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Procedures for reporting misconduct and incompetence in the education workforce in Wales



Guidance

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Procedures for reporting misconduct and incompetence in the education workforce in Wales

- Audience Governing bodies of schools; local authorities in Wales; directors of education; HR directors; Local Safeguarding Boards; headteachers of maintained schools; voluntary-aided schools and foundation schools; proprietors of independent schools; non-maintained special schools; sixth form colleges; pupil referral units; principals of further education (FE) institutions; principals of higher education (HE) institutions; teaching unions; church diocesan authorities; teacher supply agencies; Careers Wales companies; Governors Wales; the Education Workforce Council; the Recruitment and Employment Confederation; and those bodies listed in Schedule 1 of the Education Workforce Council (Membership and Appointment) (Wales) Regulations 2014.
- **Overview** This document sets out the reporting arrangements for cases of professional misconduct and professional incompetence in the education service.
- Action All employers and agents to have regard to this guidance when they cease to use a practitioner's or other person's services, or might have ceased to have used a practitioner's or other person's services had that person not ceased to provide those services. This guidance replaces existing Welsh Assembly Government Circular No: 018/2009 Reporting Misconduct and Incompetence in the Education Service (2009).
- Further
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- AdditionalThis document can be accessed from the Welsh Government'scopieswebsite at www.gov.wales/educationandskills
- **Related documents** *Keeping learners safe: The role of local authorities, governing bodies and proprietors of independent schools under the Education Act* 2002 Guidance document no: 158/2015 (2015)

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1. Introduction

1.1 The Education (Wales) Act 2014 reconfigures the General Teaching Council for Wales to form the Education Workforce Council ('the EWC' or 'the Council') and places a new requirement for other professionals in the education workforce to professionally register in the same way as school teachers already do.

1.2 From 1 April 2015, the EWC became the regulatory body for all school and further education (FE) based practitioners in Wales.

1.3 The Safeguarding Vulnerable Groups Act 2006 ('the SVGA') and the Education Workforce Council (Main Functions) (Wales) Regulations 2015 place a duty on all employers and agents in Wales to report cases to either the Disclosure and Barring Service (DBS) or the EWC where they have ceased or may have ceased to use the services of a registered person on grounds of misconduct or incompetence.

1.4 The guidance provides detailed statutory procedures for employers and agents to follow when making reports to either the DBS or the EWC. **All employers and agents should follow this guidance**.

1.5 This guidance should not be regarded as authoritative legal advice. If there is any doubt as to the application or interpretation, advice should be sought from a legal advisor.

1.6 This guidance replaces Welsh Assembly Government Circular No: 018/2009 *Reporting Misconduct and Incompetence in the Education Service*, issued in September 2009.

2. Circumstances in which cases need to be reported directly to the DBS

2.1 A regulated activity provider (often employers and service providers) is under a legal duty to refer information to the DBS under the SVGA when both of the following conditions are met.

- The regulated activity provider withdraws permission for the person to carry out regulated activity, or would have done if the person had not otherwise ceased (e.g. resigned).
- The regulated activity provider thinks that:
 - the person has been convicted or cautioned for a relevant offence
 - the person has engaged in relevant activity
 - the harm test is satisfied¹.

2.2 The SVGA also places a legal duty on personnel suppliers to refer information to the DBS if it becomes aware that a person it has supplied to a regulated activity provider has ceased to carry out regulated activity in accordance with the above, or if it ceases to act on behalf of that person for the same reasons.

2.3 The SVGA provides a power for local authorities (LAs), keepers of registers and supervisory authorities to make a referral to DBS if they think a person has been removed from regulated activity under the above circumstances.

2.4 All of the organisations referred to above are under a legal duty to provide the DBS with certain information (if they hold it) if they are requested to do so by the DBS.

2.5 The duty to refer still applies if the person ceases to engage in regulated activity before they are dismissed. This includes where a person resigns or retires, moves to another employer or stays with the same employer but carries out other duties.

2.6 Relevant information should be referred to the DBS as soon as it becomes available. The DBS needs to reduce the time between an individual becoming a known risk and that individual being barred from working with children and/or vulnerable adults.

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¹ If a case is referred to the DBS by an employer or service provider and the DBS does not take any action against that individual, then the case will be forwarded to EWC to consider.

2.7 The information to be referred to the DBS should include any disciplinary matters that would highlight a concern relating to the harm or risk of harm to children or vulnerable adults and other information such as:

- minutes of disciplinary hearings
- witness statements
- dismissal/suspension letter
- social services records.

2.8 The DBS has developed a referral form for employers to use to make case referrals. Employers are requested to complete the appropriate form and return it to the DBS with any supporting documentation. Further information on how to make a referral to the DBS, including the referral forms, is available on the DBS website at www.gov.uk/government/publications/dbs-referrals-form-andguidance.

3. Circumstances in which cases need to be reported directly to the EWC

Misconduct

3.1 Relevant employers are required by Part 7 of the Education Workforce Council (Main Functions) (Wales) Regulations 2015 to make a report to the EWC where they have ceased to use a registered practitioner's services on grounds of misconduct, professional incompetence or conviction of a relevant offence (within the meaning of section 27 of the Education (Wales) Act 2014), where the conduct **does not** involve the harm, or risk of harm, to a child or vulnerable adult. This could include cases where the practitioner has, for example, falsified coursework, or stolen money from the school or FE institute.

3.2 A report is also required where the employer might have ceased to use the registered practitioner's services on one of those grounds had they not already ceased to provide the services. A relevant employer is therefore required to make a report if the registered practitioner resigns in circumstances where they have been dismissed on those grounds.

3.3 Agents are required to make a report to the EWC where an agent has terminated arrangements for a registered practitioner on grounds of misconduct, professional incompetence, or conviction of a relevant offence where the conduct **does not** involve the harm, or risk of harm, to a child or vulnerable adult.

3.4 A report is also required when the agent might have terminated arrangements on such grounds if the registered practitioner had not terminated them; or might have refrained from making new arrangements for a registered practitioner on such grounds if the registered practitioner had not ceased to make themselves available for work.

3.5 Where a registered practitioner resigns while disciplinary proceedings for an allegation of gross misconduct are pending or incomplete, the relevant employer or agent should complete the disciplinary proceedings so far as possible and advise the staff member that they will be doing so. In the case of resignation in such circumstances, governing bodies need to arrive at a view on the basis of all available evidence as to whether dismissal would have been the appropriate outcome if resignation had not taken place.

3.6 The EWC may also consider cases of alleged misconduct against a registered practitioner that are referred directly to it from a person other than an employer or agent (e.g. a parent/carer or colleague), provided the alleged misconduct **does not** involve the harm, or risk of harm, to a child or vulnerable adult. In this case a duly authorised officer of the Council decides if the case should be investigated.

3.7 Those cases where a registered practitioner has been dismissed (or would or might have been dismissed had they not resigned) because they have harmed, or pose a risk of harm, to a child or vulnerable adult must be referred directly to the DBS by employers and agents following the guidance set out in section 2 of this document.

3.8 Cases should be reported to the EWC promptly, preferably within a month of ceasing to use a registered practitioner's services. It is particularly important that reports contain the full facts of the case and are accompanied by copies of any supporting evidence, such as statements relating to the misconduct, notes of any interviews with the practitioner, and minutes of any disciplinary hearings. Schedule 5 to the Education Workforce Council (Main Functions) (Wales) Regulations 2015 set out in Annex A details the information that should be provided to the EWC by employers and agents.

3.9 Employers and agents should also inform the practitioner in question that the circumstances of their case will be reported to the EWC to be considered under their disciplinary procedures. The employer or agent may find it helpful to give the practitioner a copy of this guidance and a copy of the EWC guidance on its disciplinary procedures, copies of which can be obtained by contacting the EWC at the address provided in Annex D, or by accessing it on the EWC website at www.ewc.wales.

3.10 Once a report has been received the EWC will investigate the case under its disciplinary procedures. The outcome of the disciplinary proceedings will determine whether the practitioner is eligible to remain on the Council's register. The Council will also deal in the same way with cases of professional incompetence or cases where a registered practitioner has been convicted at any time of a relevant offence, or it appears that a registered practitioner may be so guilty or have been so convicted.

