

# Is there a duty to report serious teacher misconduct?

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# Is there a duty to report serious teacher misconduct?

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## Is there a duty to report serious teacher misconduct

The words 'teacher misconduct' sends shudders down most Head Teacher's spines and is one of their worst fears. Every Head Teacher hopes this is something they never have to deal with, however, what happens if it is? What action does a school need to take when an allegation of serious teacher misconduct is substantiated?

When an allegation of misconduct arises a Head Teacher will not only have to deal with the teacher as an employee and their alleged misconduct via the schools disciplinary procedure, but will also have to juggle other important issues such as; child protection, liaising with the Local Authority Designated Officer and/or the Police, managing parent concerns, and dealing with any adverse publicity and impact on the school's reputation.

In our previous newsletters (Newsletter 10 Parts 1-3 – [click here to download](#)) we talked you through the disciplinary process, starting with the investigations, right the way through to the appeal stage. As discussed in that Newsletter there may be instances where suspension is necessary as part of that process. Depending on the nature of the allegation suspension is often likely to be necessary (but not always) in cases of serious misconduct, especially where there are safeguarding concerns. If the teacher needