



Teaching
Regulation
Agency

Teacher misconduct: the prohibition of teachers

**Advice on factors relating to decisions
leading to the prohibition of teachers
from the teaching profession**

February 2022

Contents

1. Introduction	3
About this advice	3
Who this advice is for	4
2. The regulatory system	4
3. Role of the Disclosure and Barring Service (“DBS”)	6
4. What is a prohibition order and interim prohibition order?	7
5. Panel decision-making criteria	7
(i) Is the panel satisfied that the facts of the case have been proved?	8
(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”?	9
(iii) Is a prohibition order appropriate?	14
Public interest	14
Behaviour	15
Mitigation	18
6. Panel recommendations on prohibition	18
7. Panel recommendations on review period	19
8. Decisions on prohibition	20
9. Application for a prohibition order to be reviewed and set aside	21
10. Appeals	22
Annex A - Interim prohibition orders (IPO)	23

1. Introduction

About this advice

This advice sets out the arrangements for the regulatory system relating to teacher¹ misconduct which operates within a legislative framework which came into force on 1 April 2012. These arrangements are operated by the Teaching Regulation Agency (the TRA), an executive agency of the Department for Education, which acts on behalf of the Secretary of State for Education as regulator of the teaching profession.

This advice sets out the factors to be considered by a professional conduct panel (panel)², which is an independent panel convened by the TRA for the purpose of the regulation of teacher misconduct. The primary purpose of the advice is to inform panel considerations, findings and recommendations to the Secretary of State whether to impose a prohibition order on a teacher. A senior official, who acts as the decision maker on behalf of the Secretary of State, also uses this advice when considering the panel's recommendation and in deciding whether to make or set aside a prohibition order.

In using this advice, panel members are acting in a judicial capacity and are obliged to exercise their own judgment in making decisions, within the framework set out below by the Department for Education.

The advice provides information about the types of behaviours and actions that would likely cross the 'threshold' between acceptable and unacceptable conduct (see Section 5(ii)) for a person working in the teaching profession. The types of behaviours and actions described cannot be exhaustive, so whilst panels and decision makers will use this advice to help achieve a level of consistency in considering cases, there will likely be circumstances where behaviours and/or actions not referenced in the advice are considered to have crossed the 'unacceptable' threshold. The advice sets out how panel members should consider how any mitigation presented by the teacher should be weighed alongside any finding of misconduct.

This advice complements other departmental advice relating to the regulation of the teaching profession, that can be obtained from the teacher misconduct section of the [GOV.UK](https://www.gov.uk) website.

¹ A reference to a teacher is to be interpreted in accordance with the definition in regulation 2 of [The Teachers' Disciplinary \(England\) Regulations 2012](#). It should be noted that this definition is not limited to qualified teachers.

² Regulation 6 of the Teachers' Disciplinary (England) Regulations 2012 as amended by [The Teachers' Disciplinary \(Amendment\) \(England\) Regulations 2014](#).

Who this advice is for

- **Panel members**³: to inform their decision-making process at panel hearings and meetings.
- **Employers**⁴ of teachers (including agencies) and anyone considering making a referral: to help them make a judgment about whether an allegation of teacher misconduct is sufficiently serious to refer the matter to the TRA.
- **Teachers**: to help them understand the potential consequences of specific allegations of misconduct including the types of behaviours and actions that would likely cross the threshold between acceptable and unacceptable conduct for a person working in the teaching profession.
- **Teachers and panel witnesses**: who attend a panel hearing to help inform them about the decision-making process followed.
- **Teacher representatives**: if a teacher is represented, to support the preparation of the teacher's case and when presenting their case at a panel hearing.
- **TRA**: to support the TRA, and lawyers who advise them, in their investigations of allegations against teachers and determination of whether a case should be investigated and proceed to a panel hearing or meeting.
- **Decision maker**: to support their decision-making when considering a panel's recommendation and deciding whether to make or set aside a prohibition order.
- **The public**: to provide reassurance and transparency about the decision-making process that will be followed when it is alleged teachers may be guilty of committing serious misconduct.

2. The regulatory system

1. Teachers are the single most important factor in a child's education who act in 'loco parentis'. The overwhelming majority are highly competent and effective, and never engage in any form of misconduct. Headteachers and governing bodies are responsible for managing teachers in relation to their competence and conduct and

³ In addition to the advice contained within this document, panel members receive bespoke training that covers a panel's role and responsibilities, consideration of evidence, decision-making factors and child safeguarding, including assessing risk of harm.

⁴ The Department for Education's '[Keeping children safe in education](#)' (KCSIE) statutory guidance and '[Staffing and Employment Advice for Schools](#)' provides further clarification to employers of teachers about the duty to consider referring serious cases of misconduct to the TRA.

for taking action to address underperformance and misconduct in their schools. The department's statutory guidance [Keeping children safe in education \(KCSIE\)](#) makes clear that safeguarding and promoting the welfare of children is everyone's responsibility, and that all staff in schools and colleges have a responsibility to provide a safe environment in which children can learn.

