



Department  
for Education

# **Consultation on changes to teacher misconduct: the prohibition of teachers' advice**

**Government response**

**January 2014**

# Contents

Introduction	3
Summary of responses received and the Government's response	3
Main findings from the consultation	4
Next steps	7
Annex A: List of organisations that responded to the consultation	10

## Introduction

In June 2013, the Department for Education announced its intention to revise the '*National College for Teaching & Leadership (NCTL) Teacher misconduct: the prohibition of teachers*' advice (prohibition advice). The revisions were intended to clarify the Department's expectation that - other than in the most exceptional cases - any sexual misconduct and any criminal conviction or caution involving indecent images of children would likely lead to prohibition. The subsequent public consultation sought views on the changes proposed and also invited additional comment on the content of prohibition advice more generally.

The prohibition advice aids transparency in relation to the evidence and associated factors that are taken into account when considering allegations of teacher misconduct and assessing whether an individual should be prohibited from the teaching profession.

The prohibition advice's primary purpose is to inform professional panel considerations and senior decision makers within the National College for Teaching & Leadership. It also provides information that can help all those involved in the prohibition process better understand it.

The prohibition advice complements additional information published by the NCTL, which is produced specifically for teachers who are subject to NCTL disciplinary processes and witnesses who provide evidence at disciplinary hearings. In addition, the '*National College for Teaching & Leadership (NCTL) Teacher misconduct – disciplinary procedures for the regulation of the teaching profession*' advice provides further detail about the investigation, hearing and decision-making stages of the process.<sup>1</sup>

Throughout this report, percentages are expressed as a proportion of those who answered each question, rather than a percentage of all respondents.

## Summary of responses received and the Government's response

The online public consultation exercise sought views on a draft version of the revised prohibition advice and took place during an 8 week period, which ended on 16 September 2013. A total of 30 responses were received via the Department's consultation website, by email and in hardcopy. The Department would like to express its sincere thanks to all those who took the time to respond.

Of the responses received, 23 per cent (seven responses) were from representatives of

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<sup>1</sup> It is intended that all related advice will be updated subsequently to reflect the revisions to the prohibition advice that have been made as a result of this consultation exercise.

unions/associations, 20 per cent (six responses) from local authority employees, 13 per cent (four responses) from headteachers/teachers, 7 per cent (two responses) from parents. The largest group of responses (11) came from 'other organisations' including: child protection consultants; safeguarding boards/councils; teaching/schools councils and educational boards/organisations. Responses were received from both the maintained and independent sector.

The consultation comprised four questions, three of which related directly to the specific changes being proposed within the draft prohibition advice and the fourth, which invited comment about the prohibition advice more generally.

## Main findings from the consultation

### Question 1:

**a) Do you agree that the advice should be revised to clarify that panels should give serious consideration to evidence that a teacher has committed activity involving any sexual misconduct?**

**b) If yes, do you think the proposed revisions do this adequately? If not, why not?**

Of those who responded to the question, 86% agreed that the *Teacher Misconduct – the prohibition of teachers'* advice should be revised to clarify that panels should give serious consideration to evidence that a teacher has committed activity involving any sexual misconduct. A further 7% were unsure and 7% disagreed with the proposal.

In relation to whether the proposed revisions to the advice provided adequate clarification, 60% considered the revisions did so, 12% were unsure and 28% felt further revision was required.

In general respondents welcomed the proposal to raise the profile of sexual misconduct in relation to panel considerations, whilst continuing to support the need for panels to apply their own judgement and weigh the public interest with that of the teacher.

Those who considered the revisions did not provide the necessary clarification or felt unsure whether the revisions provided necessary clarification suggested that additional changes were necessary to clarify:

- what would be considered to constitute sexual misconduct;
- the boundaries between sexual misconduct and serious sexual misconduct; and
- make clear that panels should consider whether any behaviours demonstrated affect the suitability of the individual to be a teacher.

Other comments suggested that panel members should receive robust training to ensure a level of consistency in the consideration of such cases.

Of the two responses that disagreed with this proposal, the respondent either gave no explanation of their response or did so on the grounds that they considered that it should be for the Disclosure and Barring Service to investigate any allegation of sexual misconduct rather than the NCTL.

## **Question 2:**

**a) Do you agree that the advice should be revised to clarify that panels should give serious consideration to evidence that a teacher has committed activity involving indecent images of children?**

**b) If yes, do you think the proposed revisions do this adequately? If not, why not?**

90% of respondents supported revisions to the *Teacher Misconduct – the prohibition of teachers’* advice, which would clarify that panels should give serious consideration to evidence that a teacher has committed activity involving indecent images of children. A further 3% were unsure and 7% disagreed with the proposal.

