



National College for
Teaching & Leadership

Teacher misconduct – the prohibition of teachers

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

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1. About this advice

This advice relates to the arrangements for the regulation of teachers' professional conduct from 1 April 2012. These arrangements are operated by the National College for Teaching & Leadership, on behalf of the Secretary of State for Education.

This advice sets out the factors to be considered by a professional conduct hearing 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 a "conviction, at any time, of a relevant criminal offence".

In using this advice, professional conduct hearing panel members are obliged to exercise their own judgement in making decisions, as they are acting in a judicial capacity, within the framework set out below by the Department for Education.

The advice in this document complements other Departmental advice relating to the regulation of the teaching profession. It gives information to teachers and witnesses who are subject to or involved in these disciplinary processes.

2. Who is this advice for?

- **Panel members** should use this advice to inform them about the procedures at professional conduct hearing panels.
- **Employers** of teachers (including agencies) will use it to help them make a judgement about whether an allegation of teacher misconduct is sufficiently serious to refer the matter to the Secretary of State.
- It will help inform **teachers and panel witnesses** who attend a professional conduct hearing panel about the procedures followed.
- It will be an important reference tool for **teachers** in helping them understand the potential consequences of specific allegations of misconduct.
- It will provide reassurance and transparency to the **public** about the likely action that will be taken when teachers are guilty of serious misconduct.

It will also inform **staff of the National College for Teaching & Leadership** in their investigations of allegations against teachers, determination of whether a case should proceed to a professional conduct panel hearing. It will also provide advice to senior

officials acting on behalf of the **Secretary of State**¹ as regulator, when considering a panel's recommendation whether to make a prohibition order.

3. The regulatory system

Teachers are the single most important factor in a child's education and 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 for taking action to address underperformance and misconduct in their schools.

The Education Act 2011 gives responsibility to the Secretary of State to regulate teachers' conduct and to hold a list of teachers who have been prohibited from teaching. The Teachers' Disciplinary (England) Regulations 2012 provide specific and detailed information about how the arrangements should operate.

The key features of the new regulatory system are that:

- The Secretary of State, as the regulator, should only be involved in 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.
- Where a teacher has been dismissed for serious misconduct or, had they not resigned first would have been dismissed, their employer (including an agency) must consider whether to refer the case to the Secretary of State. The employer should use the advice in this document to make a judgement 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 and prompt action to refer will allow for the issue of an interim prohibition order to be considered.
- Members of the public may also consider referring a case to the Secretary of State if they think that an allegation of serious misconduct against a teacher has not been completed properly by using local disciplinary procedures.
- The police, the Disclosure and Barring Service (DBS) and other regulators may also refer cases to the Secretary of State.
- The Secretary of State will have the power to make prohibition orders – there will be no other sanctions.

¹ Throughout this advice any reference to decisions made by the Secretary of State mean that those decisions have been taken by a senior official at the National College for Teaching and Leadership.

- The arrangements apply to anyone undertaking teaching work as defined in the Teachers' Disciplinary (England) Regulations 2012 in schools, including academies (including 16- 19 academies), free schools, local authority maintained schools, non-maintained special schools and independent schools as well as sixth form colleges, relevant youth accommodation and children's homes. The Secretary of State has the power to impose an interim prohibition order if he considers that it is necessary in the public interest to do so. This will apply in cases where there has been a particularly serious allegation and a judgement is made that the teacher should not teach while an investigation and hearing are undertaken.

4. Role of DBS

The DBS, or successor body, will continue to consider cases that concern safeguarding matters (i.e. the risk of harm, or actual harm, to a child), barring individuals from working with children where appropriate. When considering whether to bar a teacher, the criteria used by DBS differ from that used by the National College for Teaching & Leadership. Where the DBS has decided a case does not meet its criteria for barring, the National College for Teaching & Leadership can decide to refer the case to a professional conduct panel for its consideration.

In all cases where a DBS investigation results in a teacher being barred from working with children, the National College for Teaching & Leadership liaises with the DBS to allow those details to be added to its list of prohibited teachers

5. What is a prohibition order?

A prohibition order imposed by the Secretary of State means that the person concerned is not allowed to undertake unsupervised teaching work in schools or the other settings set out in regulations (referred to above).

