

**General Teaching Council for Scotland**  
**Fitness to Teach rules review**  
**5 November 2024**

**Introduction**

1. NASUWT welcomes the opportunity to comment on the Phase 1 – Discovery and Analysis stage of the GTCS Fitness to Teach Rules 2017 (the Rules).
2. NASUWT is the largest UK-wide teachers' union representing teachers and school leaders in all sectors of education.

**GENERAL**

3. NASUWT reiterates its longstanding view that teachers should exhibit the highest standards of professionalism and regard for the safety and wellbeing of children and other staff in discharging their responsibilities. The Union maintains that the vast majority of teachers act in this manner.
4. Fitness to Teach Rules enable the GTCS to fulfil a statutory function mandated by the Scottish Government and are necessary to keep children and young people safe, while supporting the right of teachers to practice in a profession to which many have dedicated their entire working lives.
5. The Union supports the purpose of the review, which is to '*ensure the Rules reflect current law and best regulatory practice make the Fitness*

*to Teach process work as efficiently as it can, while still meeting the public interest and ensuring fairness.'* Acknowledging the process can always be amended and improved, it is nevertheless important to recognise the benefits of the current GTCS Fitness to Teach Rules, compared with the approach taken by the Teaching Regulation Authority in England, for example.

6. NASUWT further supports the GTCS aim of having a process that is proportionate, accountable, transparent and consistent, and is targeted only where action is needed. Indeed, the Union considers that the current range of disposals available to the GTCS Fitness to Teach Panel is a significant strength in achieving these principles.

**Q1: It is important for anyone involved in the Fitness to Teach process to be familiar with the Fitness to Teach rules, particularly those subject to investigation and any representative. We publish our rules and the policies that underpin them on our website, including our threshold policy and publication policy, which we highlight to those who are involved in our Fitness to Teach process. Do you have any further comments to make in relation to interpreting and applying the Fitness to Teach rules?**

7. Openness and transparency are important and it is welcomed that the GTCS provides this information on its website; however, not all practice statements are currently fit for purpose, such as the '*Health Matters and Medical Evidence*' and the '*Use of electronic communications in hearings*'. It is noted that a review of the suite of practice statements is included in the GTCS workplan. NASUWT would wish to be included in any discussions informing amendment and review of the practice statements.
8. While an application is required to be made by either party for a virtual hearing to take place, NASUWT's experience is that these are often granted in spite of the Teacher opposing them. While understanding

the virtual hearing may speed up the process, the default position should nevertheless remain that a Teacher at risk of removal from the Register should have the right to an in-person hearing.

**Q2: We publish information to help people understand and participate in our Fitness to Teach work. As well as information about the Rules themselves and the process followed, we publish details about upcoming hearings and recent decisions; practical information for people involved in cases and; guidance on how to make a referral. We have also published a number of practice statements designed to help guide and inform best practice and promote GTC Scotland's commitment to our organisational values and principles, as well as best regulatory practice. Do you have any suggestions for these or any other resources we can provide to support understanding and participation in the process?**

9. The Union has recently become aware of a case where the GTCS has published historical records of an Initial Consideration Panel meeting once a teacher has signed the Consent Order. As a result, significant amounts of information relating to that case were placed in the public domain and the information which was published went well beyond the information in the Consent Order. The publication policy which the GTCS relied upon to justify this decision is at best ambiguous and, NASUWT purports, falls considerably short of making this process clear. Indeed, it is the Union's view that the sharing of such information negates the purpose of the Consent Order and, in this case, removed any benefit from the Teacher signing the Consent Order. Clearer and better information from the GTCS relating to the publication of information is urgently needed.

**Q3: We are aware that the experiences of those who participate in our process vary considerably. For example, this can depend on whether a hearing takes place and if it is online or in person, the subject matter of**

**the referral and the people involved. What are your experiences of participating in the Fitness to Teach process?**

10. While the NASUWT's experience of the Fitness to Teach (FTT) process is varied, overall the Union would accept that the GTCS proceedings generally meet the principles of being proportionate, accountable, transparent and consistent, and targeted only where action is needed
11. There are a number of aspects to the 2017 Fitness to Teach Rules that work well in practice. The requirement for a Fitness to Teach Panel to have a majority of GTCS-Registered teachers on the Panel that determines the future of a Teacher is a clear strength. However, the increasing reluctance of employers to release Panel members causes excessive delay and the powers of the GTCS to mandate employers to release Panel members needs strengthening to enable the system to be sustained. Nevertheless, and as set out in more detail later on, the GTCS and Presenting Officer have a duty to ensure hearings are slimmed down, focussed and do not have excessive and unnecessary witnesses slowing proceedings.
12. A Consent Order, which allows a teacher to be voluntarily removed from the Register without the need for a full hearing, is also a welcomed and important principle. However, the current requirement that a teacher has to accept every word of every allegation against them is not fit for purpose and causes full hearings where they are not necessary. This is not a new concern; the Union during the 2016 review stated:

