



STATUTORY INSTRUMENTS.

S.I. No. 411 of 2016



TEACHING COUNCIL (DISCIPLINARY COMMITTEE PANEL
PROCEDURES) RULES 2016

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The Teaching Council, in exercise of the powers conferred on it by section 43 of, and Schedule 3 to, the Teaching Council Act 2001 (No. 8 of 2001) (as amended by section 21 of the Teaching Council (Amendment) Act 2015 (No. 31 of 2015)) (as adapted by the Education and Science (Alteration of Name of Department and Title of Minister) Order 2010 (S.I. No. 184 of 2010)), with the consent of the Minister for Education and Skills, hereby make the following rules:

1 Citation and Preliminary

1.1 These rules may be cited as the Teaching Council (Disciplinary Committee Panel Procedures) Rules 2016 and shall be referred to hereinafter as “the rules”.

1.1 The rules should be read in conjunction with the Teaching Council Acts 2001 — 2015 (“the Acts”).

1.2 In the case of any conflict between the rules and the Acts, the Acts shall take precedence.

1.3 A glossary of terms used frequently in this document is set out in the Schedule.

2 Holding an Inquiry

2.1 The Disciplinary Committee shall hold an inquiry in respect of a complaint referred to it by the Investigating Committee under section 42(9)(a) of the Acts.

2.2 An inquiry can be in the form of either an oral hearing or an examination of documents and written submissions from the complainant and the registered teacher. Reference to an inquiry throughout the rules includes both an oral hearing and an examination of documents and written submissions.

2.3 As soon as is practicable after a complaint is referred to it, the Disciplinary Committee shall cause a notice in writing to be given to the registered teacher the subject of the complaint of the following:

- a) The referral of the complaint to the Disciplinary Committee and that a panel of not less than three and not more than five persons, of whom a majority shall be registered teachers, shall be formed for the purpose of the inquiry.

*Notice of the making of this Statutory Instrument was published in
“Iris Oifigiúil” of 29th July, 2016.*

- b) Confirmation that a Notice of Inquiry containing the allegations and the particulars of any evidence in support of the complaint will be provided to him or her as soon as is practicable and in advance of the commencement of the inquiry.
- c) The opportunity for him or her, after the Notice of Inquiry referred to at b) above has been finalised and sent to him or her, to request that the inquiry be held by an examination of documents and written submissions from the complainant and the registered teacher, including any documents and written submissions considered by the Investigating Committee in relation to the complaint, instead of the inquiry being held as an oral hearing.
- d) If an oral hearing is being held, the opportunity for the registered teacher, or the registered teacher's representative to be present and to defend the registered teacher at the hearing.
- e) If an oral hearing is being held, the opportunity for the registered teacher to request that some or all of the hearing be held otherwise than in public if the registered teacher can show reasonable and sufficient cause.

2.4 The Disciplinary Committee and all panels of the Disciplinary Committee appointed to hold inquiries shall be supported by a secretariat, composed of one or more of the Teaching Council staff, who will be responsible for administrative matters to support the functioning of the Disciplinary Committee and all panels. The secretariat shall operate independently of the office of the Director who is a party to the inquiry as set out at section 4 below.

3 A Panel of the Disciplinary Committee

3.1 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, shall hold an inquiry.

A. The appointment of a Panel of the Disciplinary Committee for the purpose of an inquiry

3.2 The Chairperson of the Disciplinary Committee shall arrange for all members of the Disciplinary Committee to be invited to become members of a panel for the purpose of holding an inquiry. Notwithstanding any vacancies in the membership of the Disciplinary Committee, a panel may be appointed from among its members.

3.3 When members of the Disciplinary Committee are being invited to become members of a panel, they will be provided with the name of the registered teacher, the teacher's Teaching Council registration number, the teacher's registered address, the name of his or her school (if applicable), the name of the person who made the complaint, and, in general terms, the issue(s) to be considered.

3.4 In advance of a panel being appointed, the members of the Committee will confirm whether any possible conflict of interest could be deemed to arise in them sitting on the panel. The Committee members will be required to consider and list possible reasons for exclusion from the Committee, based on a relationship with either the complainant or the registered teacher that could be deemed to be prejudicial, e.g., family relationship, colleague relationship, friendship, member of the school's board of management, staff colleague, or any relationship, or prior knowledge, that could be deemed by the Committee to be prejudicial to the outcome.

3.5 The Chairperson of the Disciplinary Committee shall appoint 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 Chairperson of the Disciplinary Committee shall ensure, in so far as is practicable, that the membership of panels is representative of both genders.

3.6 The Chairperson of the Disciplinary Committee shall nominate the chairperson of a panel from among the members of the panel, for appointment by the Disciplinary Committee pursuant to paragraph 3 of schedule 3 to the Acts. The making of the appointment by the Disciplinary Committee, and the consideration of all matters relating to the appointment may take place either at a meeting of the Disciplinary Committee, to include a meeting taking place via teleconference, or by written communication from the members of the Disciplinary Committee.

3.7 The Council shall make available to the panel such legal, stenographic, interpreter and other services as it may reasonably require, in addition to being supported by the secretariat as set out at 2.4 above.

