



Teaching
Regulation
Agency

Teacher misconduct: the prohibition of teachers

Government consultation

25 August 2021

19 October 2021

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Introduction

This consultation seeks the public's views on proposed revisions to '**Teacher Misconduct: the prohibition of teachers - Advice on factors relating to decisions leading to the prohibition of teachers from the teaching profession**'. The advice relates to the arrangements for regulating teachers' professional conduct in England, which are operated by the Teaching Regulation Agency ("the TRA"), on behalf of the Secretary of State for Education.

The advice sets out the factors to be considered by a professional conduct panel (panel) convened for the purpose of the regulation of teacher conduct. Its primary purpose is to inform panel considerations leading to a 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 "conviction, at any time, of a relevant offence".

The advice also provides clarification to all those involved in the prohibition process including those who administer the scheme, those who may make referrals to the TRA about a teacher's conduct, others who attend panel hearings, the decision makers and those who appear before an independent professional conduct panel.

Who this consultation is for

- Panel members
- Employers of teachers in maintained schools (including maintained nursery schools and pupil referral units), non-maintained special schools, independent schools (including academies, 16-19 academies, free schools, alternative provision academies), sixth form colleges, relevant youth accommodation, and children's homes in England
- Teacher employment or supply agencies
- Teachers
- Those who represent teachers in disciplinary matters
- Any other interested party

Issue date

The consultation was issued on 25 August 2021.

Enquiries

If your enquiry is related to the policy content of the consultation you can email:

TRAadvice.CONULTATION@education.gov.uk

If your enquiry is related to the DfE e-consultation website or the consultation process in general, you can contact the DfE Ministerial and Public Communications Division by email: Consultations.Coordinator@education.gsi.gov.uk or by telephone: 0370 000 2288 or via the [DfE Contact us page](#).

Additional copies

Additional copies are available electronically and can be downloaded from [GOV.UK DfE consultations](#).

The response

The results of the consultation and the Department's response will be [published on GOV.UK](#) in Spring 2022.

About this consultation

It is of paramount importance that children are protected when they are at school and there are robust arrangements in place to safeguard and educate pupils effectively. We continually look to improve our policies, processes and procedures and take seriously any feedback, including judgements made by the High Court, for example the Wallace appeal (which said that 'proportionality' and 'exceptional' should be defined) and the McTier appeal (which said that the panel and decision maker should explain their reasoning for their decision in sufficient detail), that suggest improvements could be made, particularly where these impact on child welfare, safety and safeguarding.

The arrangements for regulating the teaching profession (which apply to England only) not only protect children but also help maintain public confidence in the teaching profession and uphold proper standards of conduct. These are all matters of public interest.

A number of the proposed revisions to the advice are intended to provide clarification on certain matters relating to the process and procedures related to the prohibition of teachers from the teaching profession. Others intend to clarify the department's advice to panels about the consideration of evidence, and on the factors to be considered in deciding whether to recommend that a teacher prohibition order should be imposed.

The proposed revisions are described in more detail below, and the consultation only invites views on the revisions proposed.

The advice is not updated routinely, with the last update having been in October 2015.

We would like to hear your views on our proposals.

Respond online

To help us analyse the responses please use the online system wherever possible. Visit www.education.gov.uk/consultations to submit your response.

Other ways to respond

If for exceptional reasons, you are unable to use the online system, for example because you use specialist accessibility software that is not compatible with the system, you may download a word document version of the form and email it or post it.

Reply by email to:

- TRAadvice.CONSULTATION@education.gov.uk

Reply by post to:

Teacher Regulation, School Safeguarding and Safety Team
Department for Education
Bishopsgate House,
Feethams, Darlington, DL1 5QE

Deadline

The consultation closes on 19 October 2021.

Proposed changes to the advice

1 - 4. Introduction – What is a prohibition order and interim prohibition order

Sections 1- 4 of the consultation version largely replicate (with some presentational changes) the contents of the current published advice. The proposed revisions provide further clarity on the regulatory system and advise panels that there may be other types of behaviours or actions not listed in the advice that cross the threshold into unacceptable conduct for a person working in the teaching profession. The key changes are set out below:

About this advice

- a) new text to clarify the status of the advice

Who this advice is for

- a) new text to provide a more comprehensive list of who the advice is for

2. The regulatory system

- a) added hyperlinks and additional information to support referrals to the TRA and the DBS

