

Reporting Cases of Misconduct or Professional Incompetence in the Education Service

National Assembly for Wales

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**Guidance
Circular**



**Standards and
Conduct of
Teachers**

Title of document:	Reporting Cases of Misconduct or Professional Incompetence in the Education Service.
Audience:	Governing Bodies, Local Education Authorities, Teaching and other unions, Church Diocesan authorities, teacher supply agencies, FE Institutes, HEI Institutes, proprietors of independent schools, heads of maintained schools, heads of independent schools, heads of foundation schools, Careers Wales companies
Overview:	<p>This document clarifies:</p> <ul style="list-style-type: none"> • the categories of person to whom the reporting requirement applies; and • when reports need to be made to the National Assembly for Wales and to the General Teaching Council for Wales in cases of misconduct or professional incompetence
Action required:	All employers and agents to have regard to this guidance when they cease to use a person's services, or might have ceased to have used a person's services had the person not ceased to provide those services.
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Related Documents:	Child Protection: Preventing Unsuitable People from Working with Children and Young Persons in the Education Service (NAW circular 34/02) Staff Disciplinary Procedures in Schools (NAW circular 45/2004)

CONTENTS

Section	Paragraph
Summary	
Section 1: The Legal Framework	
The Education (Supply of Information) (Wales) Regulations 2003	1.1 - 1.2
Section 142 of the Education Act 2002	1.3
Section 2: Definitions	
Definition of a 'person'	2.1 - 2.2
Definition of a 'relevant employer'	2.3 - 2.5
Definition of an 'agent'	2.6
Section 3: Other instances where a report should or can be made	
Cases from someone other than an employer or agent	3.1
Compromise agreements	3.2
Students	3.3 - 3.5
Careers Wales companies	3.6
Section 4: Misconduct	
When to make a report to the National Assembly for Wales	4.1 - 4.7
Section 5: Incompetence	
When to make a report directly to the General Teaching Council for Wales	5.1 - 5.3
Section 6: Reports	
Information that should be supplied	6.1
How reports are dealt with	6.2
The role of the Department for Education and Skills	6.3
The role of the General Teaching Council for Wales	6.4
Section 7: General Issues	
Confidentiality of reports	7.1
Sharing of information	7.2 - 7.3
Annex	
Information to be supplied by a Relevant Employer	Page 11
Information to be supplied by an Agent/Supply Agency	Page 12

REPORTING CASES OF PROFESSIONAL INCOMPETENCE AND MISCONDUCT

Summary

In accordance with the Education (Supply of Information)(Wales) Regulations 2003, employers of teachers and others whose work relates to the provision of education, and teacher supply agencies must report certain cases of *professional incompetence* to the General Teaching Council for Wales and certain cases of *misconduct* to the National Assembly for Wales. A copy of the Regulations can be accessed on the Stationery Office website at:

<http://www.wales-legislation.hmsso.gov.uk/legislation/wales/wsi2003/20030542e.htm>

- All reports of misconduct received by the National Assembly for Wales are passed on to the Department for Education and Skills (DfES). DfES will either deal with cases themselves or they will pass cases onto the General Teaching Council for Wales for them to deal with if there are no issues involving the safety and welfare of children, or medical fitness or the case relates to an unregistered teacher.

This circular offers guidance to employers and teacher supply agencies on when cases must be reported. It replaces the guidance issued in April 2003 (a letter sent to all employers entitled 'Impact of the Education (Supply of Information)(Wales) Regulations 2003). It also expands and clarifies Part 3 of National Assembly for Wales Circular no.34/02 'Child Protection: Preventing Unsuitable People from Working with Children and Young Persons in the Education Sector, and Annex C of National Assembly for Wales Circular no.45/2004 'Staff Disciplinary Procedures in Schools'.

This guidance is non-statutory and 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.

