



## **Misconduct and the Teaching Regulation Agency NEU guidance for members in England**

The purpose of this document is to explain the functions of the Teaching Regulation Agency in relation to alleged professional misconduct.

What is the Teaching Regulation Agency?

The Teaching Regulation Agency (TRA) is the latest iteration of what used to be called the General Teaching Council (England). The agency is responsible for regulating the teaching profession on behalf of the Secretary of State for Education. This means investigating and, where appropriate, progressing allegations of serious teacher misconduct to hearing.

Unlike the Welsh and Scottish teacher regulators, the TRA conduct panel has power only to make recommendations to the Secretary of State, not to determine for themselves the fate of colleagues accused of serious professional misconduct. Consequently, any recommendation by the conduct panel may be rejected by the Secretary of State.

Are all teachers subject to regulation?

Most, but not all teachers are covered by the regulatory system. Teachers who teach in any type of school setting (including independent schools), sixth form colleges, children's homes and youth accommodation are covered. Those who teach outside these settings (eg home tutors) may not be covered.

If you are referred to the TRA, but are not sure if it has power to investigate the allegations against you, contact the TRA's Investigations & Initial Determinations Unit in the first instance (email: [regulation.division@education.gsi.gov.uk](mailto:regulation.division@education.gsi.gov.uk))

Can I be referred to the TRA if I no longer teach in schools?

You may be referred to the TRA even if you no longer teach in a school. Whether the TRA has jurisdiction to investigate allegations against you will depend on whether you were teaching in a relevant setting when the conduct complained of arose. The remit of the TRA in cases of this kind has recently been contested in a number of cases, so contact the NEU if you believe you have been wrongly referred to the regulator. Similarly, contact the union if you are referred to the TRA because you now teach in a relevant setting, but did not do so at the time of the alleged misconduct.

It should be noted that your employer and/or the Disclosure and Barring Service (DBS) may investigate any allegations against you, even where the TRA has no jurisdiction to do so.

Are only qualified teachers subject to regulation?

No, all people who carry out 'teaching work' in a relevant setting, whether they are qualified or otherwise, are covered by the regulatory system. Teaching assistants and other support staff who operate under the supervision and direction of a teacher

are not deemed to be carrying out teaching work and therefore fall outside the remit of the TRA. They may, however, be subject to barring by the DBS.

What does the TRA investigate?

The TRA investigates any allegation of serious misconduct referred to it by employers, the police, the DBS and/or any member of the public. Examples of serious misconduct include allegations of inappropriate relationships with pupils, exam misconduct, financial misconduct, dishonesty, bullying, alcohol and drug offences, and any other serious criminal behaviour.

Competence issues should not be referred to the TRA, but should be dealt with at school level by employers.

On what basis may a person be prohibited from teaching by the TRA?

A teacher may be prohibited from teaching only if they are found guilty of:

- unacceptable conduct
- conduct which may bring the profession into disrepute
- a relevant offence.

What happens when an allegation is referred to the TRA?

The investigations team will carry out an initial assessment to determine whether an investigation is warranted. If they decide to make further enquiries, the teacher will be informed of the allegation and given an opportunity to submit written representations and evidence within 28 days. The evidence will then be considered by the determinations team, who will determine whether the allegation should be:

- dismissed and no further action taken, or
- referred to the professional conduct panel.

If the allegations are such that the teacher is considered to be a risk of harm to pupils, the Secretary of State may impose an interim prohibition order, which would prevent the teacher from teaching unsupervised in a school or any other relevant setting until the allegations are determined by a professional conduct committee.

There may also be occasions when the TRA will decide to dismiss the allegations, but refer the matter to the DBS for further consideration.

What is the relationship between the TRA and the DBS?

The system of automatic barring for relevant offences is unique to the DBS and is a power acquired under the Safeguarding Vulnerable Groups Act 2006. However, both the TRA and the DBS have jurisdiction to consider information amounting to relevant conduct and conduct giving rise to risk of harm.

The NEU believes this represents a duplication of work and is likely to subject teachers to a system of double jeopardy since concerns about an individual may be referred to both the TRA and the DBS at the same time. Although the TRA and DBS have given assurances that they will work together to reach a decision in cases where this happens, the NEU's casework suggests this does not happen as well as it should. It is not unusual for a teacher exonerated by the DBS to be considered for barring by the TRA subsequently, or vice versa. For teachers innocent of the allegations against them, this is an unnecessarily bureaucratic and stressful process. However, unless the law changes, teachers may continue to be subject to both jurisdictions in respect of the same alleged misconduct.

Can I appeal the imposition of an interim prohibition order (IPO)?

There is no right of appeal against the imposition of an IPO, although the Secretary of State must review the decision to impose one upon request:

- within six months after the order has been made
- and at subsequent six-monthly intervals.

Your application for review must be made in writing and must set out the grounds for the application.

What happens if the determinations team decide to refer the allegations to a conduct panel?

A referral to the conduct panel will normally be followed by a public hearing at which there will be at least three panel members, one of whom will be a teacher. The case against the teacher will be presented by a lawyer instructed to act for the TRA. The teacher will have a right to be represented by a lawyer, or a trade union official, or may represent themselves. Witnesses may be called by both sides. After hearing the evidence, the panel must determine the following questions:

- Has the case been proved on the balance of probabilities?
- If so, does this amount to unacceptable professional conduct or conduct that may bring the profession into disrepute (the Teachers' Standards relevant at the time of the misconduct will be considered)?
- Has there been a conviction or caution for a relevant offence?
- Is it appropriate to recommend a prohibition order?

The panel must also take into account any mitigating factors put forward and must also balance the interests of the public with those of the teacher when making a recommendation.

What is a prohibition order?

A prohibition order prevents a person from teaching unsupervised in a relevant setting. Prohibition orders are the only sanction available to the Secretary of State. There is therefore no lesser sanction that can be imposed, although the courts have recently held that a finding of inappropriate professional conduct without prohibition may be deemed a sanction. Prohibition orders can be for an indefinite period but are often subject to review after a stipulated period of time. They cannot be reviewed before the period of two years has elapsed.

Is there a right of appeal against prohibition?

Yes, there is a right of appeal to the High Court and it must be lodged within 28 days of the prohibition order being served.

What should I do next?

If further advice is needed, contact your NEU workplace rep in the first instance. If there is no NEU rep in your workplace, or the peripatetic nature of your employment makes contact with a workplace rep difficult, contact the NEU Adviceline in England on 0345 811 8111 or NEU Cymru in Wales on 029 2049 1818.

Further contact details may be found at: [neu.org.uk/contact-us](https://neu.org.uk/contact-us)

Further information

TRA guidance – Teacher misconduct: disciplinary procedures for the teaching profession (April 2018), available at: [gov.uk/government/organisations/teaching-regulation-agency](https://gov.uk/government/organisations/teaching-regulation-agency)

NEU guidance, available at: [neu.org.uk](https://neu.org.uk)

- Allegations of abuse against staff
- DBS Checks

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