B. The Chairperson of the Panel

3.8 The role of the Chairperson of the panel is to be a member of the panel and to chair the inquiry. The Chairperson will ensure that the inquiry is conducted in accordance with the Acts and the rules.

C. The Legal Assessor to the Panel

3.9 A legal assessor may be instructed to advise and assist the panel in relation to any relevant matters of law and procedure which arise during the course of the inquiry including at any preliminary hearing. Such advice may relate to the rules of evidence and in particular the admissibility of, or whether there is an issue as to the weight to be given to, any item of evidence or to any point of law which may arise.

3.10 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.

3.11 If the panel requires legal advice, it should obtain it from the panel's legal assessor. Prior to acting on that advice, the parties should be informed of the advice that has been given, and the parties should be given an opportunity

to make submissions in relation to that advice. The legal assessor may then vary the advice to the panel in the light of any submissions.

D. Powers of the Panel

3.12 A panel shall, for the purpose of an inquiry, have the powers, rights and privileges vested in the High Court or a judge thereof on the hearing of an action in respect of:

3.12.1 the enforcement of the attendance of witnesses and their examination on oath or otherwise, and

3.12.2 the compelling of the production of documents.

A summons signed by the chairperson of the panel or by such other member of the panel as may be authorised by the panel for that purpose may be substituted for, and shall be equivalent to, any formal procedure capable of being issued in an action for enforcing the attendance of witnesses and compelling the production of documents.

3.13 A person shall be guilty of an offence and shall be liable on summary conviction to a class C fine where—

3.13.1 on being summoned to attend before a panel for the purpose of an inquiry, he or she fails to attend, or

3.13.2 in attendance as a witness before a panel, he or she refuses to take an oath or affirmation lawfully required by the panel to be taken, or to produce any document in his or her power or control lawfully required by the panel to be produced by him or her or to answer any question to which the panel may lawfully require an answer, or

3.13.3 in attendance before a panel, he or she does anything which, if the panel were a court of law having power to commit for contempt, would be contempt of court.

4 The Parties to an Inquiry

4.1 The parties to an inquiry are:

- a) The Director, or any other person with leave of the Panel; and
- b) The registered teacher.

A. The Director

4.2 The Director or any other person with leave of the Panel (hereinafter referred to as “the Director”) shall prepare and be responsible for presenting the evidence in support of the allegations to the panel when convened for an oral hearing. In the case of an inquiry by way of an examination of documents, the Director shall liaise with the complainant in preparing and submitting the appropriate documents and submissions.

4.3 The Director may instruct a solicitor and/or a barrister to present the evidence to the panel at the oral hearing and/or to assist in the preparation for an oral hearing and/or to assist in the preparation for an inquiry by way of an examination of documents.

4.4 The Director will:

4.4.1 Consider the complaint, associated documentation and the Investigating Committee's decision.

4.4.2 Where appropriate, meet with relevant witnesses and take statements from those witnesses and if an oral hearing is being held, advise such witnesses in writing of the opportunity to request that some or all of the hearing be held otherwise than in public, if the witness can show reasonable and sufficient cause.

4.4.3 Secure such further documentary and expert evidence as is necessary.

4.4.4 Send to the registered teacher, as soon as is practicable, the Notice of Inquiry and all other relevant documentation in advance of the commencement of the inquiry.

4.5 A Notice of Inquiry will be prepared by the Director which shall include the following:

4.5.1 Name of the complainant.

4.5.2 Name and registration number of the registered teacher in respect of whom the inquiry has been sought.

4.5.3 The allegations to be considered by the panel.

4.5.4 A list of witnesses and a summary of evidence of each witness in support of the allegations.

4.5.5 The right of the registered teacher to be represented during the course of the inquiry.

4.5.6 The opportunity for the registered teacher, or the registered teacher's representative, to be present and to defend the registered teacher at an oral hearing.

4.5.7 The right of the registered teacher to cross-examine witnesses called by the Director at an oral hearing.

4.5.8 The right of the registered teacher to call witnesses at an oral hearing and, if necessary, to request the panel to exercise powers pursuant to section 43(14) of the Acts.

4.5.9 The opportunity for the registered teacher to request that some or all of an oral hearing be held otherwise than in public, if the registered teacher can show reasonable and sufficient cause.

4.5.10 The opportunity for the registered teacher to request the panel to hold the inquiry by way of an examination of documents and written submissions from the complainant and the registered teacher in place of an oral hearing, or to consent to this.

4.5.11 The date, time and location of the inquiry.

4.6 The Notice of Inquiry will be forwarded to the registered teacher in accordance with section 62 of the Acts.

B. The Registered Teacher

4.7 The registered teacher may represent himself or herself or may have a legal or other representative(s) present to represent him or her during the inquiry.

4.8 The registered teacher will have the opportunity to request the panel to hold the inquiry by way of an examination of documents and written submissions from the complainant and the registered teacher in place of an oral hearing, or to consent to this.

4.9 The registered teacher (or his or her representative(s)) will have the opportunity to cross-examine witnesses called by the Director at an oral hearing.