The guidance covers:

- The legal framework - The Education (Supply of Information) (Wales) Regulations 2003 & Section 142 of the Education Act 2002
- Definitions of a 'person', 'relevant employer', and an 'agent'
- Other instances when a report should or can be made
 - Cases from someone other than an employer or agent
 - Compromise agreements
 - Students
 - Careers Wales companies
- Misconduct
 - When to make a report to the National Assembly for Wales

- Incompetence
 - When to make a report to the General Teaching Council for Wales
- Reports
 - Information that should be supplied
 - How reports are dealt with
 - The role of the Department for Education and Skills
 - The role of the General Teaching Council for Wales
- General issues
 - Confidentiality of reports
 - Sharing of information

N.B. prior to public consultation this document has been considered by the School Workforce Advisory Panel (SWAP) whose members have agreed that there appear to be no significant workload issues.

Section 1: The Legal Framework

The Education (Supply of Information) (Wales) Regulations 2003

1.1 The Education (Supply of Information) (Wales) Regulations 2003 require employers of teachers and others whose work relates to the provision of education, and teacher supply agencies, to report cases of professional incompetence to the General Teaching Council for Wales and to report cases of misconduct to the National Assembly for Wales.

1.2 The Regulations replace the relevant provisions of the General Teaching Council for Wales (Disciplinary Functions) Regulations 2001 and the Education (Restriction of Employment) (Wales) Regulations 2000 and add in new provisions governing teacher supply agencies.

Section 142 of the Education Act 2002

1.3 The Secretary of State for Education and Skills has, in relation to Wales, concurrent powers with the National Assembly for Wales under Section 142 of the Education Act 2002 to bar or restrict a person's employment in the provision of education and other work with children. Directions can be made under Section 142 if the person is unsuitable to work with children; on grounds relating to misconduct; on grounds relating to health and, in relation to the management of independent schools, on grounds relating to professional incompetence. In addition to prohibiting or restricting work which involves the provision of education, directions under section 142 can also apply to work which brings a person regularly into contact with children and which is carried out at the request or with the consent of a relevant employer.

Section 2: Definitions

Definition of a 'person'

2.1 The Regulations are very wide and apply to teachers as well as other non-professional staff, e.g. teaching assistants, caretakers, youth workers.

2.2 So if any person is providing a service to an employer and the employer ceases (or might have done) to use them on a specified ground, the duty to report applies. The duty to report potentially covers the following categories, but this list is not exhaustive.

Teachers in the maintained sector with or without QTS

Lecturers in FE with or without QTS

Teachers in Independent sector with or without QTS

Instructors with or without QTS

Supply teachers with or without QTS

Peripatetic teachers with or without QTS
SEN teachers with or without QTS
Lunchtime supervisors
Nursery nurses
All Careers Wales staff and agents of Careers Wales delivering services in educational institutions
LEA advisors
Support staff (e.g. teaching assistants, lab technicians, IT technicians)
Administrators (e.g. office staff)
Volunteers
Bus/taxi drivers
Caretakers

Definition of a 'relevant employer'

2.3 The Regulations refer to a 'relevant employer' or an 'agent', as being the one who is required to make a report.

2.4 'Relevant employer' has the meaning set out in section 142 of the Education Act 2002, i.e. :

- A local education authority
- A person exercising a function relating to the provision of education on behalf of a local education authority
- The proprietor of a school; or
- The governing body of a further education institution

2.5 In the case of a maintained school, a referral would usually be expected to come from the relevant LEA. While maintained schools can submit reports themselves, they are advised to discuss the matter with their LEA. Where a referral is made by a school, we would usually expect the referral to come from the headteacher on behalf of the governing body.

Definition of an 'agent'

2.6 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 further education 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.

Section 3: Other instances where a report should or can be made

Cases from someone other than an employer or agent

3.1 The General Teaching Council for Wales may also consider cases of misconduct referred to it from a person other than an employer or agent (for example a parent or colleague) and the Chief Executive Officer of the Council decides if the case should be investigated. Reports of this kind should be sent direct to the Council and not to the National Assembly for Wales.

Compromise agreements

3.2 If an employer or teacher supply agency/agent reaches a compromise agreement with a teacher that they may leave employment, the employer or supply agency/agent still has a duty to report the case to the National Assembly for Wales (in cases of misconduct) or to the General Teaching Council for Wales (in cases of incompetence).