2. [The Education Act 2002](#), as amended by the [Education Act 2011](#), gives responsibility to the Secretary of State to regulate teacher misconduct and to hold a list of teachers who have been prohibited from teaching. The TRA operates the regulatory system on the Secretary of State's behalf and references to the TRA in this advice should be read accordingly. [The Teachers' Disciplinary \(England\) Regulations 2012](#) ("the Regulations") as amended⁵ provide specific and detailed information about how the system should operate.
3. The key features of the regulatory system are that:
 - The arrangements apply to anyone undertaking teaching work, as defined in the Regulations⁶, at any of the following institutions in England: all schools⁷; sixth form colleges; relevant youth accommodation; and children's homes.
 - The TRA will only consider allegations of the most serious cases of misconduct, in order to make a decision about whether a teacher should be prohibited from teaching work. Other matters, including all cases of incompetence, should be dealt with locally by employers.
 - The Secretary of State has the power to make prohibition orders and interim prohibition orders which prevent a teacher from carrying out teaching work – there are no other types of sanction available to the Secretary of State.
 - Where a teacher has been dismissed for serious misconduct or would have been dismissed had they not resigned, their employer (including an agency) has a statutory duty⁸ to consider whether to refer the case to the TRA. The employer should use the advice in this document to help make a judgment as to whether, on the grounds that a prohibition order may be appropriate, it is necessary to refer. Where the employer is in any doubt, a referral should be made. All referrals should be made promptly.

⁵ The Teachers' Disciplinary (Amendment) (England) Regulations 2014

⁶ Regulation 3 of the Teachers' Disciplinary (England) Regulations 2012

⁷ Maintained schools (including maintained nursery schools and pupil referral units), non-maintained special schools, and independent schools (including academies, 16-19 academies, free schools, and alternative provision academies)

⁸ 141D of the Education Act 2002 (as amended by the Education Act 2011)

- The police, the Disclosure and Barring Service (DBS), other regulators, members of the public and any other interested organisations may also refer cases. Advice about how to refer allegations of misconduct to the TRA for consideration is available at [GOV.UK](https://www.gov.uk).
- Where misconduct allegations also involve matters of safeguarding, the referrer should consider making a separate referral to the DBS. There is a legal duty, in specified circumstances, for employers to refer cases to the DBS. Further information is available at [GOV.UK](https://www.gov.uk). Information for schools and colleges is available in Part 3 of [KCSIE](https://www.kcsie.org.uk).

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

4. The DBS is responsible for deciding whether an individual should be barred from working with children and vulnerable adults and for maintaining a list (the barred list⁹) of those individuals who are determined to be unsuitable.
5. The DBS will consider cases that concern safeguarding matters (i.e. harm or the risk of harm to a child), barring individuals from working in regulated activity with children where appropriate. When considering whether to bar a teacher, the criteria used by the DBS differ from those used by the TRA when it considers whether to prohibit a teacher. The TRA and the DBS may consider cases in parallel and where the DBS has decided a case does not meet its criteria for barring, the TRA can still decide to progress the case to a panel for its consideration.
6. The DBS is also responsible for processing requests for Criminal Records Checks, including those made as part of the checks carried out by schools and colleges prior to appointing staff.
7. More detail about the role of the DBS can be found at [GOV.UK](https://www.gov.uk). Information about regulated activity can also be found at [GOV.UK](https://www.gov.uk).

⁹ Section 2 of the Safeguarding and Vulnerable Groups Act (SVGA) 2006

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

8. A prohibition order means that the person concerned is prevented from carrying out teaching work in schools or the other settings set out in Section 2. Where an individual is prohibited, their details will appear on the Prohibited List¹⁰.
9. A prohibition order is likely to be appropriate when the behaviour of the person concerned has been fundamentally incompatible with being a teacher. The primary purpose of a prohibition order is to safeguard pupils and students, maintain public confidence in the teaching profession and uphold proper standards of conduct. Section 5 (iii) '*Is a prohibition order appropriate?*' provides more detail about how this is considered.
10. A prohibition order has a lifetime effect. However, it may be decided that a teacher should be allowed to apply to have the prohibition order reviewed after a specified period of time. The minimum period will not be less than two years and the teacher may then apply to have the prohibition order reviewed with a view to having it set aside. See Section 9, which provides more detailed information about applications to set aside a prohibition order.
11. The Secretary of State also has the power to impose an interim prohibition order if it is considered to be in the public interest to do so. This power is usually reserved for cases where there has been a particularly serious allegation and a judgment is made that the teacher should not teach while an investigation is undertaken by the TRA. An interim prohibition order prevents the person from carrying out teaching work while their case is considered, and an individual subject to an interim prohibition order will appear on the Prohibited List. See Annex A for further information on interim prohibition orders.

