

## SANCTION GUIDANCE DOCUMENT

November 2017

## Introduction

If a complaint is referred to the Disciplinary Committee of the Teaching Council for an inquiry, a panel of the Disciplinary Committee consisting of not less than three and not more than five persons, of whom a majority shall be registered teachers (“the Panel”) shall hold an inquiry.

At the conclusion of the inquiry, the Panel may:

1. **Dismiss the complaint** in circumstances where the Panel:
  - a) Makes no finding in relation to a complaint under any of the grounds set out under section 42(1)(a) to (h) of the Act, or
  - b) is not satisfied, in respect of a complaint made under subsection (1D) of section 42, having regard to the protection of children and vulnerable persons, that there is a risk that the teacher may harm any child or vulnerable person, cause any child or vulnerable person to be harmed, put any child or vulnerable person at risk of harm, attempt to harm any child or vulnerable person, or incite another person to harm any child or vulnerable person.

OR

2. **Decide whether to impose a sanction on the registered teacher** under section 44 of the Act, where the Panel, having completed its report and considered any submissions from the parties in relation to sanction:
  - i. Makes a finding or findings on one or more of the grounds set out in section 42(1)(a) to (h) of the Act, or
  - ii. Is satisfied in respect of a complaint made under subsection (1D) of section 42, having regard to the protection of children and vulnerable persons, that there is a risk that the teacher may harm any child or vulnerable person, cause any child or vulnerable person to be harmed, put any child or vulnerable person at risk of harm, attempt to harm any child or vulnerable person, or incite another person to harm any child or vulnerable person.

This is a guidance document to assist panels of the Disciplinary Committee in relation to 2 above.

### 1. Discretion of the Panel

- 1.1 The Panel must always exercise its own judgment in making decisions and must consider the particular circumstances of each case. This guidance document is not designed to constrain that decision making process. This guidance document does not provide an

exhaustive or prescriptive list of principles and factors that are required to be considered by the Panel.

- 1.2 However, to ensure a general consistency and transparency of approach by the Panel, decisions should be made with due regard to this guidance.

## **2. Submissions**

- 2.1 In advance of making a decision in relation to sanction, the parties, being the Director (and the Director's legal representatives) and the registered teacher (and his or her representatives) will be invited to make oral or written submissions to the Panel with regard to any sanction it may impose on the registered teacher's registration. All submissions made should be considered by the Panel.

## **3. Legal Assessor**

- 3.1 A legal assessor may advise the Panel on relevant matters of law and procedure, when requested by the Panel and may intervene at any point in proceedings where he/she believes it is necessary.
- 3.2 The legal assessor shall not participate in the decision making processes of the Panel but may be present at the Panel's deliberations, at the Panel's request.
- 3.3 If the Panel requires legal advice, it should obtain it from the Panel's legal assessor. Prior to the Panel acting on that advice, the parties should be informed by the legal assessor of the advice that has been given. Both parties must then be afforded an opportunity to make submissions upon that advice. The legal assessor may then vary the advice to the Panel in light of the submissions made.
- 3.4 The Panel should then consider the legal advice and submissions made in private and give reasons for its decision.

## **4. Sanction available to the Panel under S.44 (1) (a)-(d)**

- 4.1 Pursuant to section 44(1) of the Acts, the Panel may make a decision—

- a) that the registered teacher be removed from the register and that he or she shall not be eligible to apply to be restored to the register under section 31 before the expiration of such period, beginning with the date of removal, as may be specified by the Panel in the decision,
- b) that the registered teacher shall be suspended from the register for the period specified by the Panel, which period shall not exceed 2 years,
- c) that the registered teacher be retained on the register subject to all or any of the following conditions:
  - a) that the teacher seek the assistance of such service relating to teacher health and welfare as may be available;
  - ii) That the teacher attend a specified professional development course or such other course as the Panel considers appropriate;
  - iii) The period within which the teacher shall comply with the conditions of the retention;
  - iv) Such other conditions as the Panel thinks fit.
- d) to advise, admonish or censure the registered teacher in writing.

4.2 When considering sanction, the Panel should consider all of the options that are available pursuant to section 44 (1) (a)-(d) of the Acts and commence their consideration with the least onerous sanction.

## **5. Finding(s) of the Panel**

5.1 When considering sanction, the Panel will not revisit its finding(s) regarding the allegations, which will be contained in the Panel's report prepared at the conclusion of the inquiry.

## **6. The Purpose of Sanction**

6.1 The primary aim of sanction is to protect the public rather than punishing a registered teacher.

6.2 In addition, consideration may be given by the Panel to the following:

- Rehabilitating the registered teacher and deterring the registered teacher from engaging in conduct the subject of the complaint in the future;

- The maintenance of the public's confidence in teachers, teaching standards and in the integrity of the teaching profession;
- The interests of the registered teacher, including any mitigating factor that he or she may have submitted.

