professional conduct panel hearing.
- 5.27. Any changes to the address for the hearing or the identity of panel members will not invalidate the Notice of Hearing but must be notified to the teacher as soon as possible.
- 5.28. If the TRA decides not to proceed with an allegation that has been notified to the teacher, it will inform the teacher, the referrer and the teacher's employer forthwith, and any such decision will not invalidate the Notice of Hearing.

## **Response to Notice of Hearing**

- 5.29. The teacher will be given four weeks from the date the Notice of Hearing is served to provide the following information, which will be requested in the Notice of Hearing
- (i) whether the teacher wishes to put forward any reason as to why the professional conduct panel hearing, or part of it, should not be held in public
  - (ii) whether the teacher intends to appear in person or to be represented at the professional conduct panel hearing and, if the latter, the name and address of the teacher's representative
  - (iii) whether the teacher intends to appear in person even though the teacher has chosen to be represented at the professional conduct panel hearing<sup>18</sup>
  - (iv) if the teacher does not intend to be present at the professional conduct panel hearing, whether the teacher wishes to provide any reasons for the decision not to attend

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<sup>18</sup> A teacher who is represented may nevertheless choose to present the case to the panel and to rely on the representative for advice only.

- (v) whether the teacher admits the alleged facts and, if so, whether the teacher admits that they amount to unacceptable professional conduct, conduct that may bring the teaching profession into disrepute or conviction, at any time, of a relevant offence
- (vi) whether the teacher intends to call witnesses and, if so, their names
- (vii) if the teacher proposes to call more than two witnesses, why the teacher considers that the evidence of more than two witnesses is relevant and necessary for the fair hearing of the case such that their expenses should be reimbursed<sup>19</sup>
- (viii) whether the teacher knows of any reason to believe that a conflict of interest may arise in relation to any member of the panel and, if so, the reason; and
- (ix) whether the teacher is currently employed or engaged to carry out teaching work and, if so, the name and address of the teacher's current employer.

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5.30. The teacher may provide the TRA with any documents or other evidence, including a witness statement, on which the teacher wishes to rely with the response to the Notice of Hearing<sup>20</sup>.

### **Standard and burden of proof**

5.31. The standard of proof is that applicable in civil court proceedings, namely, proof on the balance of probabilities<sup>21</sup>.

5.32. The burden of proof is on the TRA, meaning that it is for the TRA to prove the facts of the case<sup>22</sup>.

### **Admissibility of evidence**

5.33. The panel may admit any evidence, if it is fair to do so, which may reasonably be considered to be relevant to the case.

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<sup>19</sup> A teacher is able to call more than two witnesses, however paragraph 5.98 applies in relation to the reimbursement of the expenses of additional witnesses

<sup>20</sup> See also paragraph 5.37.

<sup>21</sup> That is, that an alleged fact is more likely to have happened than not.

<sup>22</sup> Details of the burden and standard of proof applicable on a review of a prohibition order are set out in paragraph 6.13.

5.34. Evidence not disclosed in accordance with paragraphs 5.30, 5.35 or 5.37 will be admitted only with the permission of the panel at the professional conduct panel hearing.

## **Service and Inspection of Evidence**

5.35. In accordance with paragraph 4.23, the TRA will serve on the teacher all signed witness statements and any other evidence on which it intends to rely at the professional conduct panel hearing; subject to any case management direction to the contrary, the TRA will do so as soon as statements and evidence are available following service of the case to answer letter.

5.36. In any event, and subject to paragraphs 5.42 and 5.43, the TRA will serve on the teacher a complete bundle of the evidence on which it intends to rely at the professional conduct panel hearing, whether or not previously provided to the teacher, not less than ten weeks before the professional conduct panel hearing.

5.37. If the teacher wishes to rely upon any document or other evidence, including a witness statement, which was not annexed to or enclosed with the reply to the Notice of Hearing, the teacher must submit to the TRA and any other party to the proceedings a copy of the document or evidence at least four weeks prior to the professional conduct panel hearing.

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## **Hearing bundle**

5.38. The presenting officer and the teacher will, whenever possible, agree a bundle of relevant documents to be used at the professional conduct panel hearing.

5.39. If agreement as to the content of the bundle is reached or the presenting officer does not obtain a response from the teacher that enables agreement to be reached

- (i) the presenting officer will prepare a bundle of relevant documents and forward it to the TRA three weeks prior to the professional conduct panel hearing; and
- (ii) the TRA will send a copy of the bundle to each panel member, the legal adviser to the panel and the teacher no later than five working days prior to the professional conduct panel hearing.

5.40. If there is a dispute between the TRA and the teacher in relation to the relevance or admissibility of documents

- (i) a bundle of the disputed documents will be prepared by the party who seeks to rely on them and forwarded to the TRA three weeks prior to the professional conduct panel hearing
- (ii) the TRA will send a copy of the bundle of disputed documents to the other parties and the legal adviser to the panel no later than five working days prior to the professional conduct panel hearing; and
- (iii) at the start of the professional conduct panel hearing, or at a case management hearing<sup>23</sup>, the party seeking to rely on the disputed documents must apply to the panel for a determination as to their relevance or admissibility.