5. Panel decision-making criteria

12. A panel must consider each case on its own merit, having regard to this guidance. The panel will consider all evidence presented to it, and then make three decisions in the order shown at (i) to (iii) below. If a panel decides that 'no' is the answer to any of these questions, it will not need to proceed to the next question.

¹⁰ The Prohibited List is administered by the TRA and can be accessed by current and prospective employers of school staff using the Secure Access/DfE Sign-in Portal via the Teacher Services' web page. The Teacher Services' system can also be used to check for the award of qualified teacher status (QTS) and the completion of teacher induction or probation. The service is offered free of charge to schools, local authorities and teacher supply agencies in England.

13. An independent legal adviser, appointed by the TRA, will provide advice to a panel on points of law, interpretation of departmental policy, practice and procedure including the appropriate weight a panel might decide to give to the evidence presented to the panel, relevant legal principles and any other issues relevant to the case. The adviser's role is to assist a panel but they do not play a part in its decision-making process.

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

14. A panel must decide whether all, or some, of the facts of the case have been proved **on the balance of probabilities**. This is the same as the standard of proof in civil law cases. This means deciding, from the evidence available to it, whether the events in question more likely happened than not. This is not the same as is applied in criminal law cases, where the facts must be proved 'beyond all reasonable doubt'.

15. Criminal **convictions**: if there has been a conviction, at any time, of a criminal offence, the panel will accept the certificate of conviction as conclusive proof of both the conviction and the facts necessarily implied by the conviction, unless exceptional circumstances¹¹ apply.

16. Police **cautions**¹²: where there is evidence that the person concerned has received a caution, this establishes that they have made a clear admission of guilt in respect of committing the offence, or offences, for which the caution has been given. Whilst a panel cannot deem evidence of a caution to be conclusive of relevant facts in the same way as a conviction, it will carry significant weight in their considerations. The circumstances in which the police are able to issue cautions are set out in the ["Ministry of Justice guidance: Simple Cautions for Adult Offenders"](#).

17. Evidence **presented to a panel**: may also include details of a variety of sanctions issued by the police other than cautions including fines and out of court disposals. Evidence of an individual's admission of guilt to the police will carry significant weight.

18. Other evidence is not limited to and may include information relating to disciplinary hearings or tribunals; considerations by other regulators; or from other organisations.

¹¹ Where exceptional circumstances may apply the legal adviser would provide advice to panels in their consideration

¹² Cautions include reprimands, final warnings and formal warnings.

A panel will assess all available evidence, from such investigatory processes, and will give an appropriate weight to that evidence.

19. **Recognised educational expert/practitioner:** Appropriate weight should be given to the opinion of any recognised educational expert practitioner or educational organisation on matters before the panel.

20. **Where hearsay evidence¹³ is presented to a panel:** the panel will consider whether the evidence is relevant and would be fair for it to be admitted. Where a panel decides that hearsay evidence is to be admitted it should treat that evidence with caution, giving it close scrutiny to determine its reliability and compatibility with factors presented in other evidence. A panel will then decide what weight if any should be attached to such evidence when making its finding of facts.

(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”?

21. For any allegation for which the panel finds the facts proven, it must determine whether one or more of the three categories above applies.

a) “Unacceptable professional conduct” is misconduct of a serious nature, falling significantly short of the standard of behaviour expected of a teacher. Misconduct outside of the education setting will amount to “unacceptable professional conduct” only if it affects the way the person fulfils their teaching role or if it may lead to pupils being exposed to or influenced by the behaviour in a harmful way.

22. In making a judgment as to whether the behaviour demonstrated falls short of the standard expected of a teacher, a panel should draw on its own knowledge and experience of the teaching profession, particularly the personal and professional conduct elements of the [Teachers’ Standards](#) and the responsibilities and duties in relation to the safeguarding and welfare of pupils set out in statutory guidance [KCSIE](#) and [Working Together to Safeguard Children](#), which is underpinned by legislation.

¹³ Evidence not based upon a witness's personal knowledge as a direct observer of an event, but stems from the repetition of what a witness heard another person say or what they know or understand from the evidence available.