3. Role of the Disclosure and Barring Service (“DBS”)

- a) inserted footnote to clarify which legislation permits the DBS to hold a list of individuals barred from working with children and vulnerable adults (“the barred list”)
- b) new text to clarify that the TRA and DBS may consider cases in parallel
- c) new text regarding regulated activity and the role of the DBS in safer recruitment

4. What is a prohibition order and interim prohibition order?

- a) new text to Section 4 heading, this section now also covers high level information describing the circumstances in which an interim prohibition might be imposed
- b) new text to clarify the Secretary of State’s powers to impose an interim prohibition order and the purpose of that order
- c) new text to provide additional information on reviewing and setting aside a prohibition order

- d) cross referenced new Section 9 within the advice which explains the process of applying for a prohibition order to be reviewed and set aside
- e) cross referenced new Annex A covering interim prohibition orders, added at the end of the guidance

Question 1: Are the revisions and new text in sections 1-4 helpful? Yes/no/don't know

Why?

5. Panel decision-making criteria

We have made more substantive revisions to 5(i), 5(ii) and 5(iii) to update the list of relevant offence types and the list of behaviours likely to be incompatible with being a teacher. We have also made amendments to clarify what information panels will consider as part of the decision-making process. In addition, we have made some presentational changes which include re-ordering text to make the decision-making process clearer for those who use the advice. Main changes include:

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

- a) new text at the end of the 'criminal conviction' paragraph - case law suggests that there may be exceptional circumstances when a panel will not accept the certificate of conviction as conclusive proof
- b) new text in the 'evidence presented to a panel' paragraph, this provides examples of the other types of sanctions that could be issued by the police and presented to a panel, but is not limited to these
- c) new text explains that where evidence is presented by a recognised educational expert/practitioner, panels should carefully consider the opinion of that person's evidence and what weight should be given to it
- d) new text on how panels should consider hearsay evidence and what weight should be given to it

Question 2: Is the new text helpful? Yes/no/don't know

Why?

5(ii) - Has there been: a) “unacceptable professional conduct”; b) “conduct that may bring the profession into disrepute”; or c) “conviction, at any time, of a relevant offence”?

a) Unacceptable professional conduct

- a) text copied from “conviction, at any time, of a relevant offence” sub-section which describes how the behaviours underlying a conditional or absolute discharge should be considered by a panel
- b) reworded reference to ‘offences shown in the list’ and ‘any of the offences in the list’ to provide clarity that it is not a list of offences per se, but rather that it is a list of offence types, and that behaviours associated with any of the offence types listed might amount to unacceptable professional conduct
- c) clarified that there might be other types of behaviours beyond those listed in the advice that a panel might consider to be ‘unacceptable professional conduct’ and that each case should be considered on its own merits

Question 3: Is the new text and clarification helpful? Yes/no/don’t know

Why?

b) Conduct that may bring the profession into disrepute

- a) text copied from “conviction at any time of a relevant offence” sub-section which describes how the behaviours underlying a conditional or absolute discharge should be considered by a panel
- b) reworded reference to ‘offences shown in the list’ and ‘any of the offences in the list’ to provide clarity that it is not a list of offences per se, but rather that it is a list of offence types and that behaviours associated with any of the offence types listed might amount to conduct that may bring the profession into disrepute
- c) clarified that there might be other types of behaviours beyond those listed in the advice that a panel might consider to be ‘conduct that may bring the profession into disrepute’, and that each case should be considered on its own merits taking into account the circumstances involved

Question 4: Is the new text and clarification helpful? Yes/no/don’t know

Why?

c) Conviction, at any time, of a relevant offence

- a) new text which explains the effect of a conditional discharge or absolute discharge and how it will be treated for the purposes of the TRA’s proceedings
- b) insertion of six new offence types that are likely to be considered as “a relevant offence”, it is important the list remains up to date and relevant, and in the main these changes reflect changes in the law since 2015 - we have added:

harassment and/or stalking; child cruelty and/or neglect; voyeurism (including upskirting); revenge pornography; sexual communication with a child; and controlling or coercive behaviour

- c) updated how we reflect drugs to be considered including in relation to different aspects such as possession for personal use, possession with intent to supply, supply (selling, dealing or sharing), production, and also reflected non classified drugs

Question 5: is the new text describing how convictions for conditional/absolute discharges should be treated helpful? Yes/no/don't know

Why?

Question 6: Do you agree with the proposed addition of the six new offence types that ought to be considered likely to lead to prohibition? Yes/no/don't know

Why?

Question 7: is the additional information on drugs helpful? Yes/no/don't know

Why?