Routes for referring cases of misconduct for practitioners and others



Incompetence

Reporting arrangements for professional incompetence are not changed in this instance. Employers and agents are still required to report cases of professional incompetence relating to a registered practitioner directly to the EWC. A report must be made where:

- an employer:
 - has ceased to use the services of a registered practitioner on a ground relating to their professional incompetence
 - might have ceased to use the services of a registered practitioner on that ground had they not ceased to provide these services
- an agent:
 - has terminated arrangements for a worker who is a registered practitioner to carry out work on grounds relating to their professional incompetence
 - might have terminated arrangements on grounds relating to their professional incompetence if the registered practitioner had not terminated them
 - might have refrained from making new arrangements for a registered practitioner on grounds relating to their professional incompetence if the worker had not ceased to make themselves available for work.

Schedule 5 to the Education Workforce Council (Main Functions) (Wales) Regulations 2015 set out at Annex A details the information that should be provided to the EWC by employers and agents.

Referral route for cases of professional incompetence

Employer or agent

- Dismissed the registered practitioner/ceased to use the practitioner's services.
- Might have dismissed the practitioner/ceased to use the practitioner's services had they not resigned or similar.

Refer case to the EWC

4. Other instances where a report should be made to either the DBS or the EWC

Compromise agreements/settlements

4.1 If an employer or agent reaches a compromise agreement/settlement with a registered practitioner that they may leave employment and the circumstances giving rise to this fall within sections 2 and 3 of this guidance, the employer or agent still has a duty to report the case to the DBS or to the EWC in accordance with the procedures set out in sections 2 and 3. A Careers Wales company reaching a compromise agreement/settlement with a member of staff undertaking a regulated activity will also have a duty to report the case to the DBS.

Students

4.2 Unless acting as personnel suppliers, initial teacher training institutions and FE institutions that provide courses of training for nursery nurses and other child care workers are not required by law to report convictions or other misconduct by students on those training courses to the EWC. They are, however, required to report a case under the SVGA to the DBS if the circumstances indicate that the person is unsuitable to work with children and/or vulnerable adults and should be barred to prevent them seeking work with children and/or vulnerable adults in another area. Such circumstances might arise where an institution withdraws a person from a training course as a result of a conviction or misconduct involving children or vulnerable adults.

4.3 Where a initial teacher training institution or FE institution is acting as a personnel supplier there is a duty on them to report information to the DBS under the SVGA, if a person has harmed, or posed a risk of harm, to a child or vulnerable adult.

5. General issues

Other cases

5.1 Where a person working in a regulated activity has been dismissed on the grounds of unsuitability (where an act of misconduct has not occurred) or lack of health or physical capacity to carry out a relevant activity, or in cases that involve non-registered persons (e.g. caretakers, office staff) that do not involve the harm, or risk of harm, to a child or vulnerable adult, the case will need to be dealt with solely under the employer's own disciplinary procedures and not referred to the DBS or the EWC.

Confidentiality of reports

5.2 Reports are dealt with in strict confidence by the DBS and the EWC. All available evidence, case papers and records are stored confidentially and securely. The DBS and the EWC do not comment about individual cases in response to enquiries from the media or the public. When reports are submitted they need to be marked '**private and confidential**'.

Sharing of information

5.3 Generally the EWC and the DBS will only share information² with the practitioner or worker whose case has been reported, but in some instances the EWC or the DBS may share information with the employer or referring party if it is determined it is necessary for them to make comment. It is for the employer (in conjunction with the Local Safeguarding Boards if there are safeguarding concerns) to consider the need to share any information relating to the case with other employers/potential employers.

5.4 In some circumstances, e.g. if a case may lead to barring or restriction, the DBS may disclose factual information to a prospective employer. They may also disclose information to the police.

² Both the EWC and the DBS follow strict policies to protect the identity of witnesses and others when sharing information.