5.41. In a case in which there are multiple or complex allegations the panel may, at a case management hearing, direct the TRA to prepare and serve on the other parties a table<sup>24</sup> of the allegations against the teacher, and the teacher's response to those allegations, in the following format

- (i) a column in which each allegation against the teacher is set out as a separate entry
- (ii) a column in which the teacher's response to each allegation is set out
- (iii) any additional columns which the panel considers would assist the conduct of the professional conduct panel hearing, such as a summary

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of the evidence in support of the TRA's case or the teacher's case to be completed by the TRA or the teacher, as the case may be

- (iv) a final, blank column in which the panel's findings in relation to each allegation will be recorded following the professional conduct panel hearing.

5.42. If a party wishes to rely at the professional conduct panel hearing on documents or other physical evidence which it is not appropriate or practicable to be copied or sent by post, the party in possession of the documents or other physical evidence will, at least four weeks prior to the professional conduct panel hearing, provide to the other parties

- (i) a description of the evidence
- (ii) an explanation as why it is not appropriate or practicable for the documents or other evidence to be copied or sent by post

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<sup>23</sup> See paragraphs 5.64 to 5.76.

<sup>24</sup> Such tables are referred to in civil court proceedings as "Scott Schedules".

- (iii) details of the arrangements that may be made for inspection of that evidence by or on behalf of the other parties.
- 5.43. The TRA will make appropriate arrangements for the documents or other physical evidence referred to at paragraph 5.42 to be inspected.
- 5.44. If a party wishes to inspect the original of any document disclosed in accordance with paragraphs 5.37 to 5.40, the TRA will make suitable arrangements for inspection to take place at least five working days before the date of the professional conduct panel hearing.

### **Absence of the teacher at a hearing**

5.45. If the teacher does not attend the start of the professional conduct panel hearing, the chair will

- (i) request evidence that the Notice of Hearing was served on the teacher in accordance with paragraph 5.23 (in particular any response received from the teacher which evidences receipt); and
- (ii) ask whether any reasons for the teacher's absence have been communicated to the TRA.

5.46. If the panel is not satisfied that the Notice of Hearing was served on the teacher in accordance with paragraph 5.23 it will adjourn the professional conduct panel hearing.

5.47. If the panel is satisfied that the Notice of Hearing was served on the teacher in accordance with paragraph 5.23, and after taking into consideration any representations by the TRA, any oral representations made by the teacher's representative if present, any evidence submitted as to the reason for the

teacher's absence and any written submissions made by the teacher, the panel may

- (i) proceed with the hearing in the absence of the teacher; or
- (ii) adjourn the hearing to a later date.

5.48. If the panel adjourns the hearing to a later date, the panel appointed to hear the case may consist of members other than those who decided to adjourn the case.

### **Rescheduling or adjourning the hearing**

5.49. The parties may agree to reschedule a professional conduct panel hearing at any time before it commences, or to adjourn such a hearing after it has commenced.

- 5.50. If a party wishes to reschedule or adjourn a professional conduct panel hearing but cannot secure the agreement of the other parties (whether to reschedule or adjourn at all or to reschedule or adjourn to a specified date), the TRA or the panel (as applicable) will decide whether to reschedule or adjourn, and may schedule a case management hearing to determine when the professional conduct panel hearing will take place.
- 5.51. The panel may re-schedule a professional conduct panel hearing or, after a professional conduct panel hearing has commenced, adjourn a professional conduct panel hearing at any time for such period as it thinks fit if it is in the interests of justice to do so.
- 5.52. Reasons for considering rescheduling or adjourning include, but are not limited to
- (i) the submission of further evidence by a party
  - (ii) a party or a party's representative being unable to attend the hearing for reasons beyond their control
  - (iii) a panel member or the legal adviser to the panel being unable to attend the hearing
  - (iv) it becoming apparent that the time estimate for the hearing is inadequate and that it is not in the interests of justice for the hearing to be fragmented.
- 5.53. No professional conduct panel hearing will be rescheduled or adjourned in accordance with paragraph 5.51 unless all parties have been given a reasonable opportunity to make representations on the matter to the TRA or the panel, as applicable.
- 5.54. Notice of a decision whether or not to adjourn a professional conduct panel hearing will be served on the teacher, with reasons for the decision.
- 5.55. When a professional conduct panel hearing has been rescheduled or adjourned the TRA will, as soon as is practicable, notify the parties of the new time and date of the hearing and the address at which it will take place or resume.

## **Referral back to investigation stage**

- 5.56. If before the scheduled first day of a professional conduct panel hearing
- (i) the TRA becomes aware, whether via representations or evidence provided by the teacher or otherwise, of new evidence or any other reason that suggests that the case should not be considered at a professional conduct panel hearing; or

- (ii) the TRA becomes aware of additional matters not previously considered for referral to the panel

the TRA will refer the case back to the investigation stage<sup>25</sup> to enable it to consider the new matters and to re-take the decision as to whether to refer the case to a panel.

