



NAHT (NI) response to the consultation in to the regulatory role of the General Teaching Council for Northern Ireland

Introduction

NAHT (NI) welcomes the opportunity to respond to this consultation. School leaders' input in to the development of the regulatory role of the GTC must be given the utmost consideration in order to ensure that a fair and appropriate system can be established. The General Teaching Council must exist to serve its members and therefore it is essential that all factions of the profession have ownership and an understanding of what actions the Council will undertake in order to serve them.

NAHT is an independent trade union and professional association with 29,000 members in England, Wales and Northern Ireland. Members include principals, vice principals, assistant head teachers, bursars and school business managers. They hold leadership positions in early years, primary, special, secondary and independent schools, sixth form colleges, outdoor education centres, pupil referral units, social service establishments and other education settings. The membership represents 40 per cent of secondary and 85 per cent of primary schools in England, Wales and Northern Ireland. Since September 2014, we also represent middle leaders in schools through NAHT Edge. This places the NAHT in an excellent position to provide an informed practitioner position which covers the viewpoint of leaders across all phases of education.

Overarching concerns

1. The teaching profession must know how the GTC will serve them

At the outset, NAHT(NI) are concerned that this consultation is being issued prior to a consultation on the statutory remit of the council. We are concerned that this would amount to putting the cart before the horse so to speak. Whilst we appreciate that the Minister has approved the Aims, Objectives and Targets for the Council, we are concerned that members of the teaching profession themselves have not been afforded this opportunity.

If the council is sincere in representing the professional interests of teachers, then teachers must be at the forefront of shaping the role of the Council. As recognised in the consultation, teachers have a long standing and proud profession and are committed to the highest standards of professional conduct. For an effective self-regulatory system to exist there must be wide spread understanding and buy in with respect to the role of the Council. Teachers must be confident that they know what is expected of them without feeling like a scheme is being imposed.

We would urge that the GTC Bill is put out to public consultation as a matter of urgency. The regulation consultation at hand should be paused until this process is complete. NAHT contend that a fully effective process to establish the regulations of the GTC cannot happen until this has been addressed. This must be fully acknowledged at the outset of our consultation response.

We would contend that the function of the GTC should remain the regulation of the teaching profession and should not be extended to include roles within the education sector as has happened with the Education Workforce Council of Wales. The core function of the GTC must be the regulatory role. Additional functions which may put the independence of the GTC at risk, such as professional development roles and use of data roles, should be avoided to ensure that conflicts of interest are avoided.

2. Cost and Resources

We find it of great concern that as a non-departmental public body, the GTC is member funded. Other non-departmental bodies receive public funding. Fundamentally, why the treasury designated the GTC in this manner should be reviewed. In the absence of such a review, we shall comment on the costs and resources as referenced in the consultation document.

There are significant resource implications connected with any regulatory functions as the consultation document acknowledges contested cases especially may incur costs far and above the £15,000-£20,000 estimate.

We acknowledge that this is a demand led process but we are concerned that membership fees should not be allowed to fluctuate at an unregulated pace to cover that demand.

In the current absence of a regulatory body, the Department of Education has oversight for the teaching profession through their Human Resources unit. The funding that this unit receives to cover legal costs currently should be diverted to the GTC to assist them in covering costs over and above current membership fees.

Fundamentally, membership fees should not be borne by a profession currently experiencing real-term cuts to salary. If they are to stand, they should be proportionate to the role and relative pay levels. A membership fee review should be carried out and a sliding scale of membership fees akin to those in place for the Education Workforce Council in Wales should be considered and consulted upon. The first year of new fees could be offset by including the related amounts in an across the board pay rise to cover the specific amount for that category of registrant.

3. Removal of right to teach

We understand that the new regulatory powers effectively confer upon the Council the ability to destroy a person's career in that they may be able to remove their right to teach forever. Procedures in respect of this must be clear, measured and regularly reviewed.

The gravity of this power must not be underestimated. Such measures should only be considered in the most severe of cases and the right of appeal and the ability to pursue legal redress must be clearly conveyed.

There must be clear procedures around restricting practice or suspension whilst allegations are investigated. Statistics around suspensions and removal should be made available on a yearly basis.

The rules relating to Committee stage 2 appear to countenance a finding of Unacceptable Professional Conduct (UPC) (or relevant offence) but **no** removal from the register [4.1 (3)] (previous history, character and mitigation) and 7.2[17]] [e] (“period of disqualification **if any**”). But 4.(5) appears to provide that if UPC is found, removal from the register is mandatory.

