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Procedures for the Handling of a Complaint about a Registered Teacher to the Investigating Committee of the Teaching Council

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1 Preliminary

- 1.1 The following procedures ("the Procedures") outline how a complaint to the Investigating Committee of the Teaching Council ("the Committee") will be handled.
- 1.2 The Procedures are based on Part 5 of the Teaching Council Act 2001, as amended ("the Act"), and in particular section 42. The Procedures are subordinate to the Act and must be read in conjunction with the Act.

2 The Investigating Committee

- 2.1 The Committee consists of 11 members of the Council. The membership is determined in accordance with section 27 of the Act.
- 2.2 The Chairperson of the Committee is the Deputy Chairperson of the Council. If the Chairperson of the Committee is unavailable to be present at all or part of a meeting of the Committee, those present at the meeting shall elect an acting chairperson who shall act as chairperson while the Chairperson of the Committee is unavailable.
- 2.3 The role of the Chairperson is to be a member of the Committee, and to chair the proceedings of the Committee when considering a complaint. The Chairperson will ensure that the consideration of each complaint is conducted in accordance with the Act and the Procedures, in accordance with fair procedures, and in accordance with the public interest.
- 2.4 The Chairperson shall endeavour to ensure that decisions are made on the basis of consensus. Where this is not possible, decisions will be made on the basis of a simple majority of those present and voting. In the event of a tied vote, the Chairperson (or person presiding in the Chair's absence) will have a second or casting vote.
- 2.5 The quorum for a meeting of the Committee is six members, being a majority

of the total membership provided for in section 27 of the Act.

- 2.6 Meetings of the Committee take place in private with the Committee, relevant staff of the Teaching Council, and the legal advisor(s) to the Committee entitled to attend.
- 2.7 The Committee shall be supported by the Teaching Council staff, who will be responsible for administrative matters and to support the functioning of the Committee. Some of these staff members will be known as Case Officers, who will manage complaints in the manner directed by the Committee.
- 2.8 The members of the Committee to be present at a meeting to consider a complaint will provide the secretariat with information relating to any possible conflict of interest. Where a conflict of interest arises, the member concerned will not take part in the consideration of the complaint and will leave the meeting of the Committee while the complaint is being considered.
- 2.9 The Committee may have a legal advisor present at any stage of its proceedings as outlined in these procedures. Such advisor may provide legal advice and assistance to the Committee and to the secretariat, on any aspect of the Committee's consideration of a complaint.
- 2.10 A member of the Committee may not sit on the Disciplinary Committee and vice-versa.

3 Complaints

- 3.1 A person (including the Council) may make a complaint to the Investigating Committee about a registered teacher.
- 3.2 A complaint under section 42(1) of the Act shall be:
 - a) in writing,
 - b) signed by the complainant, and
 - c) accompanied by such documents and information as may be relevant to the complaint.
- 3.3 Section 42(1) of the Act sets out the grounds for making a complaint to the Investigating Committee in relation to a registered teacher, which are as

follows:

- a) that he or she has failed to comply with, or has contravened any provision of the Act, the Education Act 1998, the Education (Welfare) Act 2000, the Education for Persons with Special Education Needs Act 2004, the Education and Training Boards Act 2013, or any regulations, rules or orders made under those Acts,
- b) that his or her behaviour constitutes professional misconduct,
- c) poor professional performance,
- d) that he or she has engaged in conduct contrary to a code of professional conduct established by the Council under section 7(2)(b) of the Act,
- e) that his or her registration is erroneous due to a false or fraudulent declaration or misrepresentation,
- f) that he or she is medically unfit to teach,
- g) that he or she has been convicted in the State of an offence triable on indictment or convicted outside the State of an offence consisting of acts or omissions that, if done or made in the State, would constitute an offence triable on indictment,
- h) that he or she has failed to comply with an undertaking or to take any action specified in response to a request under section 43(6) of the Act.

3.4 The Act does not define what constitutes professional misconduct by a registered teacher. However, the Teaching Council's Code of Professional Conduct for Teachers includes the following definition:

Disgraceful or dishonourable conduct either in the course of the registered teacher's profession, or otherwise than in the course of the registered teacher's profession if the conduct is of such a serious nature as would bring the profession of teaching into disrepute.

3.5 Poor professional performance is defined in the Act as follows:

..a failure by the registered teacher to meet the standards of competence (whether in knowledge, skill or the application of knowledge and skill or both) that can reasonably be expected of a registered teacher.