Annex A: Information that should be provided to the EWC by employers and agents

(Extract from the Education Workforce Council (Main Functions) (Wales) Regulations 2015, sections 45, 46 and Schedule 5)

PART 7

Supply of information: employers, agents and contractors

Employer's reports

- **45.** —(1) Schedule 5 (which makes provision in relation to information supplied to the Council) has effect.
 - (2) A relevant employer must report to the Council the facts of a case and provide all the information listed in Part 1 of Schedule 5 that is available to the relevant employer in relation to a registered person where that employer—
 - (a) has ceased to use the services of a registered person on the ground of—
 - (i) misconduct;
 - (ii) professional incompetence; or
 - (iii) conviction of a relevant offence within the meaning of section 27 of the 2014 Act; or
 - (b) may have ceased to use a registered person's services on such a ground had the registered person not ceased to provide those services.
 - (3) The Council must make all information provided to it under this regulation available to—
 - (a) an Investigating Committee; and
 - (b) a Fitness to Practice Committee where it considers that information is relevant to the case referred to it by the employer pursuant to paragraph (1).

Agent's reports

- **46.** —(1) An agent must report the facts of a case to the Council and provide all the information listed in Part 2 of Schedule 5 that is available to the agent in relation to a registered person where that agent—
 - (a) has terminated arrangements on the ground of—
 - (i) misconduct;
 - (ii) professional incompetence; or
 - (iii) conviction of a relevant offence within the meaning of section 27 of the 2014 Act;
 - (b) may have terminated arrangements on such a ground if the registered person had not terminated them; or
 - (c) may have refrained from making new arrangements for a registered person on such a ground if the registered person had not ceased to make themselves available for work.
 - (2) The Council must make all information provided to it under this regulation available to—
 - (a) an Investigating Committee; and
 - (b) a Fitness to Practice Committee where it considers that information is relevant to the case referred to it by the employer pursuant to paragraph (1).

SCHEDULE 5

INFORMATION TO BE SUPPLIED TO THE COUNCIL

PART 1

Information to be supplied by a relevant employer

1. A statement of reasons for ceasing to use the person's services.

2. Employer's records relating to the cessation of the use of the person's services or any contemplated cessation, including notes and minutes of meetings, interview notes, and evidence supplied to or obtained by the employer.

3. Employer's records relating to the conduct which eventually led to the cessation of the use of the person's services or might, but for the person having ceased to provide those services, have led the employer to cease to use that person's services, including notes and minutes of meetings, interview notes, and evidence supplied to or obtained by the employer.

4. Employer's letters, warnings or notices issued to a person in relation to the cessation of the use of that person's services or contemplated cessation, or the conduct which eventually led to the cessation of the use of the person's services or might, but for the person having ceased to provide those services, have led the employer to cease to use that person's services, and the person's replies or representations in response.

5. Any other statements, representations and evidence submitted by a person to the employer in relation to the cessation of the use that person's services or contemplated cessation, or the conduct which eventually led to the cessation of the use of the person's services or might, but for the person having ceased to provide those services, have led the employer to cease to use that person's services.

6. Letter advising of a person's intention to cease to provide services.

7. Any other document or information which the employer considers is relevant to any investigation which may be carried out by an Investigating Committee or any proceedings which may be taken by an Investigating Committee or a Fitness to Practice Committee against a registered person.

PART 2

Information to be supplied by an agent

8. A statement of reasons for terminating the arrangements.

9. Any records relating to the termination of the arrangements or any contemplated termination, including notes and minutes of meetings, interview notes, and evidence supplied to or obtained by the agent.

10. Any records relating to the conduct which eventually led to the termination of arrangements or might, but for the person having terminated arrangements, have led the agent to terminate them, or might, but for the person having ceased to make themselves available for work, have led the agent to refrain from making new arrangements, including notes and minutes of meetings, interview notes, and evidence supplied to or obtained by the agent.

11. Agent's letters, warnings or notices issued to a person in relation to the termination of arrangements, or the conduct which eventually led to the termination of arrangements or might, but for the person having terminated arrangements, have led the agent to terminate them, or might, but for the person having ceased to make themselves available for work, have led the agent to refrain from making new arrangements, and the person's replies or representations in response.

12. Any other statements, representations and evidence submitted by a person to the agent in relation to the termination of arrangements, or the conduct which eventually led to the termination of arrangements or might, but for the person having terminated arrangements, have led the agent to terminate them, or might, but for the person having ceased to make themselves available for work, have led the agent to refrain from making new arrangements.