23. It is likely that a panel would consider the acceptance of a caution for an offence involving behaviours associated with any of the offence types in the list that begins on page 12, as an admission of behaviours that would amount to “unacceptable professional conduct”.
24. It is likely that a panel would consider a conviction that led to conditional discharge or absolute discharge, involving behaviours associated with any of the offence types in the list that begins on page 12, as behaviours that would amount to “unacceptable professional conduct”.
25. Where a teacher is found by a panel to have displayed behaviours associated with any of the offence types shown in the list that begins on page 12, but was not convicted of an offence, a panel is likely to conclude that those behaviours would amount to “unacceptable professional conduct”.
26. There may be behaviours, categorised as “low level” concerns¹⁴, that could be an isolated incident that the headteacher on investigation could deem to be serious misconduct. There could also be low level concerns that would not, as isolated incidents, ordinarily meet the threshold for an investigation or intervention. However, in some cases the cumulative effect of repeated behaviours, particularly where a pattern of behaviour is identified, may lead the panel to conclude that those behaviours would amount to “unacceptable professional conduct”. The advice is not intended to be exhaustive and there may be other behaviours that panels consider to be “unacceptable professional conduct”. Each case should be considered on its individual merits by the panel, taking into account the circumstances involved.
- b) **“Conduct that may bring the profession into disrepute”** is conduct that could potentially damage the public’s perception of a teacher, therefore bringing the teaching profession into disrepute. Misconduct outside of the education setting will be considered relevant only if the conduct displayed is of a serious nature and would likely have a negative impact on the public’s perception of the individual as a teacher, therefore bringing the teaching profession into disrepute.
27. Panel members should use their knowledge, skills and experience to take into account how the teaching profession is viewed by others, the responsibilities and duties of teachers in relation to the safeguarding and welfare of pupils, and the influence that teachers may have on pupils, parents and others in the community. Panels should take account of the uniquely influential role that teachers can hold in

¹⁴ a low level concern is a concern falling short of the harm threshold that would lead to an investigation into an allegation as set out in Section 1 of Part four of KCSIE

pupils' lives and that pupils must be able to view teachers as role models in the way they behave.

28. It is likely that a panel would consider the acceptance of a caution, involving behaviours associated with any of the offence types in the list that begins on page 12, as an admission of behaviours that would amount to “conduct that may bring the profession into disrepute”.
29. It is likely that a panel would consider a conviction that led to conditional discharge or absolute discharge, involving behaviours associated with any of the offence types in the list that begins on page 12, as behaviours that would amount to “conduct that may bring the profession into disrepute”.
30. Where a teacher is found by a panel to have displayed behaviours associated with any of the offence types shown in the list that begins on page 12, but were not convicted of an offence, a panel is likely to conclude that those behaviours would amount to “conduct that may bring the profession into disrepute”.
31. The advice is not intended to be exhaustive and there may be other behaviours that panels consider to be “conduct that may bring the profession into disrepute”. Each case should be considered on its individual merits by the panel, taking into account the circumstances involved.
- c) **“Conviction, at any time, of a relevant offence”** refers to a conviction of an offence that is relevant to a person’s fitness to be a teacher, either by a British criminal court or by an overseas court where the offence would constitute a relevant offence had it been committed in England and Wales. The effect of a conditional or absolute discharge¹⁵ means that the conviction on which that discharge is made will not be treated as a ‘relevant conviction’ for the purposes of these proceedings.

¹⁵ Conditional discharge means the offender is released and the offence registered on their criminal record. No further action is taken unless they commit a further offence within a time decided by the court (no more than three years). Absolute discharge means no further action is taken, since either the offence was very minor, or the court considers that the experience has been enough of a deterrent. The offender will receive a criminal record.

32. An offence can be considered relevant even if it did not involve misconduct in the course of teaching. In making a judgment on relevance a panel will consider all the facts of the case. These will include the nature and gravity of the offence, its circumstances and any mitigating circumstances and, in committing the offence, whether and to what extent the individual's actions:

- were contrary to the standards of personal and professional conduct expected of a teacher, with reference to the Teachers' Standards;
- were relevant to teaching, working with children and/or working in an education setting;
- would be likely to have an impact on the safety or security of pupils or members of the public; or
- would be likely to affect public confidence in the teaching profession if the teacher were allowed to continue teaching.

33. It is likely that a conviction for **any** offence that led to a term of imprisonment, including any suspended sentence will be considered "a relevant offence".

34. It is also likely that a conviction for any offence that relates to, or involves, any of the following will be considered "a relevant offence":

- violence;
- terrorism;
- sexual activity;
- voyeurism (including upskirting);
- revenge pornography (sharing private, sexual materials, either photos or videos, of another person without their consent);
- sexual communication with a child¹⁶;
- any activity involving viewing, taking, making, possessing, distributing or publishing any indecent photograph or image or indecent pseudo photograph or image of a child, or permitting any such activity, including one off incidents;

¹⁶ For the purposes of this advice a child includes everyone under the age of 18

- child cruelty and/or neglect;
- controlling or coercive behaviour;
- harassment and/or stalking;
- intolerance and/or hatred on the grounds of race, religion, sexual orientation or any of the other protected characteristics¹⁷;
- possession (including for personal use), possession with intent to supply another person, supply (selling, dealing or sharing) or production of any class A drugs;
- possession with intent to supply another person, supply (selling, dealing or sharing) or production of any class B, class C or any temporary class drugs;
- fraud or serious dishonesty;
- theft from a person or other serious theft;
- arson and other “major” criminal damage;
- possession of prohibited firearms, knives or other weapons;
- serious driving offences, particularly those involving alcohol or drugs;
- serious offences involving alcohol;
- serious offences involving gambling;

It is less likely that a conviction for offences that relate to, or involve, any of the following will be considered to be “a relevant offence”:

- isolated minor cases of theft;
- minor driving offences;
- minor offences involving gambling; or

¹⁷ [Section 4 of the Equality Act 2010](#)

- minor offences involving personal use of alcohol or class B, class C or temporary class drugs away from children and education contexts.