Students

3.3 Unless acting as agents, teacher training institutions, and further education institutions which 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. They are, however, advised to report a case to the National Assembly for Wales if the circumstances indicate that the person is unsuitable to work with children and should be barred and placed on List 99 to prevent him or her seeking work with children 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.

3.4 In cases where an applicant's criminal record indicates that he or she is unsuitable to work with children, disclosure can be made direct to DfES.

3.5 If a relevant employer is using a student's services (for example when a student is carrying out teaching practice at a school) and has ceased to do so on a ground of misconduct, there is a duty on the employer (not the institution) to report.

Careers Wales companies

3.6 Careers Wales companies are required to comply with this guidance through their annual contracts with the National Assembly for Wales.

Section 4: Misconduct

When to make a report to the National Assembly for Wales

4.1 Relevant employers are required by the Regulations to make a report to the National Assembly for Wales where they cease to use a person's services on grounds of unsuitability to work with children, misconduct or health where that concerns the safety and welfare of children. A report is also required where the employer might have ceased to use the person's services on one of those grounds had he or she not already ceased to provide the services. An employer is therefore required to make a report if a person is dismissed on one of those grounds or where someone resigns in circumstances where he or she would have been dismissed, or might have been dismissed, on those grounds. The National Assembly for Wales will, in turn refer the matter to DfES.

4.2 The Regulations state that:

A report must be made to the National Assembly for Wales when, an employer;

- (a) has ceased to use a person's service on the grounds -
 - (i) that the person is unsuitable to work with children;
 - (ii) relating to the person's misconduct; or
 - (iii) relating to the person's health where a relevant issue is raised (one that concerns the safety and welfare of children), or
- (b) might have ceased to use a person's services on such a ground had the person not ceased to provide those services.

4.3 It is important that employers report all cases which meet these criteria, including any in which the person resigns on the award of retirement benefits, or is dismissed or resigns as a result of a conviction, or during police enquiries.

4.4 It is also important that employers report cases promptly, preferably within a month of ceasing to use a person's services. Reports should contain full details of the person's misconduct or of the person's unsuitability to work with children or of the person's health as the case may be. Where the person has not been convicted of an offence, the Secretary of State for Education and Skills can only act if the allegation of misconduct is substantiated by other means. In those cases it is particularly important, therefore, that reports are accompanied wherever possible by copies of any supporting evidence, such as statements relating to the misconduct, notes of any interviews with the person, and minutes of any disciplinary hearings (see Annex for further details).

4.5 The employer should also inform the person that the circumstances of his or her case will be reported to the National Assembly for Wales and passed on to DfES so that the Secretary of State can consider whether

action needs to be taken under section 142 of the Education Act 2002 to bar or restrict a person's employment in the provision of education and other work with children. The employer may find it helpful to give the person a copy of this guidance circular.

4.6 In relation to reports by agents, the Regulations state that a report must be made to the Assembly where an agent:

- (a) has terminated arrangements on a ground -
 - (i) that the worker is unsuitable to work with children;
 - (ii) relating to the worker's misconduct; or
 - (iii) relating to the worker's health where a relevant issue is raised (one which concerns the safety and welfare of children);
- (b) might have terminated arrangements on such a ground if the worker had not terminated them; or
- (c) might have refrained from making new arrangements for a worker on such a ground if the worker had not ceased to make himself or herself available for work.

4.7 Where a member of staff resigns while disciplinary proceedings for an allegation of gross misconduct are pending or incomplete, the headteacher (or the chair of governors in the case of allegations against a headteacher) will need to advise the staff member that the disciplinary proceedings will continue to completion. This is necessary to enable the employer to comply with the requirements of the Regulations. In the case of resignation in such circumstances, governing bodies are required 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.

Section 5: Incompetence

When to make a report directly to the General Teaching Council for Wales

5.1 Reportable cases of **professional incompetence** in respect of teachers registered with the Council should be referred directly to the General Teaching Council for Wales.

5.2 A report must be made to the General Teaching Council for Wales when an **employer**:

- (a) has ceased to use the services of a person who is a registered teacher on a ground relating to his or her professional incompetence; or
- (b) might have ceased to use the services of a person who is registered teacher had he or she not ceased to provide those services.

