

THE PROHIBITION OF TEACHERS

Department for Education advice on factors relating to decisions leading to the prohibition of teachers from the teaching profession

This document will come into effect on 1st April 2012

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1. About this advice

This advice relates to the arrangements for the regulation of teachers' professional conduct from 1 April 2012. These arrangements will be operated by the Teaching Agency, on behalf of the Secretary of State for Education.

This advice sets out the factors to be considered by professional conduct hearing panels convened for the purpose of the regulation of teacher conduct. Its primary purpose is to inform considerations leading to the decision as to whether to recommend the imposition of a prohibition order on a teacher following a finding of "unacceptable professional conduct", "conduct that may bring the profession into disrepute" or a "conviction, at any time, of a relevant criminal offence".

In using this advice, professional conduct hearing panel members are obliged to exercise their own judgement in making decisions, as they are acting in a judicial capacity, within the framework set out below by the Department for Education.

This advice complements other Departmental advice relating to the regulation of teachers, relating to the disciplinary process, information for teachers subject to the disciplinary process and information for witnesses.

2. Effective date

This advice is effective from 1 April 2012.

3. Who is this advice for?

- **Panel members** should use this advice as part of the process of professional conduct hearings.
- It will inform **staff of the Teaching Agency** in their investigations of allegations against teachers and to determine whether a case should proceed to a professional conduct panel hearing.
- **Employers** of teachers (including agencies) will use it to help them to decide whether an allegation of teacher misconduct is sufficiently serious to refer to the Secretary of State; cases should be referred if it appears that a prohibition order may be appropriate.
- It will help **teachers and panel witnesses** to inform their attendance at a professional conduct hearing.
- It will be an important reference tool for **teachers** in helping them understand the potential consequences of specific allegations of misconduct.

- It will provide reassurance and transparency to the **public** about the likely action that will be taken when teachers are guilty of serious misconduct.

4. The regulatory system

Teachers are the single most important factor in a child's education and the overwhelming majority are highly competent and effective, and never engage in any form of misconduct. Head teachers and governing bodies are responsible for managing teachers in relation to their competence and conduct and for taking action to address underperformance and misconduct in their schools.

The Education Act 2011 gives responsibility to the Secretary of State to regulate teachers' conduct and to hold a list of teachers who have been prohibited from teaching. Regulations (The Teachers' Disciplinary (England) Regulations 2012) provide information about how the specific and detailed arrangements should operate. From 1 April 2012 the Teaching Agency will administer arrangements for teacher regulation on behalf of the Secretary of State.

The key features of the new regulatory system are that:

- The Secretary of State, as the regulator, should only be involved in the most serious cases of misconduct, in order to make a decision about whether a teacher should be barred from the profession; other matters, including all cases of incompetence should be dealt with locally;
- Where a teacher's employer, including an agency, has dismissed the teacher for misconduct, or would have dismissed them had they not resigned first, they must consider whether to refer the case to the Secretary of State; the advice in this document should be used to make a judgment about whether a prohibition order may be appropriate, and whether an early referral is advisable in order to consider an interim prohibition order; if in doubt, a referral should be made;
- Members of the public may also consider referring a case to the Secretary of State if they think that an allegation of serious misconduct against a teacher has not been dealt with after local procedures have been followed;
- The police, the Independent Safeguarding Authority (ISA) and other regulators may also refer cases to the Secretary of State;
- The Secretary of State will have the power to make prohibition orders – there will be no other sanctions;
- The arrangements apply to anyone undertaking teaching work as defined in The Teachers' Disciplinary (England) Regulations 2012 in

schools, including Independent Schools, Sixth Form Colleges, Youth custody settings, children's homes, as well as Academies, Free Schools, local authority maintained schools and non-maintained special schools;

- The Secretary of State will have the power to impose an interim prohibition order in cases where there has been a particularly serious allegation and a judgement is made that the teacher should not be teaching during the period while an investigation and hearing are undertaken; and
- The ISA, or its successor body, will continue to deal with cases that concern safeguarding matters (i.e. the risk of harm, or actual harm, to a child). The Teaching Agency will liaise with the ISA to ensure that cases are dealt with appropriately and information about teachers barred from working with children by the ISA will be linked to the list of prohibited teachers.

