



Department
for Education

Teacher misconduct: regulating the teaching profession

Government response to consultation

29 April 2022

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Introduction

On 1 February 2022, the Department for Education published a consultation on proposed changes to the '**Teacher misconduct regulatory regime**'. The consultation sought views only on the changes proposed.

The regulatory regime operated by the Teaching Regulation Agency, on behalf of the Secretary of State for Education, not only protects children but also helps to maintain public confidence in the teaching profession and uphold proper standards of conduct.

It is only right that we keep this regime under review, and where possible look to improve our policies, processes and procedures, and take seriously any feedback (including judgments made by the High Court, relevant case law etc.) that suggests improvements could be made, particularly where these impact on child welfare, safety and safeguarding.

The public consultation sought views on several proposals to broaden the scope of the teacher misconduct provisions and took place over a six-week period. The proposals included broadening the provisions to include persons who commit misconduct when not employed as a teacher, but who have previously carried out teaching work; to a wider range of education settings; and make provision for the Secretary of State to consider referrals of serious teacher misconduct regardless of how the matter comes to his attention. The consultation closed on 14 March 2022.

We are proposing to make the changes to the teacher misconduct regime on which we consulted, when a suitable legislative opportunity becomes available.

Summary of responses received and the government's response to the consultation

This section sets out a summary of the responses that we received. It also sets out where we have decided to make additional changes as a result of consultation responses.

The consultation comprised of seven questions. Six questions related to changes being proposed and one sought comment on whether the proposed changes impacted on those individuals with a protected characteristic under the Equalities Act 2010.

The responses have been important to understand stakeholders and the public's views on whether the regulatory regime should be broadened. We are grateful to those respondents who have shared their views with us. We have reflected carefully on every response and will continue to keep in mind the views and concerns expressed by respondents and will consider them alongside our proposals when we are able to take this work forward.

Not every respondent submitted an answer to every question. The number of responses analysed below therefore varies from question to question. Throughout this document, percentages are expressed as a proportion of those answering each question, rather than a percentage of the total responses.

Due to rounding percentage figures may not always add up to 100%.

This analysis does not include issues raised which were outside the scope of the consultation and/or the current regulatory regime.

80 organisations and individuals responded to the consultation; these include responses from, schools (including MATS), FE colleges, Higher Education settings, local authorities, legal firms acting on behalf of the Teaching Regulation Agency (TRA), panel members, members of the public and national representative organisations.

We are grateful for the care and attention given to, and level of detail that people provided in, their responses.

A list of organisations that responded (which did not ask to remain anonymous) can be found at Annex A.

Common Themes identified through consultation

Teachers covered by the teacher misconduct regime

The consultation suggested broadening the scope of the teacher misconduct regime to enable the TRA to consider all referrals of serious misconduct committed by any individual who has at any time been employed or engaged to undertake teaching work in a relevant establishment. Following the supportive responses, we have not made any additional changes to this proposal. The consultation response section below reiterates our rationale for taking this forward.

Relevant settings covered by the teacher misconduct regime

The consultation proposed widening the range of relevant settings to include a range of other types of settings, including providers of online education, to ensure the TRA is able to consider serious misconduct of teachers working in, and to prevent prohibited individuals from being employed to undertake teaching work in these settings.

Internal referrals of serious misconduct

The consultation sought views on whether the Secretary of State should be able to consider referrals of serious misconduct brought to his attention through officials' normal day to day duties. The current teacher misconduct regime relies solely on an external referral being made to the TRA. We want to ensure that we continue maintain the independence of the TRA in the system whilst also enabling DfE officials to respond to information that they become aware of, and so will make it clear in guidance that DfE officials must not pro-actively seek out referrals.

Equalities Assessment

The consultation sought views on whether the proposed changes would have any positive or negative impact on those with a protected characteristic. Just under half of the respondents commented on this section. We will continue to monitor this to ensure we comply with the Equality Act 2010, and will consider it further both when we identify a suitable legislative vehicle as well as during any process to implement the changes.

Consultation Responses

Teachers covered by the teacher misconduct regime

Q6 – Do you agree that the regulatory regime should apply to those who have taught in the past but subsequently commit misconduct whilst not employed or engaged in teaching work in a relevant setting?

We received 80 responses to this question.

