

Justice Committee

Apologies (Scotland) Act 2016 (Excepted Proceedings) Regulations 2017 [draft]

Written submission from the General Teaching Council for Scotland

The General Teaching Council for Scotland (GTCS) is a statutory, professional regulatory body established and governed by the Public Services Reform (GTCS) Order 2011 (the “Order”).

Under [The Requirements for Teachers \(Scotland\) Regulations 2005](#), all teachers employed in state primary and secondary schools in Scotland must be GTCS registered. Following the enactment of the Education (Scotland) Act 2016, plans are currently under development and discussion for GTCS registration to be mandated for the independent school sector. We register teachers in the further education sector (college lecturers) on a voluntary basis.

The statutory functions of GTCS are to:

- Maintain a register of teachers in Scotland (ensuring those registered are suitably qualified)
- Set Professional Standards for our registrants, including as to professional competence and conduct
- Protect the public and ensure public confidence in the teaching profession by investigating and determining the fitness to teach of our registrants or applicants for registration
- Accredit programmes that lead to the award of our Professional Standards, in particular Scottish University initial teacher education programmes that lead to the award of the Standard for Provisional Registration
- Ensure that our registrants engage in ongoing professional learning and reflect against the appropriate Professional Standard through our Professional Update process
- Make recommendations to the Scottish Government on matters relating to teacher professionalism and the supply of teachers (excepting matters of remuneration or conditions of service)

We have previously highlighted the implications of the Apologies (Scotland) Act 2016 (the “Act”) for our work as the professional regulator of teachers in Scotland; in particular in the context of our fitness to teach procedures which are carried out in the public interest. We welcome the proposal to provide the GTCS (alongside other professional regulators) with an appropriate exception.

This briefing paper outlines why the exception is required when the Act only restricts the inadmissibility of apologies to determinations of liability.

Through our fitness to teach process, we investigate and determine whether a teacher’s fitness to teach is impaired or he/she is unfit to teach. When temporary action is needed to protect the public or maintain public confidence in the profession we may restrict a registrant’s registration pending conclusion of our investigation and determination of the case. We must remove an individual from (or refuse entry to)

the Register where we determine that he/she is unfit to teach. A range of outcomes are available to us if it is established that fitness to teach is impaired. A teacher can be removed from the Register by a consent process. A teacher can appeal any removal or refusal decision to the Court of Session.

Our proceedings are civil proceedings within the scope of the Act.

In the most serious of cases we can take interim measures to protect the public while we investigate the matter fully. We temporarily restrict a teacher's registration where we consider this to be both proportionate and necessary in the particular circumstances which involves a general assessment of the risk of harm that the particular teacher presents with reference to the allegation made. The legal test for our temporary restriction orders is set out in the Order and requires a Fitness to Teach Panel to determine whether there are circumstances on the face of it which might cause the teacher's name to be removed from the Register. The facts at the temporary restriction order stage therefore need only be established on a prima facie basis and this is consistent with the approach of other professional regulators at this interim stage.

While we recognise that an apology does not necessarily indicate that a teacher admits the facts alleged ("liability" in the context of the Act), we consider that it may be an important piece of evidence in considering whether a temporary restriction order should be imposed in a case.

Following investigation, a decision is made by our Investigating Panel as to whether there is a case to answer and the matter should be referred to a Fitness to Teach Panel for hearing proceedings.

A full hearing is the substantive hearing in a fitness to teach case. Full hearings follow a 3 stage process. A Fitness to Teach Panel has to decide, in turn:

- 1 Whether it finds the facts alleged proved;
- 2 Whether, on the basis of the facts found proved, the Respondent's fitness to teach is impaired or he/she is unfit to teach; and
- 3 If it finds that fitness to teach is impaired, what action should be taken or sanction imposed in view of that identified impairment.

It is important to note that the fitness to teach tests described above are applied *currently* (i.e. at the time of the hearing and for the foreseeable future rather than, for example, at the time that the facts found proved took place). This is consistent with the principle that professional regulation is about looking forward in order to protect rather than about looking back in order to punish. Assessing fitness to teach is approached holistically, taking account of: (i) the way in which the teacher has acted or failed to act; (ii) any information available as to where the teacher is now with regards to his/her fitness to teach and how he/she is likely to behave or perform in future; and (iii) wider public interest considerations.

Whilst, as noted above, we recognise that an apology does not necessarily mean that a teacher is admitting the facts (i.e. liability), we think that the terms of the apology and the relevant context may have a bearing on a determination of the facts

(Stage 1) and will always be relevant to making a determination on fitness to teach (Stage 2). We consider that any apology made should be admissible evidence and be capable of being explored in a hearing to assist Fitness to Teach Panels reach a determination on the alleged facts.

A teacher may apologise at an earlier stage but then deny the allegations when it comes to the GTCS fitness to teach process. Were the apology to be inadmissible as evidence, a Panel may consequently not have sufficient evidence to find the facts proved. This could compromise public protection. It may also mean that in order to determine the matter, more witnesses are required to give evidence with the resultant impact and cost. This would also lengthen the hearing process and the time taken to conclude the case.

Without an exception, we accept that the Act aims to make an apology inadmissible in relation to the determination of liability only. This would mean that the apology could be considered at Stages 2 and 3 of the hearing process when the Panel considers fitness to teach as well as mitigating factors. We do not consider that this would operate well in practise. Witnesses at Stage 1 may speak about the apology when giving evidence on the facts. Without the exception, they would need to be interrupted as any mention of the apology would be inadmissible at this stage.

As noted above, insight and reflection are key factors in our fitness to teach process: an apology often forms a critical part of this. Our view is that it may substantially prejudice the teacher (and the public interest) if there were practical difficulties in a Panel being able to take his/her apology into account.

We are of the view that the simplest way to amend the Act and to address the concerns explained is to include an exception at clause 2(1) which refers to GTCS proceedings.

General Teaching Council for Scotland
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