*'The Union believes that there should be scope where the allegations are multiple and often multifaceted to admit the allegations in part where this would make no material difference to the sanction offered. There have been examples where members are unable to admit one*

*minor or trivial allegation and this has prevented a consent order which would have resolved the matter sooner with no risk of harm'*

13. The Union remains clear that there should be a form of 'plea bargaining' where a teacher can set out which of the allegations they would be willing to accept to be removed from the Register. This is particularly important where teachers have retired and have no intention of returning to teaching but feel unable to accept a Consent Order as they dispute one allegation but are willing to accept multiple others.
14. NASUWT would support the wording proposed at the Fitness to Teach Rules event hosted by the GTCS in June 2024 which suggested: "*With reference to 2.7.1(b), where the Teacher is willing to agree to removal with consent but not to the consent order as drafted, there should be consideration given to suggested alternative wording in the interests of efficiency and fairness while still addressing the public interest requirements*".
15. The Union would wish to highlight the importance of making progress in this area during the current review. It is worth noting that these issues were previously raised in the 2016 FTT review and sadly are still pertinent and unresolved. The following is taken from our 2016 response to the GTCS review:

*'The NASUWT is currently providing representation to a number of members through the Fitness to Teach process who have no intention of remaining a GTCS registered teacher and are actively seeking to leave the register. Currently they are unable to do so, which is causing them unnecessary stress and wasting the resources of the GTCS as well as the NASUWT. Where a member is subject to a Fitness to Teach investigation but is unable to continue teaching due to ill health, particularly a degenerative illness, some form of fast tracking should be introduced to allow removal from the register. The current Rules do not allow for this and the new proposals do not appear to clearly allow for*

*such a measure. This could be widened out to include other areas where respondents have left the profession and have no intention of returning, for example having accessed their pension'*

16. While the Temporary Restriction Order (TRO) is an important principle, the current application disproportionately impacts teachers not in work. Where a TRO is imposed when a teacher is not in employment at the time, there needs to be a process to fast track proceedings and prioritise those not in work over those currently in employment as the consequence of the TRO (unable to work as a teacher) is disproportionately higher than that for a teacher in work (unable to move to a new job).

17. The NASUWT experience of the Introduction of the GTCS Fitness to Teach Rules from 2012 onwards is that proceedings have become much slower and more legalistic. A hearing which historically may have taken one day will now often take 4 – 5 working days. These changes coincided with the GTCS appearing to outsource the Presenting Officer function to external legal representatives. This is not a uniquely Scottish concern and we can see in England as well that the TRA's practice of contracting out its investigation functions to external legal firms also contributes to delays. In the Union's response to the Teaching Regulation Agency consultation '*Teacher misconduct: the prohibition of teachers: 19 October 2021*' it was confirmed that:

*'Such an approach adds unnecessary costs to the investigation process. It also creates unacceptable conflicts of interest, given that contractors tasked with investigating cases are also often given responsibilities for presenting cases on the TRA's behalf. This system creates perverse incentives for contractors to protract cases, and to recommend they proceed to a panel hearing, in order to maximise the professional fees they receive from the TRA for their services. It is worth noting in this context that other UK regulatory bodies employ staff directly to carry out investigations, as was the former General*

*Teaching Council for England's practice, to ensure timely assessment of cases and avoid conflicts of interest. As a minimum expectation, the TRA must revise its procedures in this respect to ensure that decisions to proceed to panel hearings are genuinely impartial and secure value for public money'.*

18. Since 2012, NASUWT also notes there has been a significant increase in the number of witnesses called to give evidence in person. Many of these witnesses are third party witnesses who simply recount having been informed of an event by an actual witness. A common example is a headteacher being informed of an allegation by a teacher. The headteacher did not witness the alleged incident and their attendance as a witness at the hearing simply adds significant delay and logistical complexity when their written witness statement is clearly sufficient. This excessive calling of witnesses makes the process longer and is intimidating to the Teacher. As a general rule, the Presenting Officer should limit in-person witnesses to those who have first-hand evidence of the event (s) under consideration.
  