4.10 The registered teacher will have the opportunity to call witnesses at an oral hearing and, if necessary, to request the panel to exercise its powers to enforce the attendance of witnesses and compel the production of documents.

5 Preliminary Hearing

5.1 A preliminary hearing may be arranged in advance of the inquiry at which the panel appointed for the purpose of the inquiry will be present, except in certain circumstances where an alternate panel of the Disciplinary Committee may be present. These circumstances include where it may be prejudicial for the panel appointed for the inquiry to consider an application, or where for administrative and/or logistical reasons it is not possible for the panel appointed for the inquiry to be present at a preliminary hearing. A legal assessor may sit with the panel. A preliminary hearing takes place in private with the parties invited to attend. As set out in 4.1 above, the parties are the Director (or any other person with leave of the Panel) and the registered teacher.

A. Matters raised at Preliminary Hearings

5.2 A preliminary hearing may address matters relating to:

5.2.1 Submissions regarding whether the inquiry can proceed by an examination of documents and written submissions or whether oral evidence is required.

5.2.2 Confirmation as to whether the registered teacher will contest any or all of the allegations in the Notice of Inquiry.

5.2.3 The standard of proof to be adopted by the panel.

5.2.4 The extent to which documents will be required to be formally proven.

5.2.5 The date, time, location and estimated duration of the inquiry.

5.2.6 Consideration of requests by the registered teacher or by a witness who will be required to give evidence at the inquiry or about whom personal matters may be disclosed at the inquiry, that the panel hold all or part of the oral hearing otherwise than in public.

5.2.7 Attendance of witnesses and any special arrangements that may be needed at an oral hearing.

5.2.8 Whether interpreter services will be required at an oral hearing.

5.2.9 Applications and submissions regarding enforcing the attendance of witnesses at oral hearings and/or compelling the production of documents.

5.2.10 Such other preliminary matters as the panel, the registered teacher and/or his or her representative(s) and the Director may wish to address in advance of the inquiry.

5.3 The panel shall set out its reasons in respect of any decision it may make at a preliminary hearing.

5.4 The proceedings of a preliminary hearing shall be recorded by a stenographer.

5.5 Where a preliminary hearing has taken place, the panel appointed for the purpose of the inquiry, in consultation with the parties, may proceed to hold the inquiry immediately following the preliminary hearing provided that the Notice of Inquiry has been sent to the registered teacher.

B. Consideration of whether an inquiry should proceed by an examination of documents and written submissions

5.6 At a preliminary hearing, a panel may, at the request of, or with the consent of, the registered teacher the subject of the complaint, decide to hold an inquiry by an examination of documents and written submissions from the complainant and the registered teacher, including any documents and written submissions considered by the Investigating Committee and any other relevant documentation.

5.7 Any request by the registered teacher and/or any decision by the panel with regard to whether to hold an inquiry by an examination of documents should only be made after the Notice of Inquiry has been sent to the registered teacher.

5.8 Factors that will be taken into account by a panel when deciding whether to proceed to hold an inquiry by an examination of documents include the following:

- a) Whether it may be difficult to resolve material facts which are disputed or unresolved without oral evidence.
- b) Whether the registered teacher's constitutional rights to fair procedures would be properly vindicated by an examination of documents and written submissions.
- c) The grounds of complaint and the seriousness of the allegations.
- d) Whether admissions are being made by the registered teacher.
- e) The views of the Director.
- f) The views of the complainant.
- g) The public interest.

C. Applications for all or part of an oral hearing to be held otherwise than in public

5.9 Oral hearings will take place in public, unless the registered teacher or a witness who will be required to give evidence, or about whom personal matters may be disclosed, requests the panel to hold all or part of the oral hearing otherwise than in public, and the panel is satisfied that it would be appropriate in the circumstances to do so. At a preliminary hearing applications can be made for the oral hearing or part thereof to be held in private or for the identity of any person including any witness, or institution or location to be made anonymous. In deciding whether to grant an application for the oral hearing or part thereof to be held in private, or providing for anonymity, the panel will take cognisance of factors including the interests of justice, the wishes of the witnesses, the safeguarding of minors who may be witnesses, the protection of the private lives of persons concerned, the public interest and the subject matter of the oral hearing, including, whether a registered teacher's health or medical fitness is at issue.

5.10 Where it is proposed to hold an oral hearing, or part thereof, in private, at a preliminary hearing the panel may hear any submissions made by or on behalf of the registered teacher and/or the Director to have certain persons present for some or all of the evidence. The panel may also hear any submissions made by either party to have an expert witness present throughout the oral hearing.

D. Submissions regarding the evidence of a minor or vulnerable person at an oral hearing

5.11 At a preliminary hearing, the Director may inform the panel of the opinion, if any, of a minor, or vulnerable person, or his or her parents/guardians/carers, as regards the form of evidence to be given by such

person at an oral hearing. The panel will consider any submissions made as to whether the questions to be asked of such person could be asked through an independent intermediary or via an audio/video link so as to ensure that the questions are asked in a way that is appropriate to the age and mental ability of such person.