13. The person's letter terminating arrangements or ceasing to make themselves available for work.

14. Any other document or information which the agent considers is relevant to any investigation which may be carried out by an Investigating Committee or any proceedings which may be taken by an Investigating Committee or a Fitness to Practice Committee against a registered person.

Annex B: Circumstances under which an employer or agent will be under a duty to refer information to the DBS

(Extract from sections 35, 36 and 39 of the Safeguarding Vulnerable Groups Act 2006 (as amended))

35. Regulated activity providers: duty to refer

- (1) Subsection (2) applies to-
 - (a) a regulated activity provider who holds any prescribed information in relation to a person (P) engaged in regulated activity provided by him;
 - (b) ...
- (2) A person to whom this subsection applies must provide [DBS] with the information if—
 - (a) he withdraws permission for P to engage in the activity for a reason mentioned in subsection (3), or
 - (b) he does not withdraw permission for such a reason but would or might have done so if P had not otherwise ceased to engage in the activity.
- (3) The reasons are that the person to whom subsection (2) applies thinks—
 - (a) that paragraph 1, 2, 7 or 8 of Schedule 3 applies to P,
 - (b) that P has engaged in relevant conduct (within the meaning of paragraph 4 or 10 of Schedule 3), or
 - (c) that the harm test is satisfied.
- (4) The harm test is that P may—
 - (a) harm a child or vulnerable adult,
 - (b) cause a child or vulnerable adult to be harmed,
 - (c) put a child or vulnerable adult at risk of harm,
 - (d) attempt to harm a child or vulnerable adult, or
 - (e) incite another to harm a child or vulnerable adult.
- (5) For the purposes of subsection (3)(b), conduct is inappropriate if it appears to the person to whom subsection (2) applies to be inappropriate having regard to the guidance issued by the Secretary of State under paragraph 4(6) or 10(6) of Schedule 3.

- (6) . . .
- (7) This section does not apply if the conditions specified in subsection (2) are fulfilled before the section is commenced.

36. Personnel suppliers: duty to refer

- A personnel supplier must provide [DBS] with any prescribed information it holds in relation to a person (P) who has been supplied by it to another person if the supplier knows that P has ceased to be engaged in regulated activity . . . in the circumstances mentioned in subsection (2)(a) or (b) of section 35.
- (2) A personnel supplier which is an employment agency or employment business must provide [DBS] with any prescribed information it holds in relation to a person (P) for whom it acts if—
 - (a) the agency or business determines to cease to act for P for a reason mentioned in subsection (4), or
 - (b) it does not determine to cease to act for P for such a reason but would or might have done so if its arrangement with, or employment of, him had not otherwise come to an end.
- (3) A personnel supplier which is an educational institution must provide [DBS] with any prescribed information it holds in relation to a student (P) following a course at the institution if—
 - (a) the institution determines to cease to supply P to another person for him to engage in regulated . . . activity for a reason mentioned in subsection (4),
 - (b) the institution determines that P should cease to follow a course at the institution for a reason mentioned in subsection (4), or
 - (c) it does not determine as mentioned in paragraph(a) or (b) for such a reason but would or might have done so if P had not otherwise ceased to engage in the activity or ceased to follow the course.

- (4) The reasons are that the personnel supplier thinks—
 - (a) that paragraph 1, 2, 7 or 8 of Schedule 3 applies to P,
 - (b) that P has engaged in relevant conduct (within the meaning of paragraph 4 or 10 of Schedule 3), or
 - (c) that the harm test is satisfied.
- (5) The harm test is that P may—
 - (a) harm a child or vulnerable adult,
 - (b) cause a child or vulnerable adult to be harmed,
 - (c) put a child or vulnerable adult at risk of harm,
 - (d) attempt to harm a child or vulnerable adult, or
 - (e) incite another to harm a child or vulnerable adult.
- (6) For the purposes of subsection (4)(b), conduct is inappropriate if it appears to the personnel supplier to be inappropriate having regard to the guidance issued by the Secretary of State under paragraph 4(6) or 10(6) of Schedule 3.
- (7) An employment agency acts for a person if it makes arrangements with him with a view to—
 - (a) finding him employment with an employer, or
 - (b) supplying him to employers for employment by them.
- (8) An employment business acts for a person if it employs him to act for and under the control of other persons in any capacity.
- (9) In this section "employment" has the same meaning as in the Employment Agencies Act 1973 (c. 35).
- (10) This section does not apply if the conditions specified in subsection (1), (2) or (3) are fulfilled before the section is commenced.