In relation to whether the proposed revisions to the prohibition advice provided adequate clarification, 67% considered the revisions did so, 19% were unsure and 15% felt further revision was required.

In general, respondents strongly supported these amendments, welcoming additional guidance both to assist employers in determining when to make a referral that involves these matters and in clarifying to panel members the position when considering cases involving such images.

Those who considered the revisions did not provide the necessary clarification or felt unsure whether the revisions provided necessary clarification suggested that additional changes were necessary to:

- ensure panels had a proper understanding of the scales used to assess imagery and the relevance of the determined level in respect of risk;
- clarify the types of imagery that panels should consider; and
- provide more detail on the range of images that could be considered as improper, for the purposes of teacher prohibition.

Other comments suggested that the Secretary of State should set out a presumption that prohibition will prevail in proven cases of this type and that mitigating factors should not be considered in these cases.

Of the two responses that disagreed with the proposal, the respondent either gave no explanation of their response or did so on the grounds that they considered that it should be for the Disclosure and Barring Service to investigate any allegation relating to activity involving indecent images of children, as a “relevant offence for the purposes of the Safeguarding Vulnerable Groups Act 2006 (Prescribed Criteria and Miscellaneous

Provisions) Regulations 2009”, rather than the NCTL.

### **Question 3:**

**a) Do you agree that the advice should be revised to indicate explicitly to panels that they should consider relevant cautions as well as convictions?**

**b) If yes, do you think the proposed revisions do this adequately? If not, why not?**

93% of respondents agreed that the *Teacher Misconduct – the prohibition of teachers’* advice should be revised to indicate explicitly to panels that they should consider relevant cautions as well as convictions. A further 3% were unsure and 3% disagreed with the proposal.

In relation to whether the proposed revisions to the advice provided adequate clarification, 59% considered the revisions did so, 30% were unsure and 11% felt further revision was required.

Again there was strong support generally to the revisions that were proposed and suggestions that the advice should make more explicit the need for panels to take account of relevant cautions.

Those who considered the revisions did not properly address the matter, or felt unsure about this, suggested that additional changes were necessary to:

- clarify and provide consistency on the consideration panels will give to accepted police cautions;
- confirm the wider application of the ‘relevant offence’ criteria in panel considerations of ‘unacceptable professional conduct’ and ‘conduct that may bring the profession into disrepute’;
- ensure panel members have a clear understanding of the circumstances in which a caution can be issued by the police; and
- make clear the differences between cautions and convictions, perhaps introducing a separate section on cautions.

Other comments suggested that panels should treat cautions identically to convictions, that it was important to consider the relevance of the caution to teaching and raised concerns about the weight that would be given to a caution as relevant evidence.

The only respondent that disagreed with the proposal suggested that “discretion of heads is more important”.

### **Question 4:**

**Do you have any further comments to make about the revised Teacher Misconduct: the prohibition of teacher advice?**

Respondents to this question made suggestions for more general revisions to the

prohibition advice and proposals for changes to the procedures that are followed when prohibition is being considered. These included:

- clarification of what is meant by the 'prohibited list';
- the need for the advice to provide information that addresses the uncertainty about the process for referring cases of serious teacher misconduct to the National College for Teaching and Leadership (NCTL);
- an explanation of the relationship between the NCTL's activity and the Disclosure and Barring Service's remit to consider safeguarding referrals;
- the potential to introduce automatic prohibitions in certain situations/for specific offences, or for some offences to always result in prohibition without any provision to apply for the prohibition to be reviewed;
- in respect of images of children, the importance for panel members to understand the significance of behaviours involved and the associated risk that an individual may pose to a child; and
- the need to provide detail that ensures consistency in decision making.

## Next steps

We have considered carefully all comments received and have made further amendments to the draft advice document, which we consider address the vast majority of the suggestions made.