6 Inquiry by Examination of Documents and Written Submissions

6.1 Where the panel has decided that the inquiry shall proceed by way of an examination of documents and written submissions, the panel shall ensure that the registered teacher is provided with a notice stating that the registered teacher may make submissions in relation to the inquiry in writing to the panel within such time as is specified in the notice. All documentation to be considered by the panel will be furnished to the registered teacher in advance of the inquiry so that he or she can make submissions. The complainant may be afforded an opportunity to reply to the registered teacher's written submissions. Any response from the complainant will be furnished to the registered teacher for him or her to prepare further submissions having considered the registered teacher's reply. Further exchanges of submissions may take place where necessary.

6.2 Once submissions have been exchanged, the documents and written submissions to be considered by the panel will be agreed between the parties in advance of the inquiry, or decided on at a preliminary hearing before a panel.

6.3 In advance of the panel commencing their inquiry by consideration of the documents and written submissions, a panel may decide that the inquiry should proceed by way of an oral hearing if, for example, the documents and written submissions cannot be agreed between the parties, if issues raised in the exchange of written submissions suggest that oral evidence is necessary to properly and fairly consider and decide whether the allegations are proven or if in the panel's view it is in the public interest for an oral hearing to take place.

6.4 If at any point during the consideration of an inquiry by examination of documents and written submissions, the panel is of the view that an oral hearing is required, for whatever reason, the panel will inform the parties of this view and an oral hearing will take place.

6.5 An inquiry by way of examination of documents and written submissions will take place in private with neither party present.

6.6 As set out at 3.9 above, a legal assessor may be instructed to advise and assist the panel in relation to any relevant matters of law and procedure which arise during the course of the inquiry. If the panel requires legal advice, it should obtain it from the panel's legal assessor. Prior to acting on that advice, the parties should be informed in writing of the advice that has been given, and the parties should be given an opportunity to make submissions in relation to that advice. The legal assessor may then vary the advice to the panel in the light of any submissions.

6.7 The panel will review the documentation and written submissions and deliberate on the allegations.

6.8 Decisions of the panel may be made by way of simple majority. All members of the panel must vote. Reasons will be given for all decisions of the panel.

6.9 The panel shall set out its reasons in respect of any decision it may make at an inquiry by way of an examination of relevant documents and written submissions.

7 Inquiry by way of oral hearing

A. Preparation for the oral hearing

7.1 The Director will endeavour to ensure that all documentary evidence to be presented by him or her at the hearing will be made available to the registered teacher, or, if applicable, to the registered teacher's representative(s), a minimum of four weeks before the hearing. In default of this, the panel will take such steps as are necessary to ensure that the registered teacher does not suffer any prejudice as a result of any late receipt of documentary evidence.

7.2 The panel shall ensure that notice in writing is given to the registered teacher of the date, time and place of any hearing in sufficient time to enable the registered teacher to prepare for the hearing.

B. Procedure at the oral hearing

7.3 When opening the oral hearing, the Chairperson shall introduce the members of the panel and the panel's legal assessor. The Chairperson shall state that the legal assessor is not a member of the panel and shall outline the role of the legal assessor. The Chairperson will confirm that the panel has been constituted in accordance with the Acts. The Chairperson will invite the participants at the oral hearing to address him or her as Chairperson. All matters pertaining to the Inquiry shall be directed to him or her.

7.4 At the invitation of the Chairperson, appearances shall be taken.

7.5 The Director, or any other person with leave of the panel, shall present the evidence in support of the complaint.

7.6 The Chairperson will confirm the standard of proof having heard submissions from the parties in relation to it.

7.7 The allegations in the Notice of Inquiry will be read into the record of the proceedings unless the registered teacher and the Director consent to the waiving of this formality. The Chairperson will invite submissions from the registered teacher and the Director in relation to any preliminary matters arising which were not addressed at any preliminary hearing.

7.8 At the invitation of the Chairperson, the Director or his or her legal representative(s) or any other person with leave of the panel will read out the allegations in the Notice of Inquiry and will provide an oral summary of the evidence to be called.

7.9 The Director or his or her legal representatives or any other person with leave of the panel shall present the evidence in support of the complaint and may call witnesses.

7.10 Before giving evidence, each witness shall be asked either to affirm the truth of his or her evidence or to swear an oath. The testimony of witnesses attending the oral hearing shall be given on oath. Any member of the panel may administer oaths for the purpose of the hearing.

7.11 The Chairperson will introduce the members of the panel and the panel's legal assessor and the other parties to each witness before the witness commences giving evidence.

7.12 The registered teacher (or his or her representative(s)) will have the opportunity to cross-examine witnesses called by the Director.

7.13 Members of the panel may question witnesses if they so wish.

7.14 The Chairperson will allow the Director (or his or her representative(s)) and the registered teacher (or his or her representative(s)) to have an opportunity to re-question witnesses when cross-examination and questioning by the panel has concluded.

7.15 At the conclusion of the presentation of the Director's case, the Chairperson will advise the registered teacher (or his or her representative(s)) that he or she has the option of either giving evidence or not giving evidence. No inference will be drawn by the panel from any decision made by the registered teacher in respect of these options. The registered teacher, or his or her representative(s), may present any evidence and may call witnesses in relation to the allegations.

7.16 The Director will have the right to cross-examine witnesses called on behalf of the registered teacher.

7.17 Witnesses may be recalled at the discretion of the panel or at the request of the registered teacher or the Director.

7.18 The panel may adjourn the proceedings at any stage.

7.19 During the oral hearing the Chairperson shall allow sufficient breaks to avoid loss of concentration and fatigue on the part of any participants. The panel may also take adjournments during a hearing to deliberate in private and/or to take advice on legal or procedural matters, which advice should be obtained in accordance with paragraph 3.11 above.

7.20 The panel shall set out its reasons in respect of any decision it may make at the oral hearing.

7.21 The proceedings of the oral hearing will be recorded by a stenographer.

C. If the registered teacher does not attend the oral hearing

7.22 In the event that the registered teacher (or his or her representative(s)) is not present at the oral hearing, the Director may present evidence regarding the service of the Notice of Inquiry on the registered teacher. The Director may also adduce evidence of all communications with the registered teacher in respect of the inquiry and in particular in relation to the date and time of the oral hearing.

7.23 If the registered teacher is not present, the panel will decide whether it is satisfied that all reasonable efforts have been made to put the registered teacher on notice of the allegations and the date and time of the oral hearing. If the panel is satisfied that all such reasonable efforts have been made the panel shall proceed with the oral hearing. The panel may, if appropriate in the circumstances, direct that further specified efforts be made to put the registered teacher on notice of a new date and time for the oral hearing to resume and may adjourn the oral hearing to facilitate this.

7.24 If the registered teacher is not present but an application for an adjournment is made on behalf of the registered teacher, the panel will decide whether to accede to that request. Such adjournment will normally be granted only in exceptional circumstances. If the panel accedes to an application for an adjournment, the panel may fix a new date and time for the oral hearing and direct that the registered teacher is informed of the arrangements.

D. Witnesses

7.25 A witness before a panel shall be entitled to the same immunities and privileges as if he or she were a witness before the High Court.

7.26 Where a minor or vulnerable person is called to give evidence, the part of the proceedings in which the minor or vulnerable person takes part may be conducted in private, if the panel grants any such application.

7.27 Where a minor or vulnerable person is called to give evidence and the allegations against the registered teacher relate to the treatment of that minor or vulnerable person or interaction with that minor or vulnerable person, the minor or vulnerable person may be permitted to give live evidence by video link.

7.28 The panel will hear any application made by the parents, guardians or carers of the minor or vulnerable person for them to be in attendance at the inquiry when the minor or vulnerable person is giving evidence in private. The panel will hear submissions from the registered teacher and the Director before deciding whether to accede to any such application.

7.29 The panel will hear any application made by or on behalf of any interested person, to include a witness and to include the parents, guardians or carers of a minor or vulnerable person to be in attendance at the oral hearing in circumstances where the oral hearing is to be held in private (in the case of a witness, the application may only relate to attending the inquiry after the witness has given evidence). The panel will hear submissions from the registered teacher and the Director in relation to such application before deciding whether to accede to the application.

7.30 Where a minor or vulnerable person is called to give evidence, the questions to be asked of the minor or vulnerable person may be asked through an independent intermediary so as to ensure that the questions are asked in a way that is appropriate to the age and mental ability of the minor or vulnerable person. The panel shall hear submissions from the registered teacher and the Director before making a decision to proceed in this manner.

7.31 Matters identified at 7.26 to 7.30 above may be considered at a preliminary hearing, or at the oral hearing if necessary.

E. Medical Evidence

7.32 A medical practitioner who, on behalf of the Investigating Committee and/or the Director, conducts a medical examination of the registered teacher may be requested to give evidence to the panel in relation to the content of his or her report and any updated report(s). Such report(s) shall be furnished to the registered teacher/the representative(s) of the registered teacher in advance of the oral hearing. In circumstances where the registered teacher is not represented, the panel shall consider the appropriate method for service of such reports on a case by case basis.

F. Voting and Decision Making

7.33 Following completion of the oral hearing, the panel shall withdraw to deliberate in private.

7.34 Decisions of the panel may be made by way of simple majority. All members of the panel must vote. Reasons will be given for all decisions of the panel.

8 Following an Inquiry

8.1 At the conclusion of an inquiry, the panel shall complete its report. The panel will endeavour to complete the report within 20 working days of the completion of the inquiry.

8.2 The report shall include:

- a) The nature of the complaint, or in circumstances where the complaint was made under subsection 1(D) of section 42, the nature of the information disclosed in the vetting disclosure giving rise to the complaint.

- b) The evidence before the panel.
- c) The panel's finding or findings in relation to the allegations contained in the Notice of Inquiry.
- d) Where any finding is made in respect of an allegation that a registered teacher has been convicted in the State of an offence triable on indictment, or convicted outside the State of an offence consisting of acts or omissions that if done or made in the State would constitute an offence triable on indictment, the panel's consideration of whether the finding affects the fitness to teach of the registered teacher.
- e) Where an inquiry is completed under section 43(7) of the Acts, the measures included in the undertaking or consent.
- f) In circumstances where the complaint was made under subsection 1(D) of section 42, the panel's assessment of the risk that the registered 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, and its conclusion in respect of that risk.
- g) Any other matters in relation to the registered teacher which the panel considers appropriate.