5. What is a prohibition order?

A prohibition order imposed by the Secretary of State means that the person concerned is not allowed to undertake teaching work unsupervised in schools or other settings as set out in regulations (as referred to above). It does not relate to non-teaching work.

A prohibition order is likely to be appropriate when a teacher's behaviour has been fundamentally incompatible with being a teacher. The primary purpose of a prohibition order is to protect pupils and to maintain public confidence in the teaching profession. For further details, see the section below on 'is a prohibition order appropriate?'

A prohibition order is a lifetime ban, though in some circumstances the teacher may be able to have it reviewed after a specified period of time. See the section below on 'review of prohibition orders'.

6. Professional conduct panel decision-making criteria

After considering all of the evidence put before it, the panel must make three decisions, in the order below. If a panel decides that 'no' is the answer to any of these questions, it will not need to proceed to the next question. A panel may answer 'yes' to (i) and (ii) and still decide that it is not appropriate to recommend a prohibition order. The recommendation to the Secretary of State will be that a prohibition order is appropriate *only* if it has answered 'yes' to all three questions.

Panels will include a legal adviser, who will be able to advise the panel in taking previous decisions about cases with similar circumstances into account, while ensuring that each case is judged on its own individual merits.

The legal adviser's role is to assist the panel but does not play a part in its decision making process.

(i) - Is the panel satisfied that the facts of the case have been proved?

The panel must decide whether the facts of the case have been proved on the balance of probabilities. This is the same as the standard of proof in civil law courts. This means that a professional conduct panel will decide that an event occurred if, on the evidence available to it, it believes that the occurrence was more likely than not. A different standard is applied in criminal law courts, where the facts must be proved 'beyond all reasonable doubt'.

If there has been a conviction, at any time, of a criminal offence, the panel must accept the conviction as having proved that the facts of the case that relate to the conviction have been established. The hearing does not become a trial or re-trial to examine the facts of the case.

Information from police cautions or prior hearings, eg school disciplinary hearings or employment tribunals, may be taken into account as evidence, but this information will not necessarily be conclusive in the same way as the conviction of a criminal offence.

(ii) - Has there been "unacceptable professional conduct", "conduct that may bring the profession into disrepute" or "conviction, at any time, of a relevant offence"?

If the panel is satisfied about the facts of the case, it must determine whether this means that one of the three categories above applies.

"Unacceptable professional conduct" is misconduct of a serious nature, falling significantly short of the standard of behaviour expected of a teacher. This should be judged by the panel with reference to the personal and professional conduct elements of the latest standards published by, or on behalf of, the Secretary of State. The panel should also use their knowledge and experience of the teaching profession in making their judgement of whether the conduct is relevant to the person's fitness to be a teacher. Conduct outside the education setting will only amount to unacceptable professional conduct if it affects the way the person fulfils their teaching role or if pupils may be exposed to the behaviour in a harmful way.

"Conduct that may bring the profession into disrepute" should be judged by the panel in a similar way. Allegations of misconduct that took place outside of the school environment may be considered to be relevant if they are serious and the behaviour is directly related to an individual's suitability to be a teacher and, if proven, may bring the profession into disrepute. Panel members should use their knowledge and experience to take into account how the teaching profession is viewed by others, and the influence that teachers may have on pupils, parents and others in the community. Pupils must be able to view teachers as role models in the way they behave.

“Conviction, at any time, of a relevant offence” refers to a conviction of an offence that is relevant to a person’s fitness to be a teacher, either by a British criminal court or by an overseas court if the offence would constitute a criminal offence if committed in England and Wales. A conviction itself gives the panel jurisdiction, even if the criminal offence did not involve misconduct in the course of teaching. Where there has been a criminal conviction the professional conduct panel is concerned only to establish the gravity of the offence and its relevance to the teacher’s ongoing suitability to teach, and to take due account of any mitigating circumstances.