These lists are not exhaustive and provide only an indication of what are likely and less likely to be considered “relevant”. Each case needs to be considered on its individual merits by the panel, taking into account the circumstances involved.

(iii) Is a prohibition order appropriate?

35. If a panel has found that there has been “unacceptable professional conduct” and/or “conduct that may bring the profession into disrepute” and/or a “conviction, at any time, of a relevant offence”, it must make a judgment about whether to recommend the imposition of a prohibition order by the Secretary of State.
36. A prohibition order aims to safeguard pupils, to maintain public confidence in the profession, and uphold proper standards of conduct, referred to as public interest. Prohibition orders should not be given simply in order to be punitive or show that blame has been apportioned, although they are likely to have a punitive effect. In making a judgment as to whether a prohibition order is appropriate the panel will consider the public interest, the seriousness of the behaviour, and any mitigation offered by the teacher, and decide whether an order is necessary and proportionate.

Public interest

37. The panel will consider if it is in the public interest to prohibit the teacher. Public interest considerations may weigh both in favour of and against a teacher and include:
- the safeguarding and wellbeing of pupils and protection of other members of the public;
 - the maintenance of public confidence in the profession – assessed by reference to the standard of the ordinary intelligent and well-informed citizen who both appreciates the seriousness of the proposed ‘sanction’ and recognises the high standards expected of all teachers, as well as other issues involved in the case;
 - declaring and upholding proper standards of conduct within the teaching profession;
 - that prohibition strikes the right balance between the rights of the teacher and the public interest, if they are in conflict.

This is not an exhaustive list. A panel will first need to identify the public interest at stake in order to determine whether that public interest requires prohibition.

Behaviour

38. In considering the seriousness of the behaviour, it is important to consider the influential role that a teacher can play in the formation of pupils' views and behaviours. The level of trust and responsibility that members of the teaching profession hold means that the expectation, of both the public and pupils, is that all members of the teaching profession maintain an exemplary level of integrity and ethical standards at all times. A teacher's behaviour that seeks to exploit their position of trust should be viewed very seriously in terms of its potential influence on pupils and be seen as a possible threat to the public interest, even if no criminal offence is involved.

39. It is likely that a panel will consider a teacher's behaviour to be incompatible with being a teacher, if there is evidence of one or more of the following factors:

- serious departure from the personal and professional conduct elements of the Teachers' Standards;
- the commission of a serious criminal offence, including those that resulted in a conviction or caution, paying particular attention to offences that are 'relevant matters' for the purposes of the Police Act 1997 and criminal record disclosures¹⁸;
- misconduct seriously affecting the education and/or safeguarding and well-being of pupils, and particularly where there is a continuing risk;
- abuse of position or trust (particularly involving pupils);
- an abuse of any trust, knowledge, or influence gained through their professional position in order to advance a romantic or sexual relationship with a pupil or former pupil;
- sexual misconduct, e.g. involving actions that were sexually motivated or of a sexual nature and/or that use or exploit the trust, knowledge or influence derived from the individual's professional position;

¹⁸ The list of 'relevant matters' for the purposes of the Police Act 1997, which are offences that will always be disclosed on criminal record certificates and enhanced criminal record certificates issued by the Disclosure and Barring Service are detailed at [GOV.UK](https://www.gov.uk)

- any activity involving viewing, taking, making, possessing, distributing, or publishing any indecent photograph or image, or indecent pseudo photograph or image, of a child¹⁹, or permitting such activity, including one-off incidents;
- failure to refer to the police known female genital mutilation (FGM)²⁰ cases involving girls under 18 where the individual is aware, or should have been aware, of the statutory duty to report such matters but deliberately chose not to do so;
- failure to act on evidence that indicated a child's welfare may have been at risk e.g. failed to notify the designated safeguarding lead and/or make a referral to children's social care, the police or other relevant agencies when abuse, neglect and/or harmful cultural practices were identified;
- failure in their duty of care towards a child, including exposing a child to risk or failing to promote the safety and welfare of the children (as set out in Part 1 of KCSIE);
- violation of the rights of pupils;
- sustained or serious bullying (including cyberbullying²¹), or other deliberate behaviour that undermines pupils, the profession, the school or colleagues;
- actions or behaviours that promote extremist political or religious views or attitudes, or that undermine fundamental British values of democracy, the rule of law, individual liberty, and mutual respect and tolerance of those with different faiths and beliefs. This would encompass deliberately allowing the exposure of pupils to such actions or behaviours, including through contact with any individuals who are widely known to express views that support such activity, for example by inviting any such individuals to speak in schools;
- a deep-seated attitude that leads to harmful behaviour;
- dishonesty or a lack of integrity²², including the deliberate concealment of their actions or purposeful destruction of evidence, especially where these behaviours

¹⁹ Indecent for the purposes of the current criminal sentencing guidelines. A panel may consider that this also includes photographs or images that would not be considered indecent for the purposes of the current criminal sentencing guidelines.