8.3 At the conclusion of the inquiry the panel shall dismiss the complaint in circumstances where the panel—

- a) makes no finding in relation to a complaint under any of the grounds set out in section 42(1)(a) to (h), 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.

8.4 Where the panel dismisses a complaint, the panel shall, as soon as is practicable, by notice in writing, inform the complainant, the registered teacher and such other persons as the teacher may request, and where the teacher is employed as a teacher, his or her employer and shall, at the request of the registered teacher concerned, publish a notice to that effect in such form and manner as may be determined by the Council.

8.5 The panel may decide to sanction the registered teacher under section 44 of the Acts, where the panel, having completed its report and considered any submissions from the parties in relation to sanction—

- a) makes a finding or findings on one or more of the grounds set out in section 42(1) of the Acts, or
- b) is satisfied in respect of 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.

8.6 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, or the confirmation by the panel in their report of measures included in a consent or undertaking provided by the registered teacher in accordance with section 43(17) (b)(iii) of the Acts, provide a copy of the decision and the reasons for the decision to the complainant, the registered teacher, the Minister and where the registered teacher is employed as a teacher his or her employer.

9 Issues that can arise while a complaint is being considered by a Panel

A. Undertakings and/or consents

9.1 A panel may, at any time after its appointment, and having considered the complaint the subject of the inquiry, request the registered teacher who is the subject of the complaint to do one or more of the following:

- a) If appropriate, undertake not to repeat the conduct the subject of the complaint;
- b) Undertake to attend a specified professional development course or such other course as the panel considers appropriate;
- c) Undertake to comply with such requirements as may be specified for the purposes of improving his or her competence and performance as a registered teacher;
- d) Consent to seek the assistance of such services relating to health and welfare as may be specified;
- e) Consent to being censured.

9.2 Where a registered teacher gives an undertaking or consent as requested by the panel, the inquiry into the complaint shall be considered to be completed.

9.3 Where a registered teacher refuses to give an undertaking or consent, the panel shall continue with the inquiry as if the request had not been made.

9.4 The panel will not usually request the registered teacher to provide an undertaking or consent unless the Director has presented his evidence at an oral

hearing or the panel has examined the documents and written submissions at an inquiry proceeding by way of an examination of documents. The reason for this is that the panel should have a clear understanding of the extent of the evidence before requesting an undertaking or consent from the registered teacher.

B. Withdrawal of complaints

9.5 Where a complaint is withdrawn while being considered by a panel, the panel may, with the agreement of the Council, or the Executive Committee if the Council has delegated this power—

- a) decide that no further action should be taken in relation to the matter the subject of the complaint, or
- b) proceed as if the complaint had not been withdrawn.

C. Vetting disclosures

9.6 Where the Investigating Committee considers that a complaint is of such a nature as to reasonably give rise to a bona fide concern that the registered teacher the subject of the complaint 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, the Investigating Committee shall request the Council to apply to the National Vetting Bureau for a vetting disclosure in respect of that teacher.

9.7 In addition, as set out in section 42(1D) of the Acts, the Council may make a complaint to the Investigating Committee if the Council, while acting on behalf of another relevant organisation the Council represents for the purpose of vetting procedures under the National Vetting Bureau (Children and Vulnerable Persons) Act, 2012 (“the Act of 2012”), receives a vetting disclosure which contains information of such a nature as to reasonably give rise to a bona fide concern that the registered teacher the subject of the complaint 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. However, the Council cannot make a complaint to the Investigating Committee about specified information on a vetting disclosure regarding conduct which predates the commencement of Part 5 of the Acts unless the conduct concerned would have constituted a criminal offence at the time it occurred.

9.8 For the purpose of an inquiry, the panel may consider the information contained in a vetting disclosure obtained by the Investigating Committee in so far as the information relates to the conduct which is the subject of the inquiry. However, specified information on a vetting disclosure about conduct which predates the commencement of Part 5 of the Acts will not be considered unless the conduct concerned would have constituted a criminal offence at the time it occurred.

9.9 In the case of a complaint made by the Council under section 42(1D) and referred to the Disciplinary Committee, the panel may consider the information contained in the vetting disclosure in so far as the information grounds the complaint.

9.10 The panel will also consider any submissions made by the registered teacher to the Investigating Committee in relation to the vetting disclosure.

9.11 Where the Investigating Committee did not request the Council to apply to the National Vetting Bureau for a vetting disclosure in respect of a registered teacher, and where the Panel considers that the complaint referred to the Disciplinary Committee is of such a nature as to reasonably give rise to a bona fide concern that the registered teacher the subject of the complaint 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, the panel may request the Council to apply to the National Vetting Bureau for a vetting disclosure in respect of that teacher.

9.12 Where a panel receives a vetting disclosure in accordance with paragraph 9.11, it shall provide the registered teacher with a copy of it and invite him or her to make submissions in writing to the panel in relation to the disclosure, within a specified time period.

9.13 The panel will then consider any submissions made by the registered teacher to the panel in relation to the vetting disclosure.

9.14 The panel may consider the information contained in such a vetting disclosure obtained by the panel in so far as the information relates to the conduct which is the subject of the inquiry. However, specified information on a vetting disclosure about conduct which predates the commencement of Part 5 of the Acts will not be considered unless the conduct concerned would have constituted a criminal offence at the time it occurred.

Vetting disclosures and criminal convictions

9.15 The Council may make a complaint to the Investigating Committee under section 42(1)(g) of the Acts i.e. on the ground that a registered teacher has been convicted in the State of an offence triable on indictment or convicted outside the State of an offence consisting of acts or omissions that, if done or made in the State would constitute an offence triable on indictment. This may be on the basis of information contained in a vetting disclosure received by the Council on behalf of another relevant organisation the Council represents for the purpose of vetting procedures under the National Vetting Bureau (Children and Vulnerable Persons) Act 2012.

9.16 The panel may consider the information contained in the vetting disclosure in so far as the information grounds the complaint under section 42(1)(g) of the Acts.

9.17 The panel may also consider any submissions made by the registered teacher to the Investigating Committee in so far as they relate to the vetting disclosure.

10 General

10.1 Non-compliance with the foregoing procedures shall not render any proceedings or steps void unless the panel so directs. Such proceedings or steps may be set aside either wholly or in part as irregular, or amended or otherwise dealt with in such manner or upon such terms as the panel shall think fit.

10.2 Paragraph 10.1 shall not affect the requirements to comply with any statutory provisions.

10.3 No amendment to the rules shall be made by the Council, subject to the consent of the Minister, unless notice of the proposed amendment is formally placed before a meeting of the Council.

Schedule

Glossary of Terms

Terms and phrases used in this document explained in alphabetical order

The Acts

The Teaching Council Acts, 2001 — 2015, establish and set out the functions of the Teaching Council. The original 2001 Act has been amended in 2006, 2012 and 2015. Part 5 of the Acts governs complaints into the fitness to teach of a registered teacher.

Bona Fide

A Latin term meaning “good faith” which is used in the Acts. A bona fide concern is a real or genuine concern, held in good faith.

The Complainant

The complainant is any person (including the Teaching Council) who submits a complaint to the Investigating Committee.

The Complaint

The complaint is the written and signed request for an inquiry into a registered teacher, including all accompanying documents and information relevant to the complaint, as submitted by the complainant.

Director

The Director shall prepare and be responsible for presenting the evidence in support of the allegations to the panel when convened for an oral hearing. In the case of an inquiry by way of an examination of documents, the Director shall liaise with the complainant in preparing and submitting the appropriate documents and submissions

Disciplinary Committee

Thirteen members of the Council sit on the Disciplinary Committee. Section 28 of the Acts contains provisions regarding the membership of the Committee. The Disciplinary Committee is the body from which a panel is formed to hold an inquiry into a complaint referred to the Disciplinary Committee by the Investigating Committee under Section 42(9) of the Acts.

Disciplinary Committee Panel

The Chairperson of the Disciplinary Committee shall appoint a panel from the members of the Disciplinary Committee to conduct an inquiry into a complaint referred to it by the Investigating Committee. The panel is made up of not less than 3 and not more than 5, the majority of whom are registered teachers. Under section 43(14) of the Acts, the panel has the powers, rights and privileges of the High Court or a judge of the High Court in respect of:

- Enforcing the attendance of witnesses and their examination on oath or otherwise; and,
- Compelling the production of documents.

Inquiry

The formal consideration by a panel of a complaint in relation to a registered teacher, in accordance with section 43 of the Acts. An Inquiry may take the form of either an oral hearing or an examination of documents and written submissions.

Investigating Committee

Eleven members of the Council sit on the Investigating Committee. The membership of the Investigating Committee is set out in Section 27 of the Acts. The Investigating Committee can hold an investigation into a complaint following referral of a complaint by the Director or where a refusal by the Director is appealed to the Committee. If the Committee holds an investigation it will make a decision to either refer the complaint to the Disciplinary Committee or refuse to refer the complaint.

Legal Assessor to the Panel

A legal assessor shall advise the panel on relevant matters of law and procedure which may arise during the course of any preliminary hearing and/or inquiry.

Medical Evidence

A medical practitioner who, on behalf of the Investigating Committee and/or the Director, conducts a medical examination of the registered teacher may be requested to prepare a report, and, in most cases, to give evidence to the panel at an oral hearing in relation to the content of his or her report and any updated report(s), which would be provided to the registered teacher in advance.

Minister

The term Minister refers to the Minister for Education & Skills.

Minor

A person who is not of full age (18 years) may be described as a minor.

National Vetting Bureau

The National Vetting Bureau of An Garda Síochána.

Notice of Inquiry

The Notice of Inquiry will contain the allegations and the particulars of any evidence in support of the complaint against the registered teacher.

Offence triable on indictment

Indictable offences are those which may or must be tried on indictment, usually before a judge and jury.