In response to requests to provide greater clarity in respect of those key areas on which we consulted; panels' consideration of evidence of sexual misconduct, activity involving indecent images of children and relevant cautions, further revisions include:

- additional clarification about what might be considered to constitute sexual misconduct and similarly serious sexual misconduct and further direction on what additional information panels may consider to assist them to determine the seriousness of an offence;
- in relation to the sections of the prohibition advice that deal with consideration of cautions, further detail on the circumstances in which cautions are issued by the police, and the removal of those references that respondents considered were confusing and potentially contradictory;
- providing additional explanation to reflect that in considering images of children, panels should not be limited by the criminal sentencing position on indecency;
- clarification that, in addition to the information within the prohibition advice, panel members receive training that covers their role and responsibilities, consideration of evidence, decision making factors and child safeguarding, including assessing risk of harm;

- confirmation that behaviours associated with committing offences that did not result in a conviction, are relevant in a panel's consideration of unacceptable professional conduct and conduct that may bring the profession into disrepute;
- more detailed explanations of specific terms used within the advice; and
- new 'links' that direct readers to relevant additional background information, which provide a better and more consistent understanding of specific processes and procedures e.g. links to the Ministry of Justice advice, which explains the circumstances in which police officers may issue a caution for an offence and to specific advice about when it is appropriate to make referrals of allegation of misconduct to the Disclosure and Barring Service and/or to the National College for Teaching and Leadership;

We have also made revisions to the section of the advice that deals with the circumstances in which an interim prohibition order (IPO) may be issued. This clarifies the approach that will be taken when considering whether it is appropriate to issue an IPO, particularly in cases that involve police arrests and Crown Prosecution Service action, and this provides greater transparency in relation to the IPO decision-making process.

Sections 141A to E and Schedule 11 of the Education Act 2002 (amended as a consequence of section 8 of the Education Act 2011) and The Teachers' Disciplinary (England) Regulations 2012 provide the legislation that underpins the teacher prohibition process. In performing their role as professional conduct panels, members act in accordance with the associated legislation.

Professional conduct panels act in a quasi-judicial capacity and must, therefore, be allowed to properly assess the facts of any case before them and make findings on those facts. The prohibition advice makes clear that each case will be considered on its own merits.

A small number of concerns raised by respondents, including the suggestion that automatic prohibitions should apply in certain cases and that there should be no account taken of mitigation in any case where a panel considers a teacher to have committed activity involving indecent images, have not been reflected in the revised advice. Such changes would have required a significant revision to the current policy and associated legislative provisions. At this time we consider the existing option to impose an interim prohibition order in the most serious cases provides sufficient safeguard to pupils pending the formal consideration of their case. That is not to say that in undertaking a wider review of the teacher regulation policy and associated legislation these suggestions would not be given further consideration.

We were also asked to consider a view that consideration of allegations against a teacher of sexual misconduct or inappropriate involvement with indecent images should be considered only by DBS and that NCTL should have no role in these matters.



The DBS's remit requires it to consider cases that are referred to it, which concern safeguarding children and vulnerable adults. This means the DBS's considerations are limited to whether there is a risk of harm or actual harm. In contrast, NCTL professional conduct panels have a wider remit, which in addition to considering misconduct that would lead a panel to conclude there was a risk of harm, or actual harm, also requires consideration of whether behaviours demonstrated by a teacher amount to 'unacceptable professional conduct' or 'conduct that brings the profession into disrepute'.

Where there has been a determination of 'unacceptable professional conduct' or 'conduct that may bring the profession into disrepute', a panel may recommend prohibition from teaching. This means that a teacher who may not be considered by the DBS to be of sufficient risk to warrant being barred from working with children or vulnerable adults, may still satisfy the criteria for a professional conduct panel to recommend prohibition from teaching.

To help clarify the differing roles of the DBS and NCTL in considering misconduct cases, we have amended the advice to provide links to additional information that explain the responsibilities of each organisation.

The revised prohibition advice is published alongside this response.

## Annex A: List of organisations that responded to the consultation

- Association of School and College Leaders (ASCL)
- The Association of Christian Teachers
- Association of Teachers & Lecturers
- Vivien Baker
- Bradford Safeguarding Children Board
- Buckinghamshire County Council, Children & Young People Services
- CAPE
- Elton Primary School
- Catholic Education Service
- Disclosure and Barring Service
- The Dixie Grammar School
- Essex County Council
- Carolyn Eyre
- Freedom and Autonomy for Schools - National Association (FASNA)
- Halton Borough Council
- The Independent Association of Preparatory Schools (IAPS)
- Independent Schools Council
- Independent Schools Inspectorate
- Lakeside Community Primary School
- Leeds City Council - Children's Services
- Stewart McKane
- National Association of Head Teachers (NAHT).
- North Yorkshire County Council
- National Union of Teachers (NUT)
- Rotherham Metropolitan Borough Council
- Voice The Union For Education Professionals
- Ben Whitney (Self-Employed Education Welfare Consultant and Trainer)



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Reference: DFE-00001-2014