## **7. Factors to be considered when imposing sanction**

7.1 The decision of the Panel should be based on the finding(s) from the inquiry.

7.2 While remembering that the purpose of decisions by the Panel is primarily to protect the public, the Panel will take the following matters into account when imposing sanction:

*a) Proportionality*

In deciding what sanctions to impose the Panel will apply the principle of proportionality, balancing the maintenance of the standards of professional conduct of teachers and the interests of the public against those of the registered teacher.

*b) Mitigation*

In any case before them, the Panel will have due regard to any evidence presented by way of mitigation by or on behalf of the registered teacher. This may include:

- character evidence or references;
- time lapsed since the incident/s;
- any apologies to the complainant/person in question;
- disability;
- illness;
- inexperience/vulnerability/duress/provocation;
- surrounding circumstances to include the circumstances leading up to the incident/s in question;
- efforts to avoid such behaviour/actions reoccurring.

In considering character evidence or references submitted in mitigation by the registered teacher, the Panel should consider how recent they are, the nature of the providers, whether the providers were aware of the allegation(s) against the teacher and provided the reference or testimonial knowing that it would be used within the context of fitness to teach proceedings.

The extent, to which mitigation should influence the Panel's decision, is dependent on the individual circumstances of the case and is at the discretion of the Panel.

c) *Insight*

The expectation that a teacher will accept that, with hindsight, he/she should have behaved differently and has taken steps to prevent a reoccurrence, is a factor for consideration by the Panel. Insight may be demonstrated by an apology by the registrant, by steps that have been taken to ensure that an event such as the one complained of will not occur again or by admissions by the registrant. The Panel will be mindful that a registered teacher may, for external reasons, not be in a position to offer an apology or may receive advice not to offer an apology.

d) *Outcome/Implications*

The outcome/implications of the registered teacher's behaviour for other persons involved may be relevant in considering the gravity of the act or omission by the registered teacher. However, it may be that a serious error may result in no adverse consequences for others, whereas a minor error might have serious consequences. Therefore, while outcome or implications may be relevant, it is not the most important consideration. The most important consideration is the protection of the public.

e) *Aggravating factors*

The Panel may also consider any aggravating factors in respect of the conduct of the registered teacher such as:

- The seriousness of the matters at issue;
- Whether there has been an abuse of a position of trust and/or harm caused to a child/pupil;
- Whether there is an indication of a pattern of behaviour as opposed to an isolated event;
- The extent to which the behaviour or act was deliberate and intended;
- The character and previous history of the registered teacher.

f) *Previous sanctions*

After all of the evidence has been heard at an inquiry and after the Panel has completed its report containing its findings, the Panel may be informed of previous findings in relation to a registered teacher for the purpose of deciding on a suitable sanction. The Panel should take advice from its legal assessor when considering the weight to be attached to such previous findings.

## **8. Decision to impose no sanction**

- 8.1 Where a finding or findings has been made by a Panel, it may, but is not obliged to, impose a sanction on a registered teacher. The Panel may decide that it is not appropriate, in the circumstances to impose any sanction on the registered teacher, having considered this guidance including the factors listed at 7.2 above

## **9. Advice, admonishment, or censure in writing**

- 9.1 Section 44 of the Acts provides that a Panel may decide to impose one of the sliding scale of the sanctions of advice, admonishment or censure in writing. This may be appropriate in circumstances where the findings are less serious. Advice is the least onerous of these sanctions, followed by admonishment, and then censure in writing.
- 9.2 These sanctions, although not defined in the Acts, can in broad terms be defined as follows:
- a. Advice – to advise the teacher in relation to his or her future conduct
  - b. Admonish - to reprimand firmly
  - c. Censure - to express severe disapproval
- 9.3 These sanctions are the least restrictive sanctions that may be imposed and do not restrict the registered teacher's ability to teach. These sanctions demonstrate the disapproval of the Teaching Council regarding the allegations which have been proven and are a warning that this conduct should not occur again.
- 9.4 The panel should consider whether it is sufficient to impose a sanction of advice, admonishment or censure in writing, having considered this guidance including the factors listed at 7.2 above. If not, then the Panel will consider attaching conditions to the registered teacher's registration.

## **10. The application of conditions**

- 10.1 Section 44 of the Act states that a registered teacher may be retained on the register subject to all or any of the following conditions:
- a) that the teacher seek the assistance of such service relating to teacher health and welfare as may be available;
  - b) that the teacher attend a specified professional development course or such other course as the Panel considers appropriate;

- c) the period within which the registered teacher shall comply with the conditions;
- d) such other conditions as the Panel thinks fit.

10.2 Conditional registration is a means of restricting the registered teacher with a view to ensuring that any corrective action which is appropriate in the circumstances, is taken.