5(iii) – Is a prohibition order appropriate?

Public Interest

- a) added 'Public Interest' as a new sub-heading
- b) clarified that in all cases the panel will consider whether it is in the public interest to prohibit the teacher and in doing so explains that considerations may weigh in favour of and against a teacher
- c) clarified that best practice is that the panel identify in their decision-making process the public interest implicated
- d) insertion of new public interest consideration, that prohibition strikes the right balance between the rights of the individual and the public interest
- e) as a result of the Wallace judgement, clarification that the public interest in 'the maintenance of public confidence in the profession' may include factors weighing both for and against prohibition
- f) clarified that the public interest considerations are not an exhaustive list

Question 8: Is the advice sufficiently clear on public interest considerations? Yes/no/don't know

Why?

Behaviour

- a) added 'Behaviour' as a new sub-heading

- b) updated to provide panels with an up to date list of the types of behaviours that in the Secretary of State's view are considered likely to be incompatible with being a teacher, this includes adding information to cover: abuse of trust leading to a romantic or sexual relationship with a child; sexual misconduct; failure in duty of care; failure in protecting a child; collusion or concealment; and contravention of requirements for the conduct of exams
- c) included a paragraph to reflect the fact that the online element of behaviour has over time become more relevant, the intention is for panels to consider misconduct/abuse that has an online element or is conducted wholly online as seriously as offline

Question 9: Are the proposed revisions to the list of the behaviours helpful?

Yes/no/don't know

Why?

Question 10: Is the new paragraph covering online abuse helpful? Yes/no/don't know

Why?

Mitigation

In the published version of the advice, 'mitigation' has its own stand-alone section. In this consultation version, we have moved 'mitigation' to be a new sub-heading in Section 5(iii), because mitigation presented by the teacher is an important factor in the decision-making process and in recommending whether prohibition is appropriate or not. This section also sets the benchmark against which a panel would determine 'exceptional', by taking into account the exceptional nature of the abilities of the individual as a teacher and the public interest in retaining them in the profession. Other key changes include:

- a) clarified the existing criteria which a panel may use to determine that a recommendation for a prohibition order will not be appropriate
- b) new text clarifies that a panel should not take these criteria in isolation when making its recommendation on whether or not to prohibit but it should also consider and determine what weight it should give to any other mitigation

Question 11: Do you agree that mitigation is best placed within Section 5(iii) Is a prohibition order appropriate? Yes/no/don't know?

Why?

Question 12: Is 'Section 5(iii) Is a prohibition order appropriate' sufficiently clear in explaining what factors a panel should take into consideration when making a determination on prohibition? Yes/no/don't know

Why?

6. Panel recommendations on prohibition

Following its consideration of all the evidence presented and following the process set out in the advice, a panel will make a recommendation to the Secretary of State as to whether a prohibition order is appropriate or not. Where a panel has made a recommendation that prohibition (which is for life) is appropriate, it also recommends whether the prohibited teacher should be allowed the opportunity to make an application to have the prohibition order reviewed and set aside at a point in the future.

In the published advice, Section 7 headed 'Panel recommendations' deals with recommendations on both prohibition and reviews.

In this consultation version, we have split "panel recommendations" into two distinct parts to be clear to panels on the two distinct parts of this process: recommendation as to whether to make a prohibition order; and recommendation as to whether to allow an opportunity for a prohibition order to be reviewed and set aside.

This new Section 6 focusses solely on recommendations on prohibition. Key changes:

- a) clarify that a panel's recommendation should summarise not only the evidence presented to it, but also submissions and legal advice it has considered
- b) a panel should set out the rationale for its recommendation
- c) include new text to define what we mean by 'proportionality and necessity'

7. Panel recommendations on review period

As set out above, this new Section 7 focusses solely on review periods. The changes:

- a) strengthen the text to ensure that 'no review' is only used in the most exceptional circumstances where the behaviour displayed is so serious that lifetime prohibition with no opportunity for review would be proportionate, the impact of this means that there are now two lists - one that gives greater relevance to and weighs in favour of not offering a review period, for example where the case involved or permitted serious sexual misconduct - the other list weighs in favour of offering a longer review period, for example where the case involved or permitted fraud or serious dishonesty
- b) make it clear that both lists are not exhaustive
- c) clarify that a panel should always consider public interest and proportionality when deciding whether to recommend a review period, including the length of that review period

- d) have revised the statement on class A drugs - it now mirrors the offence type likely to be considered “a relevant offence” as set out in Section 5(ii) and extends to possession and production

Question 13: Does having separate sections on panel recommendations on prohibition and review make it sufficiently clear on what factors a panel should take into consideration when making recommendations? Yes/no/don't know

Why?