5.57. If

- (i) the purpose of the referral back under paragraph 5.56 is to consider whether to add an allegation; or
- (ii) the purpose of the referral back is to consider whether to re-take the decision as to whether to refer the case to a panel, and the TRA is nevertheless minded to continue the case

the TRA will send written notification to the teacher, and will invite the teacher to make written representations, normally within 28 days of service of the written notification.

## Case Management Directions

5.58. The parties may at any time before the commencement of a professional conduct panel hearing

- (i) agree proposed case management directions; and
- (ii) make a joint written application to the TRA or, if a panel has already been appointed, to the panel to confirm the directions as agreed

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and, if no panel has yet been appointed, the TRA may appoint a panel and ask it to consider the application.

5.59. If, on an application under paragraph 5.58, the TRA or the panel is satisfied that the proposed directions will assist in the just and efficient management of the case it will make the directions accordingly.

5.60. The TRA may at any time before the commencement of a professional conduct panel hearing set out steps or arrangements which the parties are to adhere to in preparing for or presenting their respective cases at a professional conduct panel hearing.

5.61. The TRA may not impose any sanction on a party for a failure to comply with a step or arrangement set out in accordance with paragraph 5.60.

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<sup>25</sup> See paragraphs 4.1 to 4.19.

- 5.62. In a case in which a professional conduct panel hearing has not yet commenced the TRA may, on receipt of a request from a party or if it considers it appropriate to do so, at any time up to three weeks before the scheduled date for the professional conduct panel hearing invite the panel to make arrangements for making case management directions or, if no panel has been appointed, appoint a panel in order to do so.
- 5.63. In a case in which a professional conduct panel hearing has commenced the panel may, on an application to it by a party or if it considers it appropriate to do so, make arrangements for the making of case management directions or make such directions of its own motion.
- 5.64. The arrangements for making case management directions referred to in paragraphs 5.62 and 5.63 may include, but are not limited to
- (i) seeking agreement between the parties as to the case management directions which they wish the panel to make
  - (ii) if agreement cannot be reached, inviting written representations from the parties
  - (iii) determining whether the matter should be dealt with on the papers, by telephone, by video conference or at a hearing in person and, if appropriate, fixing a date for a case management hearing<sup>26</sup>.
- 5.65. A panel may make case management directions of its own motion if it considers it appropriate to do so, and a party may apply to the panel for a variation of such directions within three working days of receiving notice of them.

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- 5.66. The matters which may be the subject of case management directions include, but are not limited to
- (i) disclosure of documents
  - (ii) exchange of witness evidence
  - (iii) the provision by the parties of a time estimate for the professional conduct panel hearing

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<sup>26</sup> The list of directions referred to in this paragraph is not exhaustive.

- (iv) the provision by the teacher of a note indicating whether any fact, allegation or witness evidence is admitted
- (v) the preparation by the TRA of a table in accordance with paragraph 5.41
- (vi) any preliminary legal arguments with which the panel will be required to deal at the professional conduct panel hearing
- (vii) the treatment of any witness as a child or vulnerable witness in accordance with paragraphs 5.101 to 5.106
- (viii) provision for a joint hearing of the cases against two or more teachers
- (ix) provision for part or all of a professional conduct panel hearing to be held in private in accordance with paragraph 5.85
- (x) provision for the names and identities of schools or witnesses to remain anonymous in accordance with paragraph 5.88
- (xi) provision for requiring a witness to attend or produce evidence in accordance with paragraph 5.96
- (xii) the time limit for compliance with any direction made by the panel
- (xiii) amendment or waiver of any time limit or other requirement set out in the Disciplinary Procedures
- (xiv) whether to reschedule the professional conduct panel hearing before it has commenced or to adjourn it after it has commenced
- (xv) whether to order a stay in proceedings to allow concurrent civil or criminal proceedings based on the same or similar facts to be concluded
- (xvi) any other matter in respect of which the panel may make a direction in accordance with the Disciplinary Procedures.

5.67. The panel for a case management hearing will

- (i) consist of at least three members and will be advised by a legal adviser
- (ii) be the panel for all other case management hearings in the proceedings and the professional conduct panel hearing unless it becomes necessary, whether in the interests of justice or otherwise, for one or more panel members to be replaced, and will where reasonably possible be advised by the same legal adviser throughout.