²⁰ Under Section 5B(11) (a) of the Female Genital Mutilation Act 2003, "teacher" means, in relation to England, a person within Section 141A(1) of the Education Act 2002 (persons employed or engaged to carry out teaching work at schools and other institutions in England).

²¹ Cyberbullying is any form of bullying which takes place online. It often happens in tandem with offline bullying but can occur on its own.

²² Actions or behaviours that undermine the integrity of the teaching profession, failed to uphold the values, beliefs and moral principles they claim to hold.

have been repeated or had serious consequences, or involved the coercion of another person to act in a way contrary to their own interests;

- collusion or concealment including:
 - any activity that involves knowingly substantiating another person's statements where they are known to be false;
 - failure to challenge inappropriate actions, defending inappropriate actions or concealing inappropriate actions;
 - encouraging others to break rules;
 - lying to prevent the identification of wrongdoing;
- deliberate action in serious contravention of requirements for the conduct of an examination or assessment leading to an externally awarded qualification or national assessment (or deliberate collusion in or deliberate concealment of such action) particularly where the action had, or realistically had the potential to have, a significant impact on the outcome of the examination assessment;
- possession of prohibited firearms, knives or other weapons;
- deliberate action to off-roll pupils from a school's roll without a formal, permanent exclusion or by encouraging a parent to remove their child, when the removal is primarily in the best interests of the school rather than those of the pupils;
- knowingly manipulating a school's attendance or admission registers, or data to benefit and/or enhance a school's attendance and/or exam results.

40. This list is not exhaustive and the decision whether to recommend prohibition should be made by a panel on a case-by-case basis, taking account of the public interest; the seriousness of the behaviour and the likely harm to the public interest were the individual allowed to continue to teach; and any mitigation offered by the teacher; ensuring the panel consider the recommended action to be necessary and proportionate, and after seeking relevant advice from the panel's legal adviser.

41. Panels should attach appropriate weight and seriousness to online²³ behaviours including, but not limited to: online misconduct; facilitating online abuse; or facilitating

²³ Online is a wide term that may include activities facilitated for example via mobile phones (including smart phones), tablets, smart devices, laptops and desktops (this is not designed to be a comprehensive list).

inappropriate relationships (including both online only relationships and where online relationships move into contact relationships).

Mitigation

42. In all cases, even where it is clear to a panel that there is proven evidence of one or more of the factors set out above (at 5(ii)), when considering the appropriateness of recommending prohibition, a panel should take into account any mitigation presented.

43. Taking account of the nature and severity of the behaviour including the level of risk of repetition, a panel may determine that a recommendation for a prohibition order will not be appropriate where most or all of the following criteria are apparent (this list is not exhaustive):

- the teacher's actions were not deliberate;
- the teacher was acting under extreme duress e.g. physical threat or significant intimidation to perform unlawful activities;
- the teacher demonstrates exceptionally high standards in both personal and professional conduct and has contributed significantly to the education sector.

44. Each case needs to be considered on its own merits. A panel will take account of the seriousness of the behaviour in question and, in determining the effect the prohibition would have on the teaching profession, any mitigation presented. Meeting the above criteria will not necessarily result in a panel making a recommendation not to prohibit. Equally, a panel should not take the above criteria in isolation, but should also consider and determine what weight should be given to any other mitigating factors such as the level of insight and remorse.

6. Panel recommendations on prohibition

45. Following its consideration of all the evidence presented and following the process as set out above, a panel will make a recommendation to the Secretary of State as to whether a prohibition order should be made in respect of the teacher.

46. In deciding whether or not the recommendation of a prohibition order is necessary, panels will always need to apply the principle of proportionality²⁴, and demonstrate that they have given careful consideration to whether an alternative recommendation to prohibition is more appropriate. For example, recommending that prohibition is not

²⁴ A sanction will only be proportionate if a 'less intrusive measure could not have been used without unacceptably compromising the achievement of the relevant objectives'.

proportionate, or recommending that the publication of adverse findings²⁵ is sufficient to achieve the public interest outcomes.

47. In making its recommendation, a panel will summarise the evidence, submissions and any legal advice it has considered, and the rationale applied in reaching that recommendation.

7. Panel recommendations on review period

48. Where a panel recommends prohibition, which is for life, it will also recommend whether the Secretary of State should consider allowing the teacher to make an application in the future to have the prohibition order reviewed and set aside.