39. Local authorities: [power] to refer

(1) A local authority [may] provide [DBS] with any . . . information they hold relating to a person if the first and second conditions are satisfied.

- (2) The first condition is that the local authority thinks—
 - (a) that paragraph 1, 2, 7 or 8 of Schedule 3 applies to the person,
 - (b) that the person has engaged in relevant conduct (within the meaning of paragraph 4 or 10 of Schedule 3) occurring after the commencement of this section, or
 - (c) that the harm test is satisfied.
- (3) The harm test is that the person may—
 - (a) harm a child or vulnerable adult,
 - (b) cause a child or vulnerable adult to be harmed,
 - (c) put a child or vulnerable adult at risk of harm,
 - (d) attempt to harm a child or vulnerable adult, or
 - (e) incite another to harm a child or vulnerable adult.
- (4) The second condition is that the local authority thinks—
 - (a) that the person is [or has been, or might in future be, engaged] in regulated activity . . ., and
 - (b) (except in a case where paragraph 1 [or 7] of Schedule 3 applies) that [DBS] may consider it appropriate for the person to be included in a barred list.
- (5) A local authority may provide [DBS] with any . . . information it holds relating to a person if—
 - (a) the local authority think that a person has engaged in relevant conduct (within the meaning of paragraph 4 or 10 of Schedule 3) occurring before the commencement of this section, and
 - (b) the condition in subsection (4) is satisfied.
- (6) For the purposes of subsection (2)(b) or (5)(a), conduct is inappropriate if it appears to the local authority to be inappropriate having regard to the guidance issued by the Secretary of State under paragraph 4(6) or 10(6) of Schedule 3.
- (7) "Local authority" has the same meaning as in section 1 of the Local Authorities (Goods and Services) Act 1970 (c. 39).

Annex C: Definitions

Definition of a 'registered practitioner'

'Registered practitioner' means:

- a person who is registered with the EWC
- a person who was registered with the EWC at the time of any alleged conduct or offence on their part
- a person who has made an application to be registered with the EWC.

Definition of a 'relevant employer'

The Education (Wales) Act 2014 regulations refer to a 'relevant employer' or an 'agent' as being the body who is required to make a report.

'Relevant employer' has the meaning set out in section 36(4) of the Education (Wales) Act 2014, i.e. 'a person who employs or otherwise engages registered persons to provide relevant services in Wales'.

In the case of a maintained school, the employer would usually be the relevant LA. While maintained schools can submit reports themselves, they are advised to discuss the matter with their LA. Where a referral is made by a school, it should usually be made by the headteacher on behalf of the governing body.

Definition of an 'agent'

An agent is a person who makes arrangements for another person to carry out work at the request of or with the consent of a relevant employer (whether or not under a contract). Agents can include employment agencies such as teacher supply agencies, contractors who provide services (e.g. catering) in schools or FE institutions, voluntary organisations which provide people to work with children, initial teacher training institutions, other institutions which provide courses of study for nursery nurses and other childcare workers.

Definition of a 'relevant offence'

A relevant offence, in relation to a registered practitioner, has the meaning set out in section 27(1) of the Education (Wales) Act 2014, i.e. '(a) in the case of a conviction in the United Kingdom, a criminal offence other than one having no material relevance to the person's fitness to be a registered person in the relevant category of registration; (b) in the case of a conviction elsewhere, an offence which, if committed in England and Wales, would constitute such an offence as is mentioned in paragraph (a)'.

Annex D: Key contacts

Education Workforce Council

Contact

Fitness to Practise Team 9th Floor Eastgate House 35–43 Newport Road Cardiff CF24 0AB Tel: 029 2046 0099 Fax: 029 2047 5850 e-mail: fitnesstopractise@ewc.wales Website: www.ewc.wales

Disclosure and Barring Service

Contact

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