- 3.6 For a complaint to be referred to the Disciplinary Committee for an inquiry, the matters complained about must be serious.
- 3.7 The Committee may consider a complaint concerned with any of the grounds at (a), (e) or (g) of paragraph 3.3 above notwithstanding that the matter to which the complaint relates occurred prior to the commencement of Part 5 of the Act.
- 3.8 In addition, the Committee may consider a complaint on the ground of professional misconduct (see (b) of paragraph 3.3 above) notwithstanding that the conduct that gave rise to the complaint occurred prior to the commencement of Part 5 of the Act, where that conduct:
- a) would have constituted a criminal offence at the time the conduct occurred; and
 - b) is of such a nature as to reasonably give rise to a *bona fide* concern that the teacher may -
 - i. harm¹ any child or vulnerable person²,
 - ii. cause any child or vulnerable person to be harmed,
 - iii. put any child or vulnerable person at risk of harm,
 - iv. attempt to harm any child or vulnerable person, or
 - v. incite another person to harm any child or vulnerable person.

¹ "harm" in relation to a person, means exploitation or abuse, whether physical, sexual or emotional of the person as defined in the National Vetting Bureau Act 2012 (as amended)

² Vulnerable person means a person, other than a child, who—

- a. is suffering from a disorder of the mind, whether as a result of mental illness or dementia, or
- b. has an intellectual disability, or
- c. is suffering from a physical impairment, whether as a result of injury, illness or age, or
- d. has a physical disability, which is of such a nature or degree—
 - (i) as to restrict the capacity of the person to guard himself or herself against harm by another person, or
 - (ii) that results in the person requiring assistance with the activities of daily living including dressing, eating, walking, washing and bathing.

- 3.9 A Case Officer will manage each complaint (hereinafter referred to as “the Case Officer”) and will acknowledge receipt of all complaints and confirm with the complainant if he or she is making a complaint, if this has not already been clearly stated.

4 Director Review

- 4.1 The Director, or any employee of the Council to whom the Director has delegated this function, (hereinafter referred to as “the Director”) will review the complaint and will refer it to the Committee, unless:

- a) it does not fulfil the requirements under paragraph 3.2 above, or
- b) it is considered by the Director to be frivolous, vexatious, is made in bad faith or is an abuse of process,

in which case the Director may refuse to refer a complaint.

- 4.2 If the Director refuses to refer the complaint, the complainant will be informed by notice in writing within 21 days of:

- a) the decision,
- b) the reasons for the decision, and
- c) the right of the complainant to appeal the decision to the Committee within 21 days of the date of service of the notice.

- 4.3 The Case Officer will forward a copy of the notice of refusal and a copy of the complaint to the registered teacher who is the subject of the complaint.

- 4.4 Where a complaint is being referred to the Committee by the Director, the Case Officer will inform the registered teacher, who is the subject of the complaint and enclose a copy of the complaint (including any accompanying documentation). The Case Officer will also enclose a copy of these Procedures, and any other relevant information or guidance on the complaints process which may assist the registered teacher.

- 4.5 Where a complaint is referred to the Committee, the Case Officer will invite the registered teacher to make written submissions to the Committee. The registered teacher may make submissions on the following initial matters:

- a) whether the complaint relates to their fitness to teach; and
 - b) whether school disciplinary procedures established under section 24 of the Education Act 1998³ have been exhausted, and if not, whether there are good and sufficient reasons to proceed to consider the complaint notwithstanding that fact.
- 4.6 In addition to the matters referred to at (a) and (b) at 4.5 above, the registered teacher may, at the same time, and having been invited to do so, make written submissions regarding the substance of the complaint including whether there is a *prima facie* case to warrant further action being taken, as referred to in section 42(9) of the Act. The registered teacher will be informed that if they agree to this in writing in advance, and if the Committee believes it has sufficient information, the Committee may proceed at its initial meeting to decide whether there is a *prima facie* case to warrant further action being taken, as referred to in section 42(9) of the Act. The registered teacher will be informed that this will generally also involve their submissions being provided to the complainant in advance of the complaint being considered by the Committee, and the complainant being afforded an opportunity to respond in writing.
- 4.7 If the registered teacher does agree to the Committee deciding whether there is a *prima facie* case to warrant further action being taken at its initial meeting, any submission received from the registered teacher will, in general, be provided to the complainant for comment, with any response from the complainant provided to the registered teacher who will in turn be afforded an opportunity to make a further submission in advance of the Committee considering the complaint.
- 4.8 Where a complaint is referred to the Committee, and in advance of it being considered by the Committee, the Case Officer may seek information regarding the status of local discipline procedures to assist the Committee in considering whether it is required to refuse to consider the complaint as referred to at 5.2 below.

