

## Guidance and notes

This form is for employers and agents who are required, by statute, to make a referral to the EWC. **Before doing so, please read the following guidance:**

Employers of registered persons (schools (Governing Body), local authorities, further education institutions, any other relevant body) and agencies are responsible for referring cases of alleged unacceptable professional conduct, serious professional incompetence and conviction of a relevant offence to the Education Workforce Council (EWC).

An employer or agent must refer a case in line with the *Education (Wales)(Act) 2014*, as amended, and *The Education Workforce Council (Main Functions) (Wales) Regulations 2015*, as amended, where:

- it ceased to use the services of a registered person in Wales, or might have ceased to use the services of a registered person in Wales had he or she not stopped providing them (an employer)
- it terminated arrangements with a registered person, or might have terminated arrangements with a registered person had he or she not terminated them or similar (an agent)

### Responsibility on employers

An employer must report the facts of a case to the **EWC** where:

(a) an employer has ceased to use the services of a registered person in Wales on the ground of:

- (i) misconduct;
- (ii) professional incompetence; or
- (iii) conviction of a relevant offence.

(b) may have ceased to use a registered person's services on such a ground had the registered person not ceased to provide those services.

### Responsibility on agents

An agent must report the facts of a case to the **EWC** where it:

(a) has terminated arrangements on the ground of:

- (i) misconduct;
- (ii) professional incompetence; or
- (iii) conviction of a relevant offence.

(b) may have terminated arrangements on such a ground if the registered person had not terminated them; or

(c) may have refrained from making new arrangements for a registered person on such a ground if the registered person had not ceased to make themselves available for work.

**The following do not undermine an employer's or agency's statutory duty to make a referral:**

- **Dismissals which are 'downgraded'** to lower disciplinary sanctions (for example, Final Written Warnings) following an offer to resign, or similar.
- **Settlement or mutual agreements** where there was any possibility that the person may have been dismissed had the agreement not been entered into.
- **Dismissal for 'Some Other Substantial Reason' (SOSR)** where the termination of a contract of employment was as a result of a disciplinary issue (conduct and/or competence).

- **Where the disciplinary process did not reach a conclusion** because the registered person resigned.

In any event, please note the EWC can investigate any case referred to it if it thinks the allegations are capable of amounting to an allegation of unacceptable professional conduct, serious professional incompetence or a conviction of a relevant offence.

### **Referral papers – what to provide**

Employers and agents should refer to Part 2 of Schedule 5 of *The Education Workforce Council (Main Functions)(Wales) Regulations 2015*, as amended, for a list of relevant paperwork which should be included with the referral if available.

This will typically mean all evidence from the point the allegation was made, to the point at which the registrant left employment (particularly suspension letter / resignation letter / dismissal letter to registrant, Disciplinary Committee minutes, appeal outcome letter to registrant, Appeal Committee minutes, Investigation Report, witness statements, responses given by the registrant to the allegations). That is, all evidence considered by a Disciplinary Committee and/or Appeals Committee. **Section G refers to a more extensive list.**

When providing documentation to support your referral, please consider that signed and dated statements and minutes are of greater legal value than unsigned documentation. If your documents were not signed at the time of any internal investigation process, if possible, please ask the parties involved to sign and date a statement that testifies to the truth and accuracy of the documentation.

Additionally, the EWC would welcome a covering letter which confirms:

- name of registrant;
- their role;
- reason for leaving employment (i.e. dismissal/gross misconduct);
- date of leaving employment;
- confirmation of the allegation(s) which led to the registrant leaving employment.

### **Referrals and the Disclosure and Barring Service (DBS)**

If the allegation against a registrant is in any way connected to the actual harm, or risk of harm, to a child or vulnerable adult, then you should make the referral to the Disclosure and Barring Service (DBS). If misconduct and harm are both involved, or if you are in any doubt, a referral should be made to both the DBS and the EWC.

**The EWC has no remit to investigate or hear any matter which alleges the actual harm, or risk of harm to children or vulnerable adults.**

Further information relating to referrals to the DBS can be found on its website:

<https://www.gov.uk/guidance/barring-referrals>