



## **Suitability to be a Registered Person**

### **Key considerations for duly authorised officers of the EWC, Suitability Committee panel members and applicants**

(Stage 2 and Stage 3 Assessments)

#### **Purpose of this guidance**

This guidance is for use by:

- duly authorised officers of the EWC who are required to recommend whether or not an applicant's registration should be granted at Stage 2, or referred to Stage 3 (Suitability Committee meeting); and
- Suitability Committee panel members who are required to decide whether or not to grant an application for registration at a Stage 3 meeting, should an assessment reach this stage; and
- applicants to assist in preparing a response to the EWC, either at Stage 2 or Stage 3.

This is **guidance only** - every assessment is different.

**In every assessment, the burden is on the applicant to provide evidence about their suitability for EWC registration. As such, the EWC is not obliged to seek out any such evidence or advise the applicant how to obtain it. It remains up to the applicant to make and substantiate his or her case for suitability.**

## Meaning of 'Stage 1', 'Stage 2' and 'Stage 3' of the suitability assessment process

**'Stage 1':** Where an applicant has one or more minor offences recorded against them.

The applicant is not invited to respond.

Possible outcomes: Application for registration is granted at Stage 1; or  
Application is referred to a Stage 2

**'Stage 2':** Where:

- an applicant has declared one or more serious/repeat/aggravated offences recorded against them; and/or
- an applicant has made any other declaration in the EWC's *Application to Register with the EWC*, or elsewhere; and/or
- an applicant has failed to make a declaration in the EWC's *Application to Register with the EWC for Wales*, or elsewhere; and/or
- the EWC receives other relevant information about the applicant, or his/her application for registration; or
- the application for registration was not granted at Stage 1.

The applicant is invited to respond and make representations as to their suitability.

Possible outcomes: Application for registration is granted at Stage 2; or  
Application is referred to a Stage 3 meeting of a Suitability Committee.

Stages 1 and 2 do not involve Committees.

Recommendations under Stage 1 and 2 are initially made by a duly authorised officer of the Fitness to Practise Team. Recommendations must be authorised by the Deputy Chief Executive and are reported to Council.

**'Stage 3':** Where:

- the application for registration was not granted at Stage 2; or
- it is deemed appropriate to refer the application direct to a Stage 3 meeting due to the information received about the applicant (Rule 6(4)).

Meetings are held in private and the applicant is invited to attend.

Possible outcomes: Application for registration is granted at Stage 3; or  
Application for registration is refused at Stage 3.

## **Guidance as to terminology**

The EWC's *Registration Rules 2017* refer to a number of different elements which might form the basis of a suitability assessment. These are set out and explained below.

**'suitability referral'** means information received by the EWC, at the time an application is made, which may affect an applicant's suitability to be a registered person. This may be:

- (a) provided by the applicant in a declaration; and/or
- (b) an applicant's failure to declare and/or
- (c) other relevant information from any other source.

A **'criminal offence'** means:

- (a) a conviction;
- (b) a caution (a formal warning about future conduct given by a senior police officer, usually in a police station, after a person has committed an offence. It is used as an alternative to charge and possible prosecution);
- (c) a warning (a young person given a second and 'final' formal warning about future conduct);
- (d) a reprimand (a reprimand has replaced the caution for young people aged under 18).

A **'declaration'** means:

where an applicant makes a declaration in the EWC's *Application to Register with the Education Workforce Council*, or elsewhere.

A **'failure to declare'** means:

where an applicant fails to make a declaration in the EWC's *Application to Register with the Education Workforce Council*, or elsewhere, when it was appropriate to do so

**'Other relevant information'** means any other information which is either requested and/or provided to the EWC which might be deemed relevant to a suitability assessment.

## Key considerations guidance

The following are points a duly authorised officer, Suitability Committee and applicant might consider:

### The applicant

#### 1. What experience of practising in the education professions does the applicant have?

Is the applicant:

- an experienced or inexperienced practitioner in their respective profession (school teacher (including an NQT), school learning support worker, further education teacher, further education learning support worker, youth worker, youth support worker, work based learning practitioner)
- carrying out the 'specified work' of a school teacher whilst unregistered (note: any school or agency employing or placing a school teacher in this way is breaking the law)
- currently practising whilst unregistered as a school learning support worker, further education teacher, further education learning support worker, youth worker, youth support worker, work based learning practitioner (note: any employer or agency employing or placing a practitioner in this way is breaking the law)

#### A note about 'specified work'

*The Education Workforce Council (Main Functions) (Wales) Regulations 2015*, as amended, specifies the following activities:

- Planning and preparing lessons and courses for pupils;
- Delivering lessons to pupils. This includes delivery via distance learning or computer aided techniques;
- Assessing the development, progress and attainment of pupils; and
- Reporting on the development, progress and attainment of pupils.

#### 2. Has the applicant taken steps to demonstrate to the EWC his or her suitability to be a registered person?

Has he or she:

- made a positive declaration in the *Application to Register* regarding his or her criminal record in the UK or abroad where it was appropriate to do so, or failed to declare
- made any other positive declaration in the *Application to Register* where it was appropriate to do so, or failed to declare
- responded to the EWC's letters under Stage 2 or Stage 3, or other enquiries
- admitted or denied their conduct, or alleged conduct
- expressed regret or apology – shown insight
- explained the conduct / incompetence and surrounding circumstances
- submitted mitigation
- made attempts to take corrective steps since the conduct or competence issues
- commented on a change in circumstances since the conduct or competence issues
- made attempts to disclose and admit the alleged failings to relevant bodies, for example, a school, ITET institution, FE institution, LA, other relevant employer or the EWC (in advance of a suitability referral being received)

#### 3. Are there any references or testimonials provided in support of the applicant?

If so, consider:

- the relationship between the author and the applicant
- the date the reference or testimonial was written (this may be general, and from some time ago)
- the provenance of the document provided (for example, official letter-head, written signature)

- whether the author shows awareness of the EWC's assessment (does the author mention the information declared or that made known to the EWC about the applicant)
- whether or not the author was a witness to the particulars of the suitability assessment, and can give a first-hand account
- whether or not the author puts forward any evidence that the applicant's behaviour / competence has improved/been rectified since the allegations arose
- whether or not the author can affirm that the conduct or competence issues declared have not affected the applicant's suitability to practice
- whether there is a reference from the applicant's most recent employer in support of him or her
- whether there is a reference from the applicant's employer, be it former or current, which shows it assessed the applicant's suitability for employment based on the same information being considered by EWC

**Criminal offences declared in the EWC's *Application to Register*, or elsewhere, and confirmed by a Police National Computer (PNC) check**

**1. When did the offending occur?**

- Recently/some time ago/both – what is the frequency
- Before, during or after teacher training, or other form of training in one or more of the respective education professions
- Before or after Qualified Teacher Status (QTS) was awarded
- Whilst employed to carry out the 'specified work' of a school teacher
- When employed as a school learning support worker, further education teacher, further education learning support worker, youth worker, youth support worker, work based learning practitioner
- During a previous period of registration with the General Teaching Council for Wales, or its equivalents in Scotland or Northern Ireland, or what was the GTCE

**A note on the time elapsed since an offence was committed**

The passage of time, without further offending, may be relevant if it can be shown to indicate that the risk of re-offending is low or diminishing, particularly if there is evidence that that time has been used constructively.

**2. What *might* the offences committed suggest?**

- A propensity for dishonesty
- A propensity for aggression and/or violence
- A disregard for others
- A lack of self-awareness
- Poor judgement
- A lack of understanding of his or her responsibilities as a professional
- A refusal or unwillingness to accept responsibility
- An inability to learn from mistakes and/or rehabilitate
- A general propensity towards certain behaviour or character
- Premeditation / intent
- A person under duress or subject to prolonged provocation
- A refusal to comply with authorities and/or the law
- There has been harm to children or vulnerable adults, or there is a continuing risk of harm (If there is information to suggest this is the case, a duly authorised officer should refer it to the Disclosure and Barring Service (DBS))
- A regular pattern of offending

### **A note on the DBS**

The Criminal Records Bureau (CRB) and Independent Safeguarding Authority (ISA) merged on 1<sup>st</sup> December 2012 to form the Disclosure and Barring Service (DBS). The DBS therefore has a role in criminal records checks and the maintenance of lists of individuals not suitable to work with children or vulnerable adults.

### **3. Has the applicant:**

- offended in the light of previous warnings
- complied with any previous conditions imposed on him or her as a result of the offending
- pursued opportunities to rehabilitate offered by the Courts
- provided details regarding the offending which correspond with any details provided by other parties, for example, the Courts and the police? **This is particularly relevant to the declaration process adopted by the EWC.**

### **A note on proof of a conviction or caution**

A Certificate or Memorandum of Conviction can be viewed as conclusive proof of the commission of an offence. Provided that the Memorandum or Certificate of Conviction relates to the applicant, the Certificate can be treated as conclusive proof of the offence and the essential ingredients of the offence. However, this does not prevent the applicant from challenging any of the particulars of the suitability referral that do not form part of the essential ingredients of the offence.

A caution is not conclusive proof of the commission of an offence comparable to a Certificate of Conviction. However, given that a caution can only be administered if an offence is admitted, a caution can be regarded as prima facie evidence of the commission of the offence.

The duly authorised officer and Suitability Committee panel members should presume that a conviction raises a question about the applicant's character. In doing so, it should be remembered that the applicant will have received an appropriate punishment from the Court. Any sentencing remarks made by a Court should be noted if these are available.

### **Declaration made in the EWC's Application to Register, or elsewhere**

#### **1. When did the investigation / action against the applicant take place?**

- In progress currently (pending)
- Recently/some time ago/both
- Before, during or after teacher training or other form of training in one or more of the respective education professions
- Before or after QTS was awarded
- Whilst employed to carry out the 'specified work' of a school teacher
- When employed as a school learning support worker, further education teacher, further education learning support worker, youth worker, youth support worker, work based learning practitioner
- During a previous period of registration with the General Teaching Council for Wales, or its equivalents in Scotland or Northern Ireland, or what was the GTCE

#### **2. What employer or body instigated an investigation / imposed the sanction?**

- Employer or agent involved in the education of young people, or other employer
- A professional or regulatory body either of teaching, or another education profession
- The Secretary of State
- The Disclosure and Barring Service (DBS)
- A police force

- Another body

### **3. What action was taken?**

- None
- Applicant currently under investigation
- Live or expired Warning (verbal, written, final written) – there may be more than one
- Dismissal / ceased to use services of
- Settlement or mutual agreement
- Dismissal for Some Other Substantial Reason
- Employment Tribunal claim in progress
- Dismissal overturned at an Employment Tribunal
- Partial bar
- Bar (included in the Children’s Barred List or Adults’ Barred List by the ISA or DBS)
- GTC Order – Prohibition, Suspension Order (with or without conditions), Conditional Registration Order or Reprimand (either live or expired)
- Other order / sanction imposed by another regulator
- Conviction / Caution / Reprimand / Warning / Fixed Penalty
- Conviction quashed on appeal
- Other

### **4. What did or does the action taken against the applicant relate to?**

- Conduct or competence whilst carrying out the ‘specified work’ of a school teacher, whether registered or unregistered
- Capability (health) whilst carrying out the ‘specified work’ of a school teacher, whether registered or unregistered (this may not be in the EWC’s jurisdiction)
- Conduct, competence or capability whilst practising as a school learning support worker, further education teacher, further education learning support worker, youth worker, youth support worker, work based learning practitioner
- Conduct, competence or capability whilst working for any other employer or agent
- Established failures whilst registered with another regulator
- Criminal record / criminal behaviour whilst in the UK or abroad
- Inappropriate behaviour towards children and/or learners
- Other

### **5. What *might* the action taken against the applicant suggest about him or her?**

- A lack of competence as a school teacher, school learning support worker, further education teacher, further education learning support worker, youth worker, youth support worker, work based learning practitioner
- A lack of understanding of his or her responsibilities as a professional in the education setting
- An inability to learn from mistakes
- A refusal or unwillingness to accept responsibility
- A general propensity towards certain behaviour or character
- An outstanding health issue (this may not be in the EWC’s jurisdiction)
- A pattern of behaviour over a period of time

### **A failure to declare in the EWC's *Application to Register*, or elsewhere**

- Did the applicant admit his or her 'mistake' prior to being approached by the Fitness to Practise Team?
- Did the applicant admit failing to declare relevant information at the earliest opportunity?
- Is the explanation given for the failure to declare satisfactory?
- Has the applicant failed to declare more than one element of the Declaration on the Application to Register? For example, the applicant may have received a Final Written Warning by an employer, and have been previously subject to a GTCE Reprimand. Has the applicant declared all unprotected convictions and/or cautions?
- Is there any evidence that the applicant has been deliberately dishonest or attempted to conceal information?
- Against the failure to declare, how serious is the action taken against / sanction imposed upon the applicant by an employer or other body?
- Is there any other information involved in this assessment, for example, a criminal record?

### **The EWC's or Committee's judgement**

**1. How significant or serious is the information / failures in the suitability referral considered to be? Is it directly relevant to the suitability of the applicant in the category of registration in which they are applying?**

**2. What steps has the applicant taken to resolve any issues?**

**3. Does the applicant pose a continuing risk of repeating any behaviour involved?**

**4. Is:**

- there a risk the failures declared / verified may reoccur if the applicant were registered in their chosen category, allowing him or her to practise in the relevant education sector?
- there a potential risk to children or vulnerable adults?
- there a potential risk to the reputation of the education professions
- there a potential for harm or loss and/or potential harm or loss to a victim of the offending?
- this matter in the public interest?