³ Section 28 of the Education Act, 1998 requires the Minister for Education and Skills to establish grievance and other procedures for students and parents. It is referred to in the Teaching Council's fitness to teach legislation. However, this section has not been brought into operation by the Minister to date.

4.9 In addition, where a complaint is referred to the Committee, the Case Officer may conduct an initial review of the complaint and prepare a draft case plan for the Committee to consider, at its initial meeting or at a future meeting. The draft case plan shall be a plan for the preliminary investigation of the complaint. It may identify (in general or specific terms) some or all of the following:

- a) information or documents to be procured,
- b) persons to supply information or documents,
- c) experts to provide reports,
- d) schools to provide submissions,
- e) such other matters as may appear to be relevant to the complaint.

4.10 The Committee will be provided with the complaint (including any accompanying documentation), all written submissions received, all information received regarding the status of local discipline procedures, any draft case plan, and all other relevant information and documentation.

5 Consideration by the Investigating Committee

5.1 The first issue for the Committee to consider is whether to hold what is referred to in the Act as “an inquiry” but will, for the purpose of distinguishing it from an inquiry before a panel of the Disciplinary Committee, be referred to throughout these procedures as “a preliminary investigation”, in relation to a complaint. Subject to paragraph 5.2 below and 5.3 below, the Committee shall decide to proceed to hold a preliminary investigation.

5.2 The Committee shall refuse to consider a complaint where:

- a) the complaint does not relate to the fitness to teach of a registered teacher; or
- b) procedures established under section 24 of the Education Act

1998⁴, have not been exhausted, save where there are good and sufficient reasons for considering the complaint notwithstanding that fact.

- 5.3 The Committee shall also refuse to consider a complaint where:
- a) it decides to uphold the decision of the Director to refuse the complaint, or
 - b) the matters referred to in the complaint pre-date the commencement of Part 5 of the Act, and the Committee is of the view that, in accordance with the Act, it is not entitled to consider the complaint.
- 5.4 Where necessary, the Committee may seek further information to assist it in forming a view on the issues referred to in paragraph 5.2 and 5.3 above.
- 5.5 Where the Committee refuses to consider a complaint in accordance with paragraph 5.2 or 5.3 above, the Case Officer shall on behalf of the Committee, inform the complainant. The registered teacher will also be informed. In the case of a decision to refuse to consider a complaint in accordance with paragraph 5.2 above, the complainant will be informed of the decision and the reasons for the decision by notice in writing within 21 days of the Committee making the decision.
- 5.6 Where the registered teacher the subject of the complaint is employed by a recognised school, an education and training board or a centre for education, or engaged in the delivery of home tuition, or employed in teaching children or vulnerable persons, and where the identity of the employer of the teacher is known to the Council, the Committee will consider whether it is obliged to inform the employer of that teacher of the complaint and the nature of the *bona fide* concern that the Committee has, in accordance with section 42(3A) and (3B) of the Act.
- 5.7 On initial consideration, and each subsequent consideration of a complaint, the Committee may consider whether immediate suspension of the registered teacher's registration may be necessary in the public interest. If the Committee

⁴ Section 28 of the Education Act, 1998 requires the Minister for Education and Skills to establish grievance and other procedures for students and parents. It is referred to in the Teaching Council's fitness to teach legislation. However, this section has not been brought into operation by the Minister to date.

believes that immediate suspension may be warranted, it shall direct that the matter be brought to the attention of the Council (or the Executive Committee if the Council has delegated its power) for consideration pursuant to section 47 of the Act.