- 5.68. The TRA will make the arrangements for the case management hearing and will send a notice to the teacher and the presenting officer at least five working days before the case management hearing.
- 5.69. At least three working days before the case management hearing the teacher and the presenting officer will serve any documents in support of their proposed directions to the TRA for onward transmission to the panel and the legal adviser to the panel.
- 5.70. The procedure at a case management hearing will be determined by the chair.
- 5.71. Case management hearings will be held in private unless the panel directs otherwise.
- 5.72. If the parties attend the case management hearing, the panel will invite each party to make oral representations regarding the directions sought, supplementing any written representations already submitted, and will give an opportunity to every other party to respond.
- 5.73. When the panel has made case management directions, the TRA will provide each party with written notice of the directions within seven days of the conclusion of the case management hearing.
- 5.74. If a party fails to comply with case management directions the panel may make whatever further directions it considers appropriate in relation to the conduct of the case, including the admissibility of any evidence.
- 5.75. In the event that the panel directs during the course of a professional conduct panel hearing that a case management hearing will take place, or adjourns a professional conduct panel hearing for a case management hearing to be fixed, it will also give directions as to the provision of any relevant documents to the TRA and paragraph 5.69 will not apply.
- 5.76. If the panel considers that it is in the interests of justice or the public interest to do so it may hear representations from any third party who it appears to the panel should be permitted to make representations as to appropriate case management directions.

### **Procedure at a professional conduct panel hearing**

- 5.77. Subject to paragraphs 5.78 to 5.84 and 5.107 to 5.118, the procedure at a professional conduct panel hearing will be determined by the chair, who will direct the parties to adopt an investigative rather than an adversarial approach.
- 5.78. At the commencement of the hearing

- (i) the chair will introduce the members of the panel and request confirmation of the identity of the teacher
- (ii) the chair will invite the parties to make any preliminary applications, which will be decided by the panel before the hearing proceeds
- (iii) the chair will read aloud the allegation against the teacher and ask whether the teacher admits the facts of the allegation and, if so, that they amount to unacceptable professional conduct, conduct that may bring the teaching profession into disrepute or conviction, at any time, of a relevant offence, as applicable.

5.79. If the teacher admits the facts of the allegation, the chair will ask the parties whether they have agreed a statement of facts and, if they have done so, at that or another convenient point in the proceedings

- (i) the presenting officer will read out the agreed statement of facts
- (ii) the chair will invite the presenting officer and the teacher to present evidence, including written and oral witness evidence, and to make representations to the panel regarding whether the facts that have been admitted amount to unacceptable professional conduct, conduct that may bring the teaching profession into disrepute or conviction, at any time, of a relevant offence, as applicable; and
- (iii) the panel will retire to deliberate in accordance with paragraphs 5.107 and 5.108.

5.80. If material facts remain disputed

- (i) the chair will invite the presenting officer to make an opening statement about the facts in dispute
- (ii) the chair will invite the teacher to respond
- (iii) the presenting officer and the teacher may present documentary and witness evidence<sup>27</sup> relating to the facts alleged and whether those facts amount to unacceptable professional conduct, conduct that may bring

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the teaching profession into disrepute or conviction, at any time, of a relevant offence, as applicable

- (iv) the panel may invite the parties to sum up their respective cases
- (v) the panel will retire to deliberate in accordance with paragraphs 5.107 and 5.108.

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<sup>27</sup> See paragraphs 5.90 to 5.100 for further provisions about witness evidence.

- 5.81. The panel may decide, at any time, to deliberate either in public or in private.
- 5.82. The panel may discontinue the proceedings at any stage if it is satisfied that it is fair and appropriate to do so because
- (i) it does not remain possible for the teacher to receive a fair hearing; or
  - (ii) it offends the panel's sense of justice and propriety to be asked to continue to hear the proceedings against the teacher in the particular circumstances of the case.
- 5.83. At any stage before making its decision as to whether the facts of the case have been proved the panel may, if it is in the interests of justice to do so, amend an allegation.
- 5.84. Before amending an allegation, the panel will invite representations from the parties and take advice from the legal adviser to the panel.

### **Public or private hearing**

- 5.85. A panel may exclude the public from a professional conduct panel hearing or part of a hearing if
- (i) it appears necessary in the interests of justice
  - (ii) the teacher makes a request for the hearing to take place in private and the panel does not consider it to be contrary to the public interest or the interests of justice for it to do so; or
  - (iii) it is necessary for the protection of the interests of children or vulnerable witnesses, and those interests outweigh any other competing interests<sup>28</sup>.
- 5.86. A party may, at the start of a professional conduct panel hearing, apply for the hearing to be held in private, and the panel will hear the application in private but will announce its decision on the application in public.
- 5.87. If the panel holds a hearing in private, the panel will nevertheless announce in public its decision regarding whether the facts have been proved and, if so,

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<sup>28</sup> See paragraphs 5.101 to 5.106

whether those facts amount to unacceptable professional conduct, conduct that may bring the teaching profession into disrepute or conviction, at any time, of a relevant offence, as applicable.

- 5.88. A panel may, if it considers it to be in the interests of justice or not contrary to the public interest to do so, direct that
- (i) the name and identity of a school will not be disclosed during the professional conduct panel hearing or at all
  - (ii) the name and identity of any individual referred to in the documents before the panel or who gives witness evidence will not be disclosed during the professional conduct panel hearing or at all
  - (iii) any other details of the case will not be disclosed during the professional conduct panel hearing or at all.