49. In every case a panel will consider the evidence and mitigation before it and set out the rationale for its decision. If the panel recommends allowing an application for review, it will recommend a minimum period before which an application can be made. Any recommended period may not be less than two years from the date on which the order takes effect.

50. Where a case involved any of the following, it is likely that the public interest will have greater relevance and weigh in favour of not offering a review period:

- serious sexual misconduct e.g. where the act was sexually motivated and resulted in, or had the potential to result in, harm to a person or persons, particularly where the individual has used their professional position to influence or exploit a person or persons;
- any sexual misconduct involving a child;
- any activity involving viewing, taking, making, possessing, distributing or publishing any indecent photograph or image or indecent pseudo photograph or image of a child, including one off incidents;
- child cruelty and/or neglect;
- terrorism.

This is not an exhaustive list and panels should consider each case on its individual merits taking into account all the circumstances involved.

²⁵ A panel's finding that the teacher (a) has been guilty of unacceptable professional conduct or conduct that may bring the profession into disrepute or (b) has been convicted (at any time) of a relevant offence will be published but no prohibition order imposed.

51. Where a case involved any of the following, it is likely that the public interest will have greater relevance and weigh in favour of a longer period before a review is considered appropriate:

- arson and other “major” criminal damage;
- possession (including for personal use) of any class A drug;
- possession with intent to supply another person, supply (selling, dealing or sharing) and production of any class A, B, C or unclassified drugs;
- fraud or serious dishonesty;
- theft from a person or other serious cases of theft;
- intolerance and/or hatred on the grounds of race, religion, sexual orientation or protected characteristics;
- violence.

This is not an exhaustive list and panels should consider each case on its individual merits taking into account all the circumstances involved.

52. In deciding whether to recommend an opportunity for review, and if so the period after which that ought to be permitted, a panel will need to be satisfied that the recommended approach is necessary to protect the public interest and that the impact on the teacher is proportionate.

8. Decisions on prohibition

53. Once a panel has made its recommendation on prohibition, including review, this will be forwarded to the decision maker at the TRA. The decision maker will, wherever possible within three working days starting the working day after receipt, consider the panel’s recommendations and make a final decision on the case. In reaching that decision they will have regard to this advice, in particular Sections 5(iii), 6 and 7. The decision maker records the reasons for their decision in sufficient detail (including where they disagree with the panel’s recommendation and the length of any review period) to allow the teacher to understand how the decision was reached. The teacher concerned will be notified of the final decision in writing before it is made public²⁶.

²⁶ Prohibition decisions are publicly available on [GOV.UK](https://www.gov.uk)

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

54. An application²⁷ to the Secretary of State for a prohibition order to be reviewed and set aside is not an appeal against the original decision to impose the prohibition order and any such review will not, therefore, re-examine the facts which were found to be proved at the professional conduct panel hearing or reconsider the decision to impose a prohibition order. The determination of a set aside application will only consider whether the teacher is suitable to be employed or engaged to carry out teaching work as at the date of the hearing of the application.
55. Where an application for a prohibition order to be set aside is made to the Secretary of State, the teacher should submit to the TRA all the necessary documents or other material evidence they wish to rely upon in order for the application to be considered. The teacher should clearly demonstrate what they have done to display insight and remorse into the seriousness of their actions, providing details of any training or activities undertaken, and be able to provide impartial testimonials that would demonstrate and evidence behaviour of their suitability to return to the profession. A key factor will be the extent to which that evidence can assure the panel that it is in the public interest (public interest considerations are outlined on page 14 of this advice) for the prohibition order to be set aside. It may be necessary for the TRA to make further enquiries based on the information presented.
56. Where a senior official at the TRA is satisfied that the evidence is sufficient to support the application, for example when there is evidence that a conviction of a relevant offence has been quashed, they can decide the prohibition order should be set aside. Alternatively, the TRA may decide it is necessary to convene a panel to further consider the application and make a recommendation about whether to set aside the prohibition order.
57. In line with the principles for prohibition set out in Sections 5 and 6 above, the panel should consider whether the continuation of the prohibition order is in the public interest and a proportionate and necessary measure. This will include looking at:
- whether and to what extent a teacher demonstrates clear and unequivocal insight into the misconduct that led to their prohibition;

²⁷ [Teacher misconduct: application to set aside a prohibition order at GOV.UK](#)

- the extent to which they can demonstrate a clear commitment to adhere to and exhibit the personal and professional conduct elements of the Teachers' Standards; and
- any risk in setting aside the prohibition order and allowing the individual to return to the profession in light of the evidence presented to the panel.

58. After considering an application to have a prohibition order set aside, a panel will make a written recommendation to the Secretary of State that either:

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

59. In either circumstance, the panel's recommendation should set out clearly what evidence it has considered, and the reasons and rationale for its decision.