The new proposed Regulation 10A provides “Where the Council finds a person guilty of misconduct it **may** remove that person’s entry from the register.” [emphasis added]. It is arguable that mandatory removal from the register is:

- a) Unintended
- b) Unfair
- c) Incompatible with the amended regulations
- d) Incompatible with teachers’ rights under Article 6 of the Human Rights Act

4. Assessing the right to lead

It should be clearly articulated that the regulations at hand concern the right to teach as opposed to the right to lead. Many school leaders have teaching duties that are distinct to leadership duties. Procedural hearings should recognise this distinction. It should be clear that it is their teaching ability and not their leadership ability that is being regulated.

5. Procedures around evidence gathering

There must be clear procedures in light of evidence gathering. The GTC should work with the employers to ensure that any investigations are appropriately regulated. Evidence which they may present must be balanced and collected in a fair and accountable manner. Details of who collected the evidence, when and what their relationship to the registered person is should be recorded, and where appropriate, be made available at the hearing. There must be focus on developing a rigorous and robust process to ensure that evidence is accurate and reliable.

Where evidence is suspected to be unreliable, an independent mechanism external to the GTC should be established to assess the quality of evidence. Resources should be dedicated to its establishment.

Bearing the above overarching concerns in mind, see below answers to selected consultation questionnaire questions.

Procedure 7.4 – 7.7:

One of the difficulties we have encountered representing teachers in England and Wales arises from the requirement on both the presenting officer and the teacher to submit evidence by the same deadline- 4 weeks before the hearing [7.7 [1] and [2]]. It is quite often the case that the teacher does not know the precise details of the allegation against him until the presenting officer has disclosed all of his evidence. We would argue that the teacher should be given 4 weeks to file his evidence *after* the presenting officer has disclosed his evidence.

6. Less serious allegations

As Unacceptable Professional Conduct is widely defined [1.2 p 8], there will be cases where the allegation, if proved, could amount to UPC but is insufficiently serious to justify removal from the register. This is not uncommon in the NCTL in England and the EWC in Wales.

We feel it ought to be possible at all three stages Initial Consideration, Committee stage one [IC] and Committee stage 2 [CC] to dispose of cases on the grounds that removal from the register is not appropriate.

Answers in relation to the issues raised in the Consultation Response Questionnaire;

Question 1

We would assert that, on the whole, the right touch approach to teacher regulation will ensure that the council's approach is focused and proportionate. As with any approach the implementation will be key.

With regard to the transparent regulation, we would suggest that the word 'simple' is removed. By their very nature, regulations are needed to have a degree of complexity and this should not be underestimated.

With regard to agility, we would require further definition of what this specifically constitutes. As with the Scottish and English systems, we would request that this is re-examined frequently. We would recommend no more than once a year but no fewer than once every four years as reviews can be resource intensive. A view should be taken by the Council as to when they should happen within that time frame.

Recognition of the case of *Kaur, Regina (on the Application of) -v- Institute of Legal Executives Appeal Tribunal and Another* [2011] EWCA Civ 1168, should be adhered to in consideration of this. In this case disciplinary, findings against the claimant were quashed on the basis that the composition of both the internal disciplinary tribunal and subsequent appeal tribunal gave rise to an appearance of bias and as

such did not meet the requirements of fair process. The detail of this case must be acknowledged in the development of the regulations review procedure.

Question 2

We would contend that generally the Council's approach, as outlined in the consultation document, enables it to meet its statutory responsibilities. We would recommend that a greater emphasis should be put on increasing parent confidence. It must be clear to those within and outside of the profession that the GTC provides a mechanism for achieving the greater good that has the best interests of children at its heart.

Question 5

We would not agree that there presently exists a high enough level of clarity between GTC's role as a regulator, and the employers' responsibilities in relation to teachers' conduct.

This lack of clarity is most acute with respect to sub teachers. We understand that there is a need to exhaust remedies as provided by the Departmental Human Resources unit first. For an employed teacher, such processes will be financed by the school and dealt with through the associated school policy and procedures before they progress to such a stage as the GTC will be concerned with. No such avenues are established for sub teachers. Therefore, sub teachers are not afforded the same rights as teachers in a position of permanent employment.

We would recommend that the GTC work with the employers, the teaching unions and the Department to establish an equivalent mechanism for sub teachers if they were in permanent employment.

As sub teachers are proportionately more likely to be female, we wish to know if such considerations were acknowledged as part of the equality screening process.

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