Response:	Total	Percent
Yes	61	76%
No	10	13%
No opinion	3	4%
Don't know	6	8%

Consultation Findings

76% of respondents agreed that the regulatory regime should apply to those who have previously taught but commit misconduct whilst not employed or engaged as a teacher in a relevant establishment to ensure children and young people were safeguarded and protected. Respondents thought the system should apply to those who are on maternity leave, who work as a supply teacher, be extended to any type of school setting if the misconduct is of a safeguarding nature, cover those undertaking online/private tutoring and anyone who considers returning to the teaching profession at a point in the future.

Of the 13% that did not agree with the proposal some thought that it went too far in that it would not be possible to take action against every ex-teacher that had worked in education. Others thought it should only apply to those who were active in education at the time of the misconduct, that a time limit should be applied to the proposal, and that the conduct would instead be picked up either by the person's place of work at the time they committed the misconduct or through current law practices, and that any new proposal should not be considered retrospectively.

Government Response

We welcome the support on this proposal. Whilst there is concern that this proposal is too far reaching, the consultation was clear that in deciding whether it is necessary and proportionate to take a case forward, the TRA will consider alongside the public interest test, the seriousness of the behaviour, any mitigation presented by the teacher, the length of time away from the teaching profession, any child protection matters and the likelihood of returning to the profession. The Secretary of State should continue to

reserve the right to consider each case on its own individual merits based on the evidence presented to him.

Q7 - Do the public interest and proportionality tests explained above strike the right balance between protecting children from unsuitable teachers and considering how long ago the person last taught and whether the person is likely to return to the classroom?

We received 80 responses to this question.

Response:	Total	Percent
Yes	52	65%
No	15	19%
No opinion	5	6%
Don't know	8	10%

Consultation Findings

65% of respondents agreed that the proposal was sufficiently clear on how the public interest and proportionality tests would be applied to these types of cases if referred to the TRA for consideration. Of those that provided further comment they did not think a time limit should be imposed as the time they have been out of teaching was irrelevant. The teaching profession is held in high regard with teachers holding a position of trust, and therefore individuals should always expect that their conduct will be measured against the teaching standards.

Of those that answered “No (19%), some thought that existing due diligence checks by employers at appointment stage would be sufficiently robust to remove inappropriate candidates, the proposal allowed for misuse of the referral system, or that it was not necessary, proportionate or in the public interest to put individuals who are not engaged in teaching work under investigation and potential sanction by the TRA. Others thought that assessing the likelihood of a person returning to the profession was very difficult to do, and without setting a time limit or producing additional guidance it would be difficult for TRA staff to make a sound judgment.

Government Response

As for question 6 above, we welcome the support on this proposal. Whilst there is concern that this proposal is too far reaching, the consultation was clear that in deciding whether it is necessary and proportionate to take a case forward, the TRA will consider alongside the public interest test, the seriousness of the behaviour, any mitigation presented by the teacher, the length of time away from the teaching profession, any child protection matters and the likelihood of returning to the profession. The Secretary of

State should continue to reserve the right to consider each case on its own individual merits based on the evidence presented to him.

Relevant settings covered by the teacher misconduct regime

Q8 - Do you agree the teacher misconduct regime should be extended to cover the Further Education and Post-16 providers described?

We received 80 responses to this question.

Response:	Total	Percent
Yes	69	86%
No	4	5%
No opinion	6	8%
Don't know	1	1%

Consultation findings

86% of respondents welcomed the proposal to extend the misconduct regime to FE and Post-16 Providers. Respondents agreed that it was only right for individuals working in these settings to be subject to the same misconduct regime as teachers. This would provide a consistent approach and better protection across all schools and colleges within the state funded education system, and ensure that learners under the age of 19 are protected wherever they are receiving their education. Others agreed that it should apply to all establishments that are required to comply with the department's statutory guidance, 'Keeping children safe in education' (KCSIE) and that by doing so it will reduce the safeguarding risk of a prohibited person trying to work between the different sectors. Some respondents were also of the view that it should be extended to Higher Education settings on the basis that they may also have responsibility for young people aged under 19 and vulnerable adults.

Of those that answered No (5%), they thought that young people over the age of 16 years old were legally allowed to make their own decisions and that they should be educated about the dangers. Other respondents said that there should be as little regulation as possible to post-16 educational settings, and that individuals are generally not from a pure teaching background and would require a different panel and guidelines.