The panel must judge that it is a “relevant offence” if the nature of the offence is serious and considered likely to impact on an individual’s suitability to be a teacher. In assessing relevance the panel should consider whether, and to what extent, the behaviour involved in committing the offence:

- was contrary to the standards of personal and professional conduct expected of a teacher, with reference to the latest standards published by, or on behalf of, the Secretary of State;
- was relevant to teaching, working with children and/or working in an education setting;
- would be likely to have an impact on the safety or security of pupils and members of the public, or on the public confidence in the teaching profession; **or**
- led to a term of imprisonment.

It is likely that all criminal offences that involve any of the following will be considered relevant:

- violence
- offences related to terrorism
- fraud or serious dishonesty
- theft from a person or other serious cases of theft
- class A drugs, particularly if supplying is involved
- serious sexual misconduct
- arson and other major criminal damage
- serious driving offences, particularly those involving alcohol or drugs
- serious offences involving alcohol
- serious offences involving gambling
- possession of prohibited firearms, knives or other weapons.

It is less likely that any of the following offences will be considered relevant:

- minor driving offences
- minor offences involving personal use of alcohol or class B or C drugs away from children and education contexts
- minor gambling offences
- isolated, minor cases of theft.

However, these are only indicative lists of offences that are likely or not likely to be considered “relevant”. Every case needs to be considered on its individual merits by the panel, taking into account the circumstances involved.

(iii) - Is a prohibition order appropriate?

If the panel has found that there has been “unacceptable professional conduct”, “conduct that may bring the profession into disrepute” or a “conviction, at any time, of a relevant offence”, it must make a judgment about whether to recommend the imposition of a prohibition order by the Secretary of State.

A prohibition order aims to protect pupils and to maintain public confidence in the profession. A panel should consider what is in the public interest and whether a prohibition order is a proportionate measure. Prohibition orders should not be given in order to be punitive or show that blame has been apportioned, although they are likely to have a punitive effect.

Public interest considerations would usually include:

- the protection of children and other members of the public
- the maintenance of public confidence in the profession
- declaring and upholding proper standards of conduct.

In deciding whether or not the recommendation of a prohibition order is appropriate, professional conduct panels should apply the principle of proportionality, weighing the interests of the public (as above) against those of the teacher. In addition they will need to consider any mitigation in relation to the seriousness of the behaviour in question.

In considering the seriousness of the behaviour, it is important to consider the influential role that a teacher can play in the formation of pupils’ views and behaviours. For example, a teacher’s behaviour that is judged to promote extremist political or religious views or actions should be viewed very seriously in terms of its potential influence on children and young people and as a possible threat to the interests of the public.

It is likely that a teacher’s behaviour will be considered to be incompatible with being a teacher if there is evidence of one or more of the factors below. This list is not exhaustive and the decision should be made by the panel using its judgment, after seeking relevant advice from the panel’s legal adviser:

- Serious departure from the personal and professional conduct elements of the latest teachers’ standards, as published by, or on behalf of, the Secretary of State;
- Misconduct seriously affecting the education and/or well being of pupils, and particularly where there is a continuing risk;
- Actions or behaviours to undermine fundamental British values, democracy and law, to promote political and/or religious extremism, or

to demonstrate deliberate intolerance and/or lack of respect of the rights, faith and beliefs of others;

- Evidence of a deep-seated attitude that leads to harmful behaviour;
- Abuse of position/trust (particularly involving vulnerable pupils) or violation of the rights of pupils;
- Dishonesty (especially where there have been serious consequences, it has been repeated and/or covered up);
- Sustained or serious bullying, or other deliberate behaviour that undermines the profession, the school or colleagues;
- Possession of prohibited firearms, knives or other weapons;
- Serious criminal offences.

Even where it is clear to a panel that there is evidence of one or more of the factors set out above, there may still be mitigating circumstances that it should take into account when considering the appropriateness of prohibition. If most or all of the following criteria are apparent (this list is not exhaustive) a panel may determine that a recommendation for a prohibition order will not be appropriate:

- The teacher's actions were not deliberate;
- The teacher was acting under duress;
- The teacher has a previously good history.