19. The Union also believes the threshold for investigation continues to be set too low. Matters which have no realistic prospect of ending in Removal from the Register continue to clog up the system: the most serious allegations need to be prioritised.
  
20. Employers continue to misuse the GTCS FTT referral process by using it as an insurance policy. Before establishing the facts of an allegation, the employer will often refer the matter to the GTCS. The consequences of this are that, where the employer subsequently investigates the matter and accepts there is no case to answer, or it is a low level disciplinary sanction, the teacher can still be stuck in the GTCS FTT process for a number of years. NASUWT raised concerns regarding this misuse as part of the 2016 review stating:

*'The NASUWT has become increasingly concerned by the trend of a number of local authority employers who appear to be referring conduct matters to the GTCS as a matter of course when their own internal procedures have clearly addressed a specific issue and there is no focus in addressing risk of harm to the referral. The new rules need to prevent these abuses of the system by employers. This should be accompanied by targeted engagement of employers by the GTCS to establish clear good practice benchmarks of suitable referrals and when those referrals should take place'.*

The Union recommends that the suggested targeted engagement of employers and clear good practice benchmarks should be prioritised moving forward.

21. Rule 2.1.1 continues to be misused by Panels. Rule 2.1.1 (b) states: *(b) that it relates to events that occurred 5 years or more before the date of the most recent event (or events) referred to and it is not in the public interest for it to be referred for investigation.* Since the introduction of the Rules in 2012, Panels routinely reject the implementation of this Rule, and, in doing so, misuse the breadth and scope of the 'public interest' clause.

22. The requirements regarding medical evidence in practice statements are set too high and Panels demonstrate an unhelpful inflexibility in reviewing the evidence. In the Health Matters and Medical Evidence Practice Statement it states:

*'Medical evidence should take the form of an appropriately detailed letter from a medical practitioner setting out the following: A specific diagnosis; The severity of the condition(s); A specific explanation of how the condition(s) impacts upon attendance at the hearing and/or engagement with the hearing process (as well as any recommendations as to reasonable adjustments that could or should be made to facilitate attendance/engagement); What the treatment is; and What the prognosis is'*



NASUWT has experience of Panels disregarding this evidence in circumstances where the required information is clearly within the information provided by the GP but is not explicitly labelled with the headings of bullet points above. The teacher is not in control of how a GP or medical practitioner presents the evidence requested nor should they be placed at a disadvantage as a result.

**Q4: We sometimes need to involve children and young people in our investigations by taking statements from them and sometimes we ask them to give evidence at a hearing because, where their evidence is key, we can experience challenges about relying on their statements alone. This tends to happen in the cases that raise the biggest potential public protection concerns. Understandably, children and young people and their parents or carers are often reluctant to become involved in our process. What can we do to ensure that the rights of children and young people are respected and protected and the impact of their involvement minimised?**

23. As this is a complex area to navigate the Union would welcome further individual and detailed discussions with the GTCS on this matter.

**Q5: Do you have any other views that you would like to provide?**

24. NASUWT agrees that the Fitness to Teach process is not operating quickly enough for the best interests of any party and that the sometimes substantial delays have a significant detrimental impact on our members. To that end, we would favour scheduling hearings early in the process as this would provide a clear outline all parties could work with.

25. This review does not take place in a vacuum and NASUWT is concerned that, as ever increasing demands are placed on teachers to continually innovate and adapt, whilst often teaching more challenging

classes due to the 'presumption of mainstream' inclusion agenda, and whilst support staff and resources are repeatedly stripped due to budget cuts, there is an increasing risk that more experienced teachers and those nearer the end of their teaching career are targeted by competency proceedings. The reality of an increasingly challenging classroom environment must be understood to prevent employers making teachers the scapegoat for an unmanageable set of circumstances outside of their control.

26. Teachers referred to the GTCS are entitled to the peaceful enjoyment of their possessions under Article 1 of the First Protocol to the European Convention on Human Rights ("the Convention"). Those possessions include (but are not limited to) their professional connections and goodwill, their salary, and their professional expertise and knowledge. Further, the GTCS proceedings are proceedings to which Article 6 of the Convention applies, as they determine teachers' right to practise their profession. Any review must be grounded in a human rights approach.

27. The GTCS is also subject to the provisions of the Equality Act 2010 and the Public Sector Equality Duty. In line with these legal responsibilities, NASUWT calls on the GTCS to investigate the extent to which the number and treatment of cases brought before it raises issues in respect of teachers with protected characteristics and further calls for such information to be a matter of public report and scrutiny. Any updated rules or guidance must thereafter seek to address any inequality.

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