5.3 A report must be made to the General Teaching Council for Wales where an **agent**:

- (a) has terminated arrangements for a worker who is a registered teacher to carry out work on a ground relating to his or her professional incompetence;
- (b) might have terminated arrangements on a ground relating to his or her professional incompetence if the worker had not terminated them; or
- (c) might have refrained from making new arrangements for a worker who is a registered teacher on a ground relating to his or her professional incompetence if the worker had not ceased to make himself or herself available for work.

Section 6: Reports

Information that should be supplied

6.1 The attached annex lists the information that employers and agents/ supply agencies must give to the National Assembly for Wales in cases of misconduct or to the General Teaching Council for Wales in cases of incompetence.

How reports are dealt with

6.2 If a case is reported to the National Assembly for Wales we will acknowledge its receipt and then extract information on a numbers/area/ type basis, before forwarding the report to DfES.

The role of the Department for Education and Skills

6.3 DfES deals with cases involving the safety and welfare of children, issues of medical fitness, or where the person is not a teacher or is an unregistered teacher (e.g. a teacher in an independent school) in relation to both England and Wales. Decisions to bar or restrict employment in these cases are then made by the Secretary of State at DfES (refer to DfES guidance document Child Protection: Procedures for barring or restricting people working with children in education, revised September 2005).

The role of the General Teaching Council for Wales

6.4 The remaining cases of misconduct involving a registered teacher (e.g. a case involving falsifying examination qualifications) are referred by DfES to the General Teaching Council for Wales for investigation under its disciplinary procedures, details of which can be found on the Council's website at www.gtcw.org.co.uk. The outcome of the disciplinary proceedings will determine whether the teacher 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 teacher has been convicted at any time of a relevant offence, or it appears that a registered teacher may be so guilty or have been so convicted.

Section 7: General Issues

Confidentiality of reports

7.1 Cases are dealt with in strict confidence within the National Assembly for Wales and DfES. Papers are kept separately from other files, and access to them is restricted to officers who need to see them in the course of their duties. We 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

7.2 The Assembly will only share information with the teacher or worker whose case has been reported. It is for the employer (in conjunction with the Area Child Protection Committee if there are child protection concerns) to consider the need to share any information relating to the case with other employers/potential employers.

7.3 In some circumstances, for example if a case may lead to barring or restriction, DfES may disclose factual information to a prospective employer. They may also disclose information to the police.

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 his or her 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 his or her 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 his or her services, and the person's replies or representations in relation thereto.
5. Any other statements, representations and evidence submitted by a person to the employer in relation to the cessation of the use of his or her 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 his or her services.
6. Letter advising 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 a Committee against a registered teacher.

INFORMATION TO BE SUPPLIED BY AN AGENT/SUPPLY AGENCY

1. A statement of reasons for terminating the arrangements.
2. 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/supply agency.
3. Any records relating to the conduct which eventually led to the termination of arrangements or might, but for the worker having terminated arrangements, have led the agent/supply agency to terminate them, or might, but for the worker having ceased to make himself or herself available for work, have led the agent/supply agency to refrain from making new arrangements, including notes and minutes of meetings, interview notes, and evidence supplied to or obtained by the agent/supply agency.
4. Agent's/supply agency'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 worker having terminated arrangements, have led the agent/supply agency to terminate them, or might, but for the worker having ceased to make himself or herself available for work, have led the agent/supply agency to refrain from making new arrangements, and the worker's replies or representations in relation thereto.
5. Any other statements, representations and evidence submitted by a person to the agent/supply agency in relation to the termination of arrangements, or the conduct which eventually led to the termination of arrangements or might, but for the worker having terminated arrangements, have led the agent/supply agency to terminate them, or might, but for the worker having ceased to make himself or herself available for work, have led the agent/supply agency to refrain from making new arrangements.
6. Worker's letter terminating arrangements or ceasing to make himself or herself available for work.
7. Any other document or information which the agent/supply agency considers is relevant to any investigation which may be carried out by an Investigating Committee or any proceedings which may be taken by a Committee against a registered teacher.