7. The Secretary of State's decision on prohibition

Once the Secretary of State has received a recommendation on prohibition from a professional conduct panel he will, within two working days wherever possible, make a decision on whether to impose a prohibition order and whether a review period is appropriate. The decision will take account of the panel's recommendation and will be notified to the teacher concerned in writing before it is made public.

8. Review of prohibition orders

When the Secretary of State decides that a prohibition order is appropriate, the prohibition applies for life. However, in some circumstances, the Secretary of State may decide to allow a teacher to apply to have the prohibition order reviewed after a specified period of time, following a recommendation by the professional conduct panel. The minimum period will not be less than two years.

Where a case has involved any of the following, the panel should consider recommending to the Secretary of State that a prohibition order is imposed with no provision for the teacher to apply for it to be set aside after any period of time:

- violence
- fraud or serious dishonesty

- theft from a person or other serious cases of theft
- class A drug abuse or supply
- serious sexual misconduct or
- arson and other major criminal damage.

In cases where a prohibition order has been imposed, once the specified minimum time has elapsed the teacher may apply to the Secretary of State to have the prohibition order set aside.

The Secretary of State may convene a professional conduct panel to make a recommendation about whether to set aside the prohibition order. The panel will consider any relevant testimony from, or on behalf of, the teacher. A review is not an appeal against the original decision to impose a prohibition order and panels will not, therefore, reconsider evidence given at the original hearing or new evidence related to the original misconduct that was not considered at the original hearing. The review will restrict itself to considering the reasons given by the teacher for why they should now be considered suitable to teach again. In line with the principles for prohibition set out above, the panel should consider whether the continuation of the prohibition order is in the public interest and a proportionate measure. Whether and to what extent a teacher demonstrates clear and unequivocal insight into the misconduct that led to their prohibition and the extent to which they can demonstrate a clear commitment to regaining their professionalism should be an important part of the panel's considerations.

A professional conduct panel can recommend to the Secretary of State that either:

- the prohibition order should be removed and the teacher given the opportunity to resume teaching; or
- the prohibition order should remain in place and, if so, whether a further specified minimum period should be applied before another application for a review can be considered. This will not be less than one year.

9. Appeals

A teacher may appeal against a prohibition order imposed by the Secretary of State to the Queen's Bench Division of the High Court under Part 52 of the Civil Procedure Rules within 28 days of the date a notice of the Order was served on them.

The High Court has the power to uphold, revoke or amend a prohibition order or to remit it for further consideration by the Secretary of State.

10. Interim prohibition orders

An interim prohibition order prevents a person from teaching until their case has been fully considered and concluded. It may only be made if the Secretary of State considers that it is necessary in the public interest.

There will be no role for professional conduct panels in making interim prohibition orders. The Secretary of State will make an interim prohibition order if it appears that:

- there is reliable evidence that the allegation of misconduct is well founded; and either
- it is necessary for the protection of children, parents or other school staff; or
- it is in the public interest.

Decisions will be taken on a case by case basis. When a case is referred to the Secretary of State, consideration will be given to whether the nature and severity of the allegation, and the evidence that it is well founded, are such that the teacher may pose a serious risk if they are free to continue teaching. An interim prohibition order may be imposed at any time during the investigation, although it is most likely to be at the early stages. The teacher will be informed that consideration is being given to the imposition of an interim prohibition order and they will be given seven days' notice to provide any additional evidence that they want to be considered in relation to the decision. All the available evidence will be fully considered.

Where the Secretary of State imposes an interim prohibition order, the teacher will be informed in writing that the order is to apply immediately. If the teacher is currently employed, the teacher's employer will also be informed in writing. The employer is required to take action to ensure the person is prevented from continuing in their position until the case is concluded or until the person successfully applies to the Secretary of State to review the order. The individual will appear on the Prohibited List and it will be clearly indicated that they have an 'interim' prohibition order.

An interim prohibition order will be reviewed by the Secretary of State, on written request from the teacher after a period of six months since it was imposed or last reviewed. The teacher should provide evidence to inform the review, which will be considered alongside evidence from the investigation. The individual does not have a right of appeal to the High Court against an interim prohibition order.