Question 14: Does the list of factors that may weigh toward no review and longer review help? Yes/no/don't know

Why?

8. Decisions on prohibition

In the published advice, Section 8 headed ‘Decisions on prohibition’ deals with decisions on both prohibition and review. As per new Sections 6 and 7 above, which deal with panel recommendations on prohibition and review, in this consultation version we have split Section 8 into two distinct parts “Decisions on prohibition” and “Application for a prohibition order to be reviewed and set aside”, to be clear that these are two distinct parts of this process by the decision maker.

We have strengthened the advice to make it clearer which sections the decision maker should have particular regard to when making their decision. The revised text provides additional information about the decision maker’s role, and what advice they follow and should include when making their decision on the Secretary of State’s behalf.

This new Section 8 focusses solely on decisions on prohibition. Changes include:

- a) new text reminds the decision maker to have regard to Sections 5 (iii), 6 and 7 when making their final decision
- a) new text clarifies that the decision maker should set out the reasons for their decision (including decisions on any review period) to allow the individual to understand how that decision was reached

Question 15: Is this section sufficiently clear? Yes/no/don't know

Why?

9. Application for a prohibition order to be reviewed and set aside

This new Section 9 focusses solely on applications to have a prohibition order reviewed and set aside. Whilst it does primarily replicate the contents of Section 8 of the published advice, we have strengthened the narrative around the types of behaviours a teacher would be expected to demonstrate at hearing in order for the existing prohibition order to be set aside. We have also made some presentational changes to make the process clearer. These changes not only allow the TRA to make further enquiries based on the information presented, but allow panels to make an accurate and well-informed decision about whether or not it is in the public interest to set aside a prohibition order. Key changes include:

- a) clarification that responsibility rests with the teacher to submit all documentation and supporting evidence they wish to rely upon in order to have their application considered
- b) new text allowing the TRA to make further enquiries based on the information presented
- c) clarifies the types of behaviours/actions a teacher is expected to demonstrate and evidence in order for an existing prohibition order to be set aside
- d) new text cross referencing the public interest considerations at page 12 and 13 of the advice, the panel should be completely satisfied that the evidence presented at hearing establishes that it is in the public interest for the prohibition order to be set aside
- e) new text setting out that the panel should, as part of its deliberations, weigh up the burden of risk in setting the prohibition order aside, to safeguard against the potential risk of any repetition of the behaviour
- f) new text clarifying that the panel should set out what evidence it has considered, and the reasons and rationale for its decision, in drawing up its recommendation to the Secretary of State on whether or not to allow the prohibition order to be set aside

Question 16: Is this section sufficiently clear? Yes/no/don't know?

Why?

10. Appeals

We have removed the paragraph about what the Court is likely to do if the Court allows the appeal. The Court has a range of options it can choose from, and though the likelihood is it will remit the case to the Secretary of State for reconsideration, we should not pre-empt this decision.

Question 17: Is this section sufficiently clear on the Court's remit? Yes/no/ don't know?

Why?

Annex A. Interim prohibition orders (IPO)

We have relocated what is currently Section 10 in the published advice to a new annex (Annex A). Its current position in the advice does not reflect the point in the process that the consideration of an Interim Prohibition Order (IPO) takes place. We have cross-referenced Annex A in Section 4 'what is a prohibition order'.

The proposed revisions clarify the types of work an IPO prevents a person from carrying out until their case is concluded. In addition, we have further clarified who has the power to make an IPO decision and set out the timescales involved.

Question 18: Is this section sufficiently clear and do you agree that information about IPO decisions should be located in an Annex? Yes/no/don't know?

Why?

General Questions

In this section of the consultation, we are seeking to expand our evidence base in areas where we have routinely been asked to consider changes to the advice, but where our knowledge is currently limited.

Responses here will enable us to consider whether these issues require further consideration and/or amendments.

Question 19: Is the advice clear about what information the panel and the decision maker considers and takes into consideration as part of the decision-making process? If not, what would you expect to see?

Question 20: Is the advice clear that panels and decision makers should give serious consideration to activity where a teacher has failed to act upon safeguarding related matters? If not, why not?

Question 21: Do you think that the advice needs to say more on safeguarding and child protection related matters, especially the high standard we expect of all teachers in matters of safeguarding. If not, what would you expect to see?



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