### **Joint hearings**

- 5.89. A panel may consider allegations against two or more teachers at a joint hearing, if
- (i) it is satisfied that there is no risk of undue prejudice to the fairness of the proceedings
  - (ii) the allegations against the teachers arise from the same circumstances; and
  - (iii) having invited and considered representations from the parties -
    - (a) prior to a panel being appointed, the TRA determines that a joint hearing is necessary; or
    - (b) if a panel has been appointed, the panel determines that a joint hearing is necessary.

### **Witnesses**

- 5.90. Witnesses must give evidence on oath or having made an affirmation appropriate to their beliefs.
- 5.91. The panel will normally direct that a signed witness statement, copied to the parties at the professional conduct panel hearing, will be taken as read even though it has not been read aloud by the witness.
- 5.92. When a witness statement is taken as read, the panel may direct that a copy of the statement, or part of the statement, will be made available to the public but, if the panel does so, the statement or part will be available during the course of the hearing only.

5.93. The teacher, the presenting officer, the members of the panel and the legal adviser to the panel may question any witness, subject to paragraphs 5.101 to 5.106.

5.94. A witness may not be present in the professional conduct panel hearing until the witness has completed giving evidence and the panel has determined that it is unlikely to be necessary to recall the witness, unless the panel directs otherwise.

5.95. A witness may, if so directed by the panel, be recalled to give further evidence or to clarify evidence that the witness has previously given in the case.

5.96. If

- (i) a party requires the attendance of, or the production of documents or other material evidence by, a witness; or
- (ii) the panel considers the attendance of the witness or the production of documents or other material evidence to be necessary;

the TRA or, if authorised by the TRA, the panel may require the witness to attend or produce the evidence pursuant to regulation 10 of the Regulations.

5.97. The TRA will, at its discretion, reimburse the reasonable expenses of up to two witnesses for each other party.

5.98. If the teacher considers that the evidence of any additional witness is likely to be relevant and necessary for the fair hearing of the case and wishes the reasonable expenses of the additional witness to be reimbursed, the teacher may make representations to that effect to the TRA.

5.99. If

- (i) the TRA accepts the representations made in accordance with paragraph 5.98, the TRA will agree that reasonable expenses of the additional witness will be reimbursed
- (ii) the TRA does not accept such representations, the teacher may apply to the panel for a case management direction.

5.100. The expenses payable pursuant to paragraph 5.99 will be in accordance with guidance issued by the TRA from time to time<sup>29</sup>.

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## **Children and vulnerable witnesses**

5.101. A child is any person who is under the age of 18 at the start of the professional conduct panel hearing.

5.102. A person is a vulnerable witness if the quality of the person's evidence is likely to be adversely affected at a professional conduct panel hearing, including by any mental or physical impairment and if the witness requires special consideration; this may include any witness

- (i) with a mental disorder
- (ii) whose intelligence or social functioning is significantly impaired
- (iii) with a physical disability as a result of which the witness requires assistance to give evidence
- (iv) who is the alleged victim of conduct which is the subject of an allegation against the teacher of a sexual nature
- (v) who complains of intimidation.<sup>30</sup>

5.103. The panel will adopt such measures as it considers appropriate in order to safeguard the interests of a child or vulnerable witness, which may include

- (i) the use of a video link
- (ii) the use of pre-recorded evidence
- (iii) the use of an interpreter, including a signer or translator
- (iv) the use of an intermediary
- (v) the hearing of evidence by the panel in private
- (vi) permitting the witness to give evidence behind a screen

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<sup>29</sup> The current version can be found at <https://www.gov.uk/guidance/teacher-misconduct-hearingsclaiming-expenses>

<sup>30</sup> The list of matters referred to in this paragraph is not exhaustive.

(vii) the attendance of a witness supporter.<sup>31</sup>

5.104. Any party may make representations as to whether a witness is to be treated as vulnerable, and as to any measures the panel should adopt in respect of a child or vulnerable witness.

5.105. In determining whether to permit a child or vulnerable witness to give evidence the panel will balance any potential impact on the welfare of the child or vulnerable witness against the interests of justice.

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5.106. If

(i) any allegation against a teacher concerns conduct of a sexual nature and the alleged victim of the conduct gives evidence (ii) a child witness gives evidence in relation to any allegation

the teacher will not be permitted to examine or cross-examine the witness in question other than via a representative, and the panel may direct that examination or cross-examination of the witness will be undertaken by such means, or by such person, as the panel considers appropriate and, if it is reasonably possible, will make such a direction at least three weeks before the witness is scheduled to give evidence.