10.3 Conditional registration may be the appropriate sanction to impose in circumstances including where:-

- It is possible to identify specific areas of the registered teacher's conduct or competence that is at issue that could be effectively, appropriately and practically controlled/improved by imposing conditions;
- Conditional registration will adequately protect the public (including children and young people, as well as colleagues) from risk of harm. Alternatively there may be no risk of harm present;
- The registered teacher shows the potential and willingness to respond positively to the imposition of conditions on his/her registration.
- That appropriate conditions can be formulated and are capable of being complied with by the registered teacher.

10.4 If conditional registration is decided upon, in considering what conditions to impose, the Panel should be mindful that conditions must be clear, effective, appropriate, practical, time defined and measureable.

10.5 Any conditions should not have the effect, intended or otherwise, of prohibiting the registered teacher from teaching.

10.6 The Panel should consider whether it is sufficient to impose conditions, having considered this guidance including the factors listed at 7.2 above. If not, then the Panel will consider suspending the teacher from the register.

## **11. Suspension from the Register**

11.1 Suspension from the register has a punitive effect, in that it prevents the registered teacher from teaching in a state funded school (and therefore, potentially from earning a living as a teacher during the period of suspension).



- 11.2 Suspension will arise where serious matters were found proven which are not so serious as to justify removal from the register (for example where there may have been acknowledgement of fault and where the Panel is satisfied that the behaviour or incident is unlikely to be repeated).
- 11.3 Suspension from the register may be appropriate where the Panel is satisfied that:
- a) the finding or findings against the registered teacher are not fundamentally incompatible with continuing to be a registered teacher in the future, in that the public interest can be satisfied by a less severe outcome than removal from the register;
  - b) that the registered teacher has shown evidence of insight and does not pose a significant risk of repeating the behaviour which was the subject of the inquiry.
- 11.4 The period of suspension from the register is a matter for the Panel's discretion, depending on the gravity of the particular case and the period may not exceed two years.
- 11.5 The Panel should consider whether it is sufficient to impose suspension, having considered this guidance including the factors listed at 7.2 above. If not, then the Panel will consider whether the registered teacher should be removed from the register.

## **12. Removal of a Registered Teacher from the Register**

- 12.1 Removal from the register is appropriate where:
- a) it is the only means of protecting the public, in particular students and teachers, and of maintaining public confidence in the teaching profession;
  - b) the finding or findings are fundamentally incompatible with continuing to be a registered teacher;
  - c) there was evidence of harmful deep-seated personality or attitudinal problems.
- 12.2 When a registered teacher's name is removed from the register, he or she may not be eligible to apply to be restored to the register before the expiration of a specified period, as determined by the Panel.
- 12.3 Whether removal is appropriate will depend on the particular facts of each case. The Panel should consider this guidance, including the factors listed at 7.2 above when deciding whether it is sufficient to remove a teacher from the register.

### **13. Report of the Panel**

- 13.1 Once the Panel has considered any submissions, it will prepare a report setting out the material before the Panel when considering sanction, noting the oral and/or written submissions made (if any), and noting the Panel's decision as regards any sanction(s) to be imposed.
- 13.2 The Panel will give reasons for the decision to impose any sanction(s).
- 13.3 If the inquiry is completed by way of the provision of an undertaking and/or consent by the registered teacher in accordance with section 43(6) and 43(7) of the Acts, the report of the Panel shall confirm those measures.

### **14. Notice from the Disciplinary Committee after the Panel has decided on sanction**

- 14.1 The Disciplinary Committee shall by notice in writing, within 21 days of the making of a decision in relation to sanction by the Panel in accordance with section 44 of the Acts, provide a copy of the decision and the reasons for the decision to the following:
- a) the complainant;
  - b) the registered teacher and his/her representatives;
  - c) where the registered teacher is employed as a teacher, his or her employer and;
  - d) the Minister.
- 14.2 The registered teacher will be informed that he/she may, within 21 days of service of the notice, apply to the High Court for annulment of the decision pursuant to section 44(3) of the Act.

### **15. Compliance with conditions of retention on the register**

- 15.1 Where a registered teacher is retained on the register subject to conditions, including a condition as to the period within which those conditions shall be complied with, the teacher may apply in writing to the Disciplinary Committee, within the period specified, for an extension of that period. Any extension of the specified period shall be at the discretion of the Committee. The Committee will inform the registered teacher in writing as soon as

practicable of its decision in relation to the application. The Committee will give reasons for its decision.

- 15.2 The Committee will ensure that it receives reports from the secretariat to the Committee in relation to non-compliance, within the specified period or any extension of that period, by persons with conditions attached to their registration.
- 15.3 Where a person fails to comply with the conditions attached to his/her registration within the specified period or any extension of that period, he or she shall be removed from the register. The removal of the register shall proceed in the manner as set out in section 44 of the Act.