Government Response

It is important that the teacher misconduct regime remains aligned with current policy and more importantly the different ways children and young people are being educated. Whilst we note the comments that there should be as little regulation as possible on post-16 education settings and that staff may not always be from a teaching background, FE

colleges are required by law to have regard to the department’s statutory guidance, ‘Keeping children safe in education’ when carrying out their duties to safeguard and promote the welfare of children. FE colleges, Special Post-16 Institutions and Independent Training Providers should already have measures in place to ensure that all their staff who work directly with children read at least Part one of KCSIE to ensure that they fully understand their safeguarding responsibilities. They are also already bound by the safeguarding responsibilities set out in their Funding Agreement with the Education and Skills Funding Agency (ESFA), which includes a requirement to not employ a prohibited teacher.

Whilst we have noted the comments about extending the proposals to include Higher Education (HE) institutions, this sector has greater institutional autonomy and so is responsible for making decisions independent of government, and students who study in HE institutions are generally aged 18 or over. Therefore we do not propose extending the teacher misconduct regime to include HE. Individuals working in an HE institution are covered by relevant legislation if they are engaging in regulated activity i.e. working with children or vulnerable adults.

Q9 - Do you agree that online education providers should also be covered by the teacher misconduct regime?

We received 80 responses to this question.

Response:	Total	Percent
Yes	70	88%
No	2	3%
No opinion	5	6%
Don't know	3	4%

Consultation findings

88% of respondents supported this proposal. Of those that provided additional comments some thought that teaching online should be treated the same as in-person teaching because individuals continue to be in a position of trust. Others thought it was appropriate for online education providers to be brought into scope of the TRA’s remit due to the increase of online learning brought about by the recent COVID-19 pandemic and various education recovery programmes. Many also commented that there was a greater risk of pupils being groomed in the online space and that it was an area that needed to be taken very seriously to help improve safeguarding.

Of the 3% that did not agree with the proposal they thought that the use of the internet must not be restricted by regulation, online providers would be covered by criminal and civil law proceedings and this type of education is often delivered by individuals outside of the UK which would create a disparity in the delivery of such provision.

Government Response

We welcome the support to bring online providers into scope of the TRA's remit, and note the concerns raised about the potential dangers for children of online education. We will continue to consider how we might use the framework for the proposed Online Education Accreditation Scheme to define those online education providers that should be brought within the teacher misconduct regime.

Internal referrals of serious misconduct

Q10 - Do you agree DfE officials should be able to make a referral to the TRA for consideration?

We received 80 responses to this question.

Response:	Total	Percent
Yes	56	70%
No	12	15%
No opinion	9	11%
Don't know	3	4%

Consultation findings

70% of respondents agreed that DfE officials should be able to make a referral to the TRA. Of those that provided additional comments, some thought it did not make sense for officials not to be able to make a referral, it would allow for more swift referrals to be made and investigations to be carried out properly. Others thought it was everyone's responsibility to safeguard children and young people and therefore anyone with a genuine and legitimate concern should be able to make a referral to the TRA. It was also highlighted that it would close the gap where there was potential for cases to be left unheard or referrals not being made by schools, and may help to support whistleblowing cases brought to the Secretary of State's attention as a prescribed person for whistleblowing disclosures.

15% of respondents did not agree with this proposal. They were concerned that the teacher misconduct regime would no longer maintain its independence as the Secretary of State would ultimately be the referrer and the decision-maker on whether a prohibition order should be imposed. It was highlighted that there is potential to create an imbalance in the current system, and scope for cases that bring about political interest or cases of a malicious nature to be referred inappropriately. Some respondents also felt that there is scope for this proposal to undermine the authority of school leaders.

Government Response

Whilst we welcome the fact that over half of respondents agreed with this proposal, we note the concerns raised by those who did not agree. We will ensure that guidance is absolutely clear that referrals should only be considered for serious misconduct and only where this is uncovered during the normal course of official's duties. We will also ensure, as per the process for all referrals to the TRA, that the decision-maker remains impartial to the case and that there is no conflict of interest with the panellists. All decisions will continue to be published to ensure transparency and to make clear the considerations of both the panel and decision maker.

Q11 - Do you agree any change should be clear that a referral can only stem from the normal course of a DfE officials' duties?

We received 80 responses to this question.