## Recommendation and decision

5.107. Once the parties have closed their respective cases, the panel will retire to deliberate.

5.108. In its deliberations, the panel will

- (i) consider all the evidence available to it and the representations of the parties
- (ii) if appropriate, take into account any failure by the teacher to comply with the personal and professional conduct standards set out in part two of the [Teachers' Standards](#) published by the Secretary of State
- (iii) take account of the criteria set out in the advice document "Teacher misconduct: the prohibition of teachers"
- (iv) take into account any relevant mitigating circumstances;

5.109. The panel will decide

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<sup>31</sup> The list of measures referred to in this paragraph is not exhaustive.

- (i) whether the alleged facts, or any of them, have been proved; and if so
  - (ii) whether those facts that are proved amount to unacceptable professional conduct, conduct that may bring the teaching profession into disrepute or conviction, at any time, of a relevant offence.
- 5.110. The professional conduct panel hearing will then resume, and the panel will announce its findings of fact.
- 5.111. If the panel decides that the teacher is guilty of unacceptable professional conduct, conduct that may bring the teaching profession into disrepute or conviction, at any time, of a relevant offence, it will ask whether the presenting officer has any evidence to produce that would be relevant to a decision as to whether to impose a prohibition order.
- 5.112. The panel will then ask whether the teacher has any evidence to produce or submissions to make in mitigation, including anything not previously mentioned to the panel, which would be relevant to a decision as to whether a prohibition order is appropriate.
- 5.113. The parties may call witnesses at this stage.
- 5.114. The panel will then invite submissions from the presenting officer and the teacher as to whether a prohibition order is appropriate.
- 5.115. The panel will then retire to decide whether to recommend to the Secretary of State that a prohibition order should be imposed.
- 5.116. The panel will take into account the principles set out in Section 5 of the advice document “Teacher misconduct: the prohibition of teachers” in determining whether to recommend a prohibition order.
- 5.117. If the panel decides to recommend a prohibition order it will also consider whether to recommend that the teacher be permitted to apply to have the order set aside and, if so, recommend the minimum period of time which must elapse before the teacher may do so.
- 5.118. In considering its recommendation the panel may take into account any previous disciplinary order imposed by the Secretary of State, the GTCE or any other relevant body.
- 5.119. On receipt of the panel’s recommendation the Secretary of State<sup>32</sup> will decide whether to make a prohibition order and, if so, whether the teacher may apply for a review of the order and the minimum period that must elapse before the teacher may do so.

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<sup>32</sup> The decision is taken by a senior official of the TRA appointed to do so on behalf of the Secretary of State.

5.120. The Secretary of State's decision will usually be taken within three working days of the panel making its recommendation.

## **Notification of decision**

5.121. Notice of the Secretary of State's decision will be sent to the teacher, normally within two working days of the decision being made and will take effect when it is deemed to have been served on the teacher<sup>33</sup>.

5.122. On the same day as it is sent to the teacher, the decision will also be sent to the teacher's employer and any former employer known to the TRA and whom the TRA considers it appropriate to notify.

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5.123. If the referrer or the teacher's employer has made a request to the TRA to be informed forthwith of

- (i) the panel's announced findings of fact and decision as to whether the teacher is guilty of unacceptable professional conduct, conduct that may bring the teaching profession into disrepute or conviction, at any time, of a relevant offence; or
- (ii) the Secretary of State's published decision as to whether to make a prohibition order, if applicable

the TRA will forward the requested information to the person who requested it by e-mail, or by post if no e-mail address has been provided, as soon as possible.

5.124. The Secretary of State's decision, along with a summary of the evidence and the reasons for the decision and the other information required by regulation 15(2) of the Regulations, will be published on the GOV.UK website within two weeks of the decision being made, subject to any requirement to keep matters contained in that information confidential.

## **Reference to a differently constituted panel**

5.125. Prior to reaching its final decision a panel may recuse itself and ask the TRA to refer the case to a differently constituted panel if

- (i) it appears that there has been a breach of natural justice
- (ii) the panel was not properly constituted; or

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<sup>33</sup> See regulation 13(3) of the Regulations.

- (iii) there is some other reason why it would be in the interests of justice for the case to be referred to a differently constituted panel.

5.126. The panel will not decline to hear or determine a case because there has been a defect or deficiency in compliance with the Disciplinary Procedures which does not amount to a breach of natural justice<sup>34</sup>.

5.127. If a panel asks the TRA to refer a case to a differently constituted panel, the TRA will inform the teacher and other relevant parties forthwith.

## **Resumption of professional conduct panel hearing after adjournment**

5.128. Prior to the resumption of a professional conduct panel hearing following an adjournment for a period of more than three months the TRA will serve on the teacher

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- (i) a notice of resumption specifying the time and date of the hearing, which will not be less than one month from the date of service of the notice; and
  - (ii) a note or transcript of the evidence considered prior to the adjournment.

## **Agreement to consider case in a professional conduct panel meeting**

5.129. If the teacher requests that the case be considered without a hearing because the teacher admits the alleged facts and that they amount to unacceptable professional conduct, conduct that may bring the teaching profession into disrepute or conviction, at any time, of a relevant offence, the TRA will, within four weeks of receipt of the teacher's request, serve on the teacher a draft statement of facts in accordance with paragraph 4.20 and invite the teacher to agree to it.