A prohibition order is likely to be appropriate when a teacher's behaviour has been fundamentally incompatible with being a teacher. The primary purpose of a prohibition order is to protect pupils and to maintain public confidence in the teaching profession. For further details, see the section below (6 iii) on 'is a prohibition order appropriate?'

A prohibition order is a lifetime ban, though in some circumstances the teacher may be able to have it reviewed after a specified period of time. See the 'Secretary of State's decision on prohibition' section below.

6. Professional conduct panel decision-making criteria

After considering all of the evidence put before it, a panel must make three decisions, in the order shown 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. A panel may answer 'yes' to (i) and (ii) and still decide that it is not appropriate to recommend a prohibition order. The recommendation to the Secretary of State will be that a prohibition order is appropriate *only* if a panel has answered 'yes' to all three questions.

A legal adviser will provide general advice to a professional conduct panel, including the identification of previous decisions where the case had similar characteristics whilst ensuring that each case is judged on its own individual merits. The legal adviser's role is to assist a panel but he or she does not play a part in its decision making process.

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

A panel must decide whether 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 courts. This means that a panel will decide that an event occurred if, on the evidence available to it, it believes that the occurrence was more likely than not. A different standard is applied in criminal law courts, where the facts must be proved 'beyond all reasonable doubt'.

If there has been a conviction, at any time, of a criminal offence, a panel must accept the conviction as having proved the facts of the case that relate to the conviction have been established. The hearing does not become a trial or re-trial to examine the facts of the case.

Detail arising from prior hearings e.g. DBS decision making processes, school disciplinary hearing, or employment tribunal may be taken into account when assessing whether the facts of the case have been proved, but this information will not necessarily be conclusive in the same way as the conviction of a criminal offence. Similarly the fact that a person has been cautioned would establish that the person has made a clear admission of guilt to having committed the offence or offences for which the caution has been given. An individual may decide to produce evidence that in fact they did not commit the offence. It will then be for the panel to determine whether on the balance of probabilities the individual did or not.

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

If a panel is satisfied about the facts of the case, it must determine whether this means that one of the three categories above applies.

“Unacceptable professional conduct” is misconduct of a serious nature, falling significantly short of the standard of behaviour expected of a teacher. This should be judged by a panel with reference to the personal and professional conduct elements of the latest standards published by, or on behalf of, the Secretary of State. A panel should also use its knowledge and experience of the teaching profession in making its judgement of whether the conduct is relevant to the person’s fitness to be a teacher. Conduct outside the education setting will only amount to unacceptable professional conduct 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.

“Conduct that may bring the profession into disrepute” should be judged by a panel in a similar way. Allegations of misconduct that took place outside of the school environment may be considered to be relevant if they are serious and the behaviour is directly related to an individual’s suitability to be a teacher and, if proven, may bring the profession into disrepute. Panel members should use their knowledge and experience to take into account how the teaching profession is viewed by others, and the influence that teachers may have on pupils, parents and others in the community. Pupils must be able to view teachers as role models in the way they behave.

In considering whether there has been “unacceptable professional conduct” or “conduct that may bring the profession into disrepute” a panel must give significant weight to evidence of a teacher accepting a caution for any offence which the panel would consider a ‘relevant offence’ under the convictions criterion.

“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 if the offence would constitute a criminal offence if committed in England and Wales. A conviction itself is sufficient even if the criminal offence did not involve misconduct in the course of teaching. Where there has been a criminal conviction the professional conduct panel is concerned to establish the nature and gravity of the offence, its circumstances and any mitigating circumstances, in order to form a view as to whether it is relevant to the teacher’s on-going suitability to teach.

The panel must judge the offence to be a “relevant offence”. In assessing relevance the panel should consider whether, and to what extent, the behaviour involved in committing the offence:

- was contrary to the standards of personal and professional conduct expected of a teacher, with reference to the latest standards published by, or on behalf of, the Secretary of State;
- was 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 and members of the public,
- would be likely to affect public confidence in the teaching profession if the teacher were allowed to continue teaching; **or**
- led to a term of imprisonment.