Panel Members

Members of the Disciplinary Committee appointed to serve on a panel in accordance with section 43(3) of the Acts.

Poor Professional Performance

A failure by the registered teacher to meet the standards of competence (whether in knowledge, skill or the application of knowledge and skill or both) that can be reasonably expected of a registered teacher.

Preliminary Hearing

A preliminary hearing may be arranged in advance of the inquiry at which the panel appointed for the purpose of the inquiry will be present, except in certain circumstances where an alternate panel of the Disciplinary Committee may be present. Preliminary hearings are held to address matters relating to the nature and conduct of the inquiry.

Professional Misconduct

A ground of complaint referred to in section 42(b) of the Acts. The Teaching Council's definition of professional misconduct is based on case law and can be found in the Council's Code of Professional Conduct on the Teaching Council website www.teachingcouncil.ie.

Registered Teacher

A teacher who is registered with the Teaching Council on the register of teachers.

Report of the Panel of the Disciplinary Committee

At the conclusion of its inquiry, the panel will prepare a report. The report will contain details such as the nature of the complaint, the evidence before the panel and further matters as set out in paragraph 8.2 of the rules.

Sanction

The panel of the Disciplinary Committee, having completed its report, may decide to sanction the registered teacher under section 44 of the Acts. The possible sanctions include the removal of the registered teacher from the register, the suspension of the registered teacher from the register for a period not exceeding two years, that the registered teacher be retained on the register subject to certain conditions and a decision to advise, admonish or censure the registered teacher.

Secretariat

One or more of the Teaching Council staff, who will be responsible for administrative matters to support the functioning of the Committee.

Summary Conviction

Conviction imposed by the District Court, without a Jury and for which the maximum punishment is generally six months imprisonment and/or a fine. An accused is not entitled to trial by jury in such cases either because the offence is minor or because the accused has waived his right to a Jury Trial.

The Teaching Council

The Teaching Council is the statutory body with responsibility for the registration and professional standards for primary and post-primary teachers in Ireland. It was established on a statutory basis on 28 March 2006, in accordance with the Acts.

Undertakings and/or consents

A panel of the Disciplinary Committee may, at any time after its appointment, and having considered the complaint the subject of the inquiry, request the registered teacher to provide an undertaking such as an undertaking not to

repeat the conduct the subject of the complaint, or a consent, such as a consent to being censured.

Vetting Disclosure

A disclosure made by the National Vetting Bureau in respect of a person.

Vetting Procedures

The enquiry and examination undertaken by the Bureau under section 14 of the 2012 Act and, where appropriate, assessment by the Chief Bureau Officer of specified information under section 15 in relation to an application for vetting disclosure in respect of a person who wishes to undertake relevant work or activities.

Vulnerable Person

Vulnerable person means a person, other than a child, who—

- (a) is suffering from a disorder of the mind, whether as a result of mental illness or dementia, or
- (b) has an intellectual disability, or
- (c) is suffering from a physical impairment, whether as a result of injury, illness or age, or
- (d) has a physical disability, which is of such a nature or degree—
 - (i) as to restrict the capacity of the person to guard himself or herself against harm by another person, or
 - (ii) that results in the person requiring assistance with the activities of daily living including dressing, eating, walking, washing and bathing.

Withdrawal of complaint

If a complaint is withdrawn, the panel of the Disciplinary Committee may decide, with the agreement of the Council (or the Executive Committee if the Council has delegated this function to the Executive Committee), that no further action should be taken in relation to the matter the subject of the complaint or to proceed as if the complaint had not been withdrawn.

Witnesses

Witnesses may be called by the Director or the registered teacher to give evidence at an inquiry by way of oral hearing.

Written Submissions

Where an Inquiry proceeds by way of examination of documents and written submissions, the registered teacher may make written submissions to be considered by the Panel.

The Minister for Education and Skills consents to the making of the foregoing rules.



GIVEN under the Official Seal of the Minister for Education and Skills,
25 July 2016.

RICHARD BRUTON,
Minister for Education and Skills.



GIVEN under the seal of the Teaching Council

SEAN MCMAHON,
Deputy Chairperson.

TOMÁS Ó RUAIRC,
Director.

Dated the 25th July 2016.

EXPLANATORY NOTE

(This note is not part of the Statutory Instrument and does not purport to be a legal interpretation.)

These rules are made under section 43 of, and Schedule 3 to, the Teaching Council Act 2001. They provide for the procedure to be applied by panels appointed by the Disciplinary Committee of the Teaching Council to hear inquiries under section 43.

These rules may be cited as the Teaching Council (Disciplinary Committee Panel Procedures) Rules 2016.

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nó trí aon díoltóir leabhar.

DUBLIN
PUBLISHED BY THE STATIONERY OFFICE
To be purchased from
GOVERNMENT PUBLICATIONS,
52 ST. STEPHEN'S GREEN, DUBLIN 2.
(Tel: 01 - 6476834 or 1890 213434; Fax: 01 - 6476843)
or through any bookseller.

€6.60



Wt. (B32257). 300. 7/16. Essentra. Gr 30-15.