5.130. The teacher will, within three weeks of service on the teacher of the TRA's draft statement of facts, serve on the TRA a response indicating which facts are agreed in accordance with paragraph 4.21, and in addition

- (i) any information which the teacher wishes to submit about the case, including in relation to mitigation; and

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<sup>34</sup> Any panel member with a concern should however alert the TRA.

- (ii) any reasons why the teacher considers that the case should be considered without a hearing, if not already provided.
- 5.131. In accordance with paragraph 4.22, the parties will take such further steps as they reasonably can to agree a statement of facts.
- 5.132. If the TRA and the teacher agree
- (i) a statement of facts; and
  - (ii) that the teacher is guilty of unacceptable professional conduct, conduct that may bring the teaching profession into disrepute or has been convicted, at any time, of a relevant offence, the TRA will decide whether it is appropriate for the allegation to be considered without a hearing, having taken into account
    - (a) the available evidence
    - (b) any information submitted by the teacher
    - (c) the interests of justice; and (d) the public interest.
- 5.133. If the TRA agrees that the case may be considered without a hearing, the case will be considered in a meeting of a panel.
- 5.134. The TRA will inform the teacher and the presenting officer in writing that the case is to be considered in a meeting, and will at the same time specify the time and date of the meeting, the address at which it will take place and the identity of the panel members.
- 5.135. The TRA will inform the teacher's employer and the referrer of the decision to consider the case in a meeting and the meeting date.
- 5.136. The TRA will send a copy of the agreed statement of facts and any representations made by the parties to the panel members prior to the meeting.
- 5.137. The panel will be constituted in accordance with paragraphs 5.1 to 5.6, and the procedure at the meeting will be determined by the chair.
- 5.138. The meeting will be held in private.
- 5.139. The process for making recommendations and decisions will be as set out at paragraphs 5.108 to 5.109 and paragraphs 5.116 to 5.124.
- 5.140. The panel may reschedule or adjourn the meeting at any stage in accordance with paragraphs 5.46 to 5.55, save that references to the hearing in those paragraphs shall be read as references to the meeting.

- 5.141. The panel will consider any evidence and submissions in relation to mitigation, including any presented to the panel at an earlier stage of the proceedings, after it has reached its decision as to whether the facts are proved and, if so, whether they amount to unacceptable professional conduct, conduct that may bring the teaching profession into disrepute or conviction, at any time, of a relevant offence.
- 5.142. At any stage of the meeting, the panel may decide that, in the interests of justice or the public interest, the case should be considered at a professional conduct panel hearing and, if it does so, will make an appropriate direction.
- 5.143. In such a case the TRA will send a Notice of Hearing to the teacher, and
- (i) the hearing will proceed in accordance with paragraphs 5.78 to 5.107 and 5.128; and
  - (ii) the process for making recommendations and decisions will be as set out at paragraphs 5.107 to 5.124.

## **Appeals, review of prohibition orders and GTCE orders**

### **Appeals**

- 6.1 A teacher may appeal against a prohibition order<sup>35</sup> to the Queen's Bench Division of the High Court under regulation 17 of the Regulations within 28 days from the date that notice of the order was served on the teacher.
- 6.2 The teacher must serve a copy of the appeal notice, together with copies of such other documents filed with it in the High Court, on the Secretary of State within such period as required by the court.
- 6.3 Appeals against prohibition orders are subject to the provisions in part 52 of the Civil Procedure Rules.

### **Application for a prohibition order to be set aside**

- 6.4 An application to the Secretary of State for a prohibition order to be set aside ("the application") must be made in writing and must specify the grounds upon which it is made.<sup>36</sup>

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<sup>35</sup> A teacher may not appeal to the High Court against the imposition of an IPO.

<sup>36</sup> See regulation 16(2) of the Regulations.

- 6.5 The teacher shall provide details of up to three referees and any other evidence in support of the application.
- 6.6 Provided the teacher is permitted by the terms of the prohibition order to make the application, the TRA will write to the teacher's nominated referees enclosing a copy of the Secretary of State's decision to impose a prohibition order and inviting the referees to provide evidence, within one month, as to the teacher's suitability to carry out teaching work.
- 6.7 The TRA will normally refer the application to a panel appointed in accordance with paragraphs 5.1 to 5.19 and consisting of persons who were not members of the original panel which heard the case, to consider the application.
- 6.8 In exceptional circumstances the TRA may set aside a prohibition order without the need to appoint a panel, for example if a conviction of a relevant offence has been quashed<sup>37</sup>.
- 6.9 If the application is referred to a panel, the TRA will send to the teacher a notification of the details of the hearing which will -

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- (i) specify the time and date of the hearing, the address at which it will take place and the identity of the panel members; and
  - (ii) have annexed to it, if available, a copy of the Secretary of State's original prohibition decision or the decision of the GTCE Committee if the order was made by the GTCE.