Response:	Total	Percent
Yes	50	63%
No	13	16%
No opinion	9	11%
Don't know	8	10%

Consultation findings

63% of respondents agreed with this proposal. Some thought that if the proposal extended beyond officials' days to day duties there was a risk that it could undermine trust the teaching profession has in the TRA to be fair and impartial, that a verification process must be built into the process to safeguard against abuse of position by officials. It was also highlighted that an official should though not be precluded from submitting a referral in their capacity as a member of the public and that the expression 'normal course' should be defined.

Of the 16% that did not agree with the proposal some thought that it was only right and proper for information about inappropriate conduct to be forwarded on at any time, in or outside of normal course of duties. Professionals have a duty of care at all times, and should be reminded of the Nolan principles which we are all held accountable to as professionals.

Government Response

We welcome the comments on this proposal, about how we will ensure that referrals are only made by officials where the alleged misconduct is uncovered during the course of their normal day to day duties. As set out in the consultation we will ensure that guidance is clear that departmental officials are not permitted to pro-actively seek out referrals and

should only refer cases of serious misconduct. The TRA has processes in place to ensure that only cases of serious misconduct are taken forward; each case must meet the threshold tests to be able to be progressed. Recommendations on prohibition will continue to be made by an independent panel following the legal process and on the balance of probability after assessing all the evidence available to it, and the final decision whether or not to prohibit will be taken by the impartial decision maker based on the recommendation of the panel. This proposal will however not prevent officials in their personal capacity for example, as a parent or a member of the public, to be able to refer to the TRA if they became aware of serious misconduct.

Equalities Assessment

Do you have any comments about the potential impact, both positive and negative, of our proposals on individuals on the basis of their protected characteristics? Where any negative impacts have been identified, do you know how these might be mitigated?

We received 42 responses to this question.

Consultation findings

Of the 53% that responded, some thought that we must share the data following our impact analysis to be able to demonstrate that there will be no adverse impact on those with protected characteristics whether it be direct and/or indirect discrimination, and that such information should be a matter of public report and scrutiny by Ministers. It was highlighted that because the workforce was predominantly female it would be adversely impacted and further work would need to be carried out by DfE to understand if age (as a result of retirement) or disability (as a result of teachers leaving the classroom to work in online settings) would be a significant factor in expanding the reach of these proposals, however it was recognised that the need to prevent risk of harm to young children outweighed any detrimental impact. It was also noted that whilst inclusivity is essential the protected characteristics should not stop an individual from being competent and/or compliant when teaching anyone, including vulnerable adults, in any institution.

Government Response

We would like to thank those respondents who answered this question and provided comments. We have carefully considered all responses and would like to reassure respondents that only cases of serious misconduct should be considered by the TRA, all other misconduct including incompetence should be dealt with locally by employers, and guidance will make this very clear. In all cases, the TRA expect local procedures to have been followed before a referral is made. This means the TRA will often have the information it needs to be able to identify vexatious or malicious complainants at an early stage. The TRA can close a case at any stage during an investigation where the initial threshold to investigate is no longer met (e.g. complaint identified as vexatious). We will

of course continue to monitor our processes to ensure we comply with the Equality Act 2010, and will consider it further both when we identify a suitable legislative vehicle as well as during any process to implement the changes.

Conclusion

We are grateful to all those who took the time to respond to the consultation and share their views. We believe that the changes we propose to implement at the next legislative opportunity will help to better safeguard and protect children and young people who are accessing their education across a wider range of settings.

Annex A: List of organisations which responded to the consultation¹ (excluding those requesting their response remain confidential)

Queen Eleanor Primary Academy
Harrytown Catholic High School
Keystone Knowledge
The Yehudi Menuhin School
Fryent Primary School
St Joseph's Primary School, Chelsea
Washwood Heath Multi Academy Trust
Hook and Warsash CofE Academy
The Rivers C of E Academy Trust
Brookes
PGSF Ltd
Armonia Ltd (Independent Learning Provider)
Carfax Education
Tradeskills4U
Education and Training Foundation
Nicola Hartley
Paul Millett
Michael Mcfall
Susan Davies
Chris Rushton
Ian Carter
Alan Wells
Wiltshire Council
Lancashire County Council
Ofsted
Capsticks Solicitors LLP
Education Workforce Council
NASUWT
NAHT

¹ We have not listed the names of those who requested their responses were kept confidential. However, these views were included in the analysis.



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