It is likely that all criminal offences that involve any of the following will be considered to be “a relevant offence”:

- violence;
- offences related to terrorism;
- fraud or serious dishonesty;
- theft from a person or other serious cases of theft;
- class A drugs, particularly if supplying is involved;
- sexual misconduct;
- arson and other major criminal damage;
- serious driving offences, particularly those involving alcohol or drugs
- serious offences involving alcohol;
- serious offences involving gambling;
- possession of prohibited firearms, knives or other weapons;
- any activity involving taking, making, possessing, distributing, publishing or permitting the taking of any indecent photograph or image or pseudo photograph or image of a child, including one off incidents.

It is less likely that any of the following offences will be considered to be “a relevant offence”:

- minor driving offences;

- minor offences involving personal use of alcohol or class B or C drugs away from children and education contexts;
- minor gambling offences; or
- isolated, minor cases of theft.

However, these are only indicative lists of offences that are likely and less likely, to be considered “relevant”. Every case needs to be considered on its individual merits by the panel, taking into account the circumstances involved.

(iii) - Is a prohibition order appropriate?

If a panel has found that there has been “unacceptable professional conduct”, “conduct that may bring the profession into disrepute” or a “conviction, at any time, of a relevant offence”, it must make a judgement about whether to recommend the imposition of a prohibition order by the Secretary of State.

A prohibition order aims to protect pupils and to maintain public confidence in the profession. A panel should consider what is in the public interest and whether a prohibition order is an appropriate and proportionate measure. Prohibition orders should not be given in order to be punitive or show that blame has been apportioned, although they are likely to have a punitive effect.

Public interest considerations would usually include:

- the protection of children and other members of the public
- the maintenance of public confidence in the profession
- declaring and upholding proper standards of conduct.

In deciding whether or not the recommendation of a prohibition order is appropriate, professional conduct panels should apply the principle of proportionality, weighing the interests of the public (as above) against those of the teacher. In addition they will need to consider any mitigation in relation to the seriousness of the behaviour in question.

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. For example, a teacher’s behaviour that is judged to promote extremist political or religious views or actions should be viewed very seriously in terms of its potential influence on children and young people and as a possible threat to the interests of the public, even if no criminal offence is involved.

It is likely that a teacher’s behaviour will be considered to be incompatible with being a teacher if there is evidence of one or more of the factors below. This list is not

exhaustive and the decision should be made by a panel using its judgement, after seeking relevant advice from the panel's legal adviser:

- Serious departure from the personal and professional conduct elements of the latest teachers' standards, as published by, or on behalf of, the Secretary of State;
- Misconduct seriously affecting the education and/or well-being of pupils, and particularly where there is a continuing risk;
- Actions or behaviours that undermine fundamental British values, democracy and law, promote political and/or religious extremism, or demonstrate deliberate intolerance and/or lack of respect of the rights, faith and beliefs of others;
- Evidence of a deep-seated attitude that leads to harmful behaviour;
- Abuse of position or trust (particularly involving vulnerable pupils) or violation of the rights of pupils;
- Dishonesty especially where there have been serious consequences, and/or it has been repeated and/or covered up;
- Sustained or serious bullying, or other deliberate behaviour that undermines pupils, the profession, the school or colleagues;
- Possession of prohibited firearms, knives or other weapons;
- Sexual misconduct;
- Any activity involving taking, making, possessing, distributing, publishing or permitting the taking of any indecent photograph or image or pseudo photograph or image of a child, including one off incidents; as above
- The commission of a serious criminal offence.

Even where it is clear to a panel that there is evidence of one or more of the factors set out above, there may still be mitigating circumstances that it should take into account when considering the appropriateness of recommending prohibition. If most or all of the following criteria are apparent (this list is not exhaustive) and taking account of the nature and severity of the behaviour, a panel may determine that a recommendation for a prohibition order will not be appropriate:

- The teacher's actions were not deliberate;
- The teacher was acting under duress;
- The teacher has a previously good history.

7. Panel recommendations

Following its consideration of all the evidence presented, 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. In doing so, a panel will summarise the evidence it has considered and the rationale applied in reaching its recommendation. It will also recommend whether the Secretary of State should consider allowing a prohibited teacher to make a future application to have the prohibition reviewed.

Where a case has involved any of the following, a panel should consider recommending to the Secretary of State that a prohibition order is imposed with no provision for the teacher to apply for it to be set aside after any period of time:

- violence
- fraud or serious dishonesty
- theft from a person or other serious cases of theft
- class A drug abuse or supply
- serious sexual misconduct or
- arson and other major criminal damage.

8. The Secretary of State's decision on prohibition

Once the Secretary of State has received a recommendation on prohibition from a professional conduct panel he will, within two working days wherever possible, make a decision on whether to impose a prohibition order. The decision will take account of the panel's recommendations and will be notified to the teacher concerned in writing before it is made public.

When the Secretary of State decides that a prohibition order is appropriate, the prohibition applies for life.

However, the Secretary of State may decide to allow a teacher to apply to have the prohibition order reviewed after a specified period of time. The minimum period will not be less than two years.

In cases where a prohibition order has been imposed, once the specified minimum time has elapsed the teacher may apply to the Secretary of State to have the prohibition order reviewed with a view to having it set aside.

Where an application for review is made, the Secretary of State may require documents or other material evidence to be submitted in order for the application to be considered. Where he is satisfied that the evidence supports the application he may decide the

prohibition order should be set aside. Alternatively, he may convene a professional conduct panel to make a recommendation about whether to set aside the prohibition order. The panel will consider any relevant evidence/testimony from, or on behalf of, the teacher. A review is not an appeal against the original decision to impose a prohibition order and panels will not, therefore, reconsider evidence given at the original hearing or new evidence related to the original misconduct that was not considered at the original hearing. The review will only consider the reasons given by the teacher as to why they should now be considered suitable to teach again. In line with the principles for prohibition set out above, the panel should consider whether the continuation of the prohibition order is in the public interest and a proportionate measure. Whether and to what extent a teacher demonstrates clear and unequivocal insight into the misconduct that led to their prohibition and the extent to which they can demonstrate a clear commitment to adhere to and exhibit the personal and professional conduct elements of the latest teacher standards should be an important part of the panel's considerations.

In reviewing an application to have a prohibition order set aside, a professional conduct panel can recommend to the Secretary of State that either:

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

9. Appeals

A teacher may appeal against a prohibition order imposed by the Secretary of State to the Queen'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 has the power to uphold, revoke or amend a prohibition order or to remit it for further consideration by the Secretary of State.

10. Interim prohibition orders

An interim prohibition order prevents a person from teaching until their case has been fully considered and concluded. It may only be made if the Secretary of State considers that it is necessary in the public interest.

There will be no role for professional conduct panels in making interim prohibition orders. The Secretary of State will make an interim prohibition order if it appears that:

- there is reliable evidence that the allegation of misconduct is well founded; and either
- it is necessary for the protection of children, parents or other school staff; or
- it is in the public interest for some other reason.

Decisions will be taken on a case by case basis. When a case is referred to the Secretary of State, consideration will be given to whether the nature and severity of the allegation, and the evidence that it is well founded, are such that the teacher may pose a serious risk if they are free to continue teaching. An interim prohibition order may be imposed at any time during the investigation, although it is most likely to be at the early stages. The teacher will be informed that consideration is being given to the imposition of an interim prohibition order and they will be given seven days' notice to provide any additional evidence that they want to be considered in relation to the decision. All the available evidence will be fully considered.

Where the Secretary of State imposes an interim prohibition order, the teacher will be informed in writing that the order is to apply immediately. If the teacher is currently employed, the teacher's employer will also be informed in writing. The employer is required to take action to ensure the person is prevented from continuing in their position until the case is concluded or until the person successfully applies to the Secretary of State to review the order. The individual will appear on the Prohibited List and it will be clearly indicated that they have an 'interim' prohibition order.

An interim prohibition order will be reviewed by the Secretary of State, on written request from the teacher after a period of six months since it was imposed or last reviewed. The teacher should provide evidence to inform the review, which will be considered alongside evidence from the investigation. The individual does not have a right of appeal to the High Court against an interim prohibition order.



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