- 6.10 The procedure prior to and at the hearing of the application will, insofar as appropriate, follow that for a professional conduct panel hearing, including in relation to the service and inspection of evidence, save that it is for the teacher to present the case for the prohibition order to be set aside and, if applicable, for the TRA to respond.
- 6.11 The panel will take into account the principles set out in Section 8 of the advice document "Teacher misconduct: the prohibition of teachers" in determining whether to recommend that the prohibition order should be set aside.
- 6.12 The panel will not re-examine the facts which were found to be proved at the professional conduct panel hearing or reconsider the Secretary of State's decision to impose a prohibition order, but will consider whether in its judgment the teacher is suitable to be employed or engaged to carry out teaching work as at the date of the hearing of the application.

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<sup>37</sup> See also paragraph 6.22.

6.13 The burden of proving any material facts, on the balance of probabilities, rests on the teacher.

6.14 Once the panel has considered the application

- (i) the panel will make a recommendation to the Secretary of State as to whether the prohibition order should be set aside and, if not, the minimum period which must elapse before the teacher can make a further application for the prohibition order to be set aside; and
- (ii) the Secretary of State will decide whether to accept the panel's recommendation.

6.15 If the application is refused, no further application may be made within twelve months of the date on which the original application was refused or such longer period as the Secretary of State may determine.

6.16 If the prohibition order is set aside the individual's details will be removed from the list of prohibited teachers held by the TRA and the previous published decision will be removed from the GOV.UK website.

6.17 Notice of the Secretary of State's decision will be sent to the teacher, normally within two working days of the decision being made, and will take effect immediately it is made.

## **Application to vary or revoke a condition specified in a GTCE conditional registration order or suspension order**

6.18 In the case of a conditional registration order or suspension order against a teacher made by the GTCE, the teacher may apply to the TRA for a variation or revocation of the order by submitting a written application which

- (i) specifies the order or condition(s)
- (ii) specifies whether the teacher is seeking variation or revocation of the order or condition(s) and, in the case of variation, the terms of the variation applied for
- (iii) specifies the grounds of the application; and
- (iv) is accompanied by any documents relied on in support of the application.

6.19 On receipt of the application the TRA on behalf of the Secretary of State will consider it on the papers and decide whether to allow it in part or in full, or to refuse it.

6.20 A decision to vary or revoke an order or condition may be published on the GOV.UK website.

6.21 Notice of the Secretary of State's decision will be sent to the teacher, normally within two working days of the decision being made, and will take effect immediately it is made.

## **Revocation of disciplinary orders**

6.22 The Secretary of State may, at any time, revoke a disciplinary order made by the GTCE or the Secretary of State if the only or main reason for making the order was that the teacher in relation to whom the order was made had been convicted of a relevant offence and, after the date the order was made, the conviction was quashed.

## **Compliance with GTCE conditional registration orders or suspension orders**

6.23 In a case in which the GTCE made a conditional registration order or a suspension order in relation to a teacher, the TRA may make a reasonable request for information in order to determine whether the conditions have been, or continue to be, complied with.

6.24 Such information may be requested from

- (i) the teacher in relation to whom the order was made
- (ii) any person who is, at the time the request is made, the teacher's employer
- (iii) any other person whom the TRA believes may hold such information.

6.25 If the TRA

- (i) receives the information requested and is of the opinion that a condition has not been complied with or is not being complied with; or
- (ii) does not receive the information requested

it may refer the matter to a panel constituted in accordance with paragraphs 5.1 to 5.19, which will decide

- (a) whether the teacher has failed to comply, or is failing to comply, with a condition; and if so
- (b) whether to recommend to the Secretary of State that a prohibition order should be made.

6.26 If the TRA refers the matter to a panel, it will send to the teacher a Notice of Hearing which will

- (i) specify the address at which the hearing will take place and the identity of the panel members
- (ii) specify the time and date of the hearing, which will not be less than eight weeks after the day the notice was served on the teacher
- (iii) have annexed to it a note of the evidence given at the hearing at which the conditional registration or suspension order was made together with a record of the decision made; and
- (iv) specify the allegation which is to be considered at the hearing.

6.27 The case will be considered at a hearing, and the procedure at the hearing will, insofar as appropriate, follow that for a professional conduct panel hearing.

6.28 If the panel decides that the TRA has proved an allegation of a breach of a condition on the balance of probabilities it will make a recommendation to the Secretary of State as to whether to make a prohibition order.

6.29 The Secretary of State will decide whether to make a prohibition order and, if so, the terms of that order in accordance with paragraphs 5.119 to 5.120.

6.30 The decision of the Secretary of State as to whether to make a prohibition order will be published on the GOV.UK website.

6.31 Notice of the Secretary of State's decision will be sent to the teacher, normally within two working days of the decision being made, and will take effect when it is deemed to have been served on the teacher.



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