60. If the prohibition order is set aside the teacher's details will be removed from the list of prohibited teachers held by the TRA and the previously published decision will be removed from the GOV.UK website. The teacher will be notified normally within two working days of the Secretary of State's decision.

10. Appeals

61. A teacher may appeal against a prohibition order to the King's Bench Division of the High Court under Part 52 of the Civil Procedure Rules within 28 days of the date a notice of the Order was served on them. The High Court can decide on a range of options, further information on these can be found on the Ministry of Justice website²⁸.

²⁸ <http://www.justice.gov.uk/courts/procedure-rules/civil/rules/part52>

Annex A - Interim prohibition orders (IPO)

62. An IPO may be made only if the Secretary of State considers that it is necessary and proportionate in the public interest, and where there is a real risk of harm to children and/or other members of the public. An IPO prevents a person from carrying out teaching work²⁹ until their case has been fully considered and concluded. A decision whether to impose an IPO is made by the TRA acting on behalf of the Secretary of State. Panels have no role in considering whether an IPO should be made.
63. In all cases, and normally within three working days following receipt of an allegation of teacher misconduct, the TRA will consider whether it is appropriate to make an IPO.
64. An IPO may be imposed at any time during the investigation, for example as additional evidence becomes available. The teacher will be informed that consideration is being given to the imposition of an IPO and they will be given 10 working days to provide any additional evidence that they want to be considered. All the available evidence will be fully considered. The TRA may extend the period required to consider imposing an IPO when awaiting information from other agencies including the police that it believes will have an impact on its decision.
65. Decisions about whether to make an IPO will be taken on a case-by-case basis, taking account of the nature and severity of the allegation and the available evidence, including any information as to the risk of repetition. The seriousness of the risk to pupils and the public, should the individual be allowed to continue to teach unsupervised, should be balanced against the interests of the teacher, having regard to the need for proportionality and the adverse consequences for the practice and reputation of the teacher if an IPO is imposed.
66. Crown Prosecution Service (CPS) and/or police action should be taken into account. If a teacher has been charged with an offence an assumption may be made that there is some reliable and credible evidence to support the charge and the underlying behaviour having been committed. The fact that a teacher is released under investigation by the police will not necessarily, of itself, be sufficient to warrant the imposition of an IPO. All the other factors that determine whether an IPO is appropriate, such as the nature of the alleged crime and whether there is any supporting evidence, must also be taken into account.

²⁹ Regulation 3 of the Teachers' Disciplinary (England) Regulations 2012

67. Although not an exhaustive list, when balanced with the other necessary considerations, the following is likely to indicate that the imposition of an IPO is necessary in the public interest:

- information that the teacher is under investigation by the police, or has been charged, in connection with a serious offence, particularly of a sexual nature and/or involving children;
- allegations and/or evidence of predatory or sexually inappropriate conduct;
- allegations and/or evidence of actions or behaviours that undermine the fundamental British values of democracy, the rule of law, individual liberty, and mutual respect and tolerance of those with different faiths and beliefs; or that promote political or religious extremism. This would encompass deliberately allowing the exposure of pupils to such actions or behaviours, including through contact with any individuals who are widely known to express views that support such activity, for example by inviting any such individuals to speak in schools; or
- any activity involving indecent images of children, as defined in this guidance.

68. Where the Secretary of State imposes an IPO, the teacher will be informed in writing that the order is to apply immediately. If the teacher is currently carrying out teaching work, they may not continue in that role. The teacher's employer will also be informed in writing and must ensure the person is prevented from carrying out teaching work until the case is concluded or until the IPO is lifted, following a successful application by the person to have the IPO reviewed. The Prohibited List will clearly indicate that the individual is the subject of an "interim prohibition order".

69. The teacher may apply to the TRA for a review of the IPO within six months of the date the order was made and subsequently at six monthly intervals. The teacher should provide evidence to inform the review, which will be considered alongside evidence from the investigation. The TRA will pro-actively review its IPO cases if new evidence becomes available during the investigation. This may result in the TRA lifting the IPO where evidence suggests that it should no longer be in place. The individual does not have a right of appeal to the High Court against an IPO.



Teaching
Regulation
Agency

© Crown copyright 2022

This publication (not including logos) is licensed under the terms of the Open Government Licence v3.0 except where otherwise stated. Where we have identified any third party copyright information you will need to obtain permission from the copyright holders concerned.

To view this licence:

visit www.nationalarchives.gov.uk/doc/open-government-licence/version/3

email psi@nationalarchives.gsi.gov.uk

write to Information Policy Team, The National Archives, Kew, London, TW9 4DU

About this publication:

enquiries misconduct.teacher@education.gov.uk

download www.gov.uk/government/collections/teacher-misconduct

Reference: TRA-00114-2018



Follow us on Twitter:
[@educationgovuk](https://twitter.com/educationgovuk)



Like us on Facebook:
facebook.com/educationgovuk