- 5.8 Where the Committee decides to hold a preliminary investigation, it shall request the Council to apply to the National Vetting Bureau for a vetting disclosure in respect of the registered teacher where the Committee considers that the complaint is of such a nature as to reasonably give rise to a *bona fide* concern that the registered teacher may:
- i. harm any child or vulnerable person,
 - ii. cause any child or vulnerable person to be harmed,
 - iii. put any child or vulnerable person at risk of harm,
 - iv. attempt to harm any child or vulnerable person, or
 - v. incite another person to harm any child or vulnerable person.
- 5.9 If the Committee requests a vetting disclosure in accordance with paragraph 5.8 above, the Committee may, for the purpose of its preliminary investigation, consider the information contained in the vetting disclosure in so far as the information relates to the conduct the subject of the complaint, in accordance with section 42(7B) and (7C) of the Act.
- 5.10 Where the Committee decides to hold a preliminary investigation, it may, at its first meeting (where appropriate) or at any subsequent meeting, decide to do one or more of the following:
- a) direct the Case Officer to carry out any or all of the actions identified in the case plan and/or any other actions the Committee thinks appropriate
 - b) require the complainant to verify anything contained in the complaint
 - c) request the complainant to supply additional information whether by means of a statutory declaration or not
 - d) require the complainant to supply documents
 - e) require the registered teacher to furnish information or documents
 - f) require any school where the teacher is or was employed or any other person the Committee has reason to believe holds material

information, to provide information or documents to the Committee

- g) obtain such expert advice or assistance as it considers appropriate
- h) invite any school where the teacher is or was employed as a registered teacher to make submissions in writing
- i) in the case of alleged medical unfitness, seek the submission of medical evidence, the making of representations, attendance for medical examination or take any other steps set out in the *Teaching Council [The submission of medical evidence, making of representations and attendance for medical examination] Regulations 2015*
- j) adjourn consideration of the complaint
- k) make its decision on whether there is a *prima facie* case to warrant further action being taken, and if so, refer the complaint to the Disciplinary Committee
- l) take such other action as the Committee considers appropriate.

5.11 Unless the Committee decides whether there is a *prima facie* case to warrant further action being taken at the initial meeting, the Case Officer will carry out all steps directed by the Committee and will prepare a case report which shall include the complaint and all correspondence, submissions, reports, documents, representations and information which the Case Officer was directed by the Committee to obtain. The case report may also include suggested additional steps to be taken as part of the preliminary investigation.

5.12 The case report and all correspondence, submissions, reports, documents, representations, and information received by the Committee during its investigation will be sent to the registered teacher by the Case Officer. The registered teacher will be given a reasonable period of time to submit a response in writing.

5.13 Thereafter, the case report and any response will be furnished to the Committee for its consideration.

5.14 On considering the case report, the Committee may direct the Case

Officer to carry out further investigations. Any additional information or documentation gathered will be provided to the registered teacher who will be given a reasonable period of time to submit a response in writing. If the Case Officer deems it necessary, they may prepare an updated case report, which along with any response, will be furnished to the Committee for its consideration.

5.15 When the Committee is satisfied that it has sufficient information, or that further reasonable investigation of the complaint is unlikely to disclose additional information likely to substantively affect the Committee's decision, the Committee shall decide whether there is a *prima facie* case to warrant further action being taken. This decision could be reached at the initial meeting of the Committee (save where the registered teacher does not agree to this in writing in advance, as referred to in paragraph 4.6 above) or at any subsequent meeting.

5.16 The Committee shall:

- a) where it is of the opinion that there is a *prima facie* case to warrant further action being taken in relation to the complaint, refer the complaint, in whole or in part, to the Disciplinary Committee, or
- b) where it is of the opinion that there is no *prima facie* case to warrant further action being taken in relation to a complaint, refuse to refer the complaint to the Disciplinary Committee.

5.17 The Committee shall record its decision in relation to paragraph 5.16 in writing and shall set out the reasons for the decision.

5.18 The Case Officer, having been instructed by the Committee, shall, within 21 days of the Committee's decision, provide a copy of the decision, and in the case of a decision that there is no *prima facie* case to warrant further action, the reasons for the decision, to the complainant, the registered teacher and where the teacher is employed as a teacher, his or her employer.

6 General

- 6.1 Non-compliance with the Procedures shall not render any proceedings or steps void unless the Committee so directs. Such proceedings or steps may be set aside either wholly or in part as irregular, or amended or otherwise dealt with in such manner or upon such terms as the Committee shall think fit.
- 6.2 Paragraph 6.1 shall not affect the requirements to comply with any statutory provisions.
- 6.3 The Committee will endeavor to manage complaints as expeditiously as possible, taking into account the interests of justice and also any administrative constraints.
- 6.4 The Committee will act at all times in accordance with the principles of fair procedures and in the public interest.
- 6.5 The Council may amend the Procedures from time to time.
- 6.6 The Procedures shall apply to all complaints being considered by the Committee or to be considered by the Committee in the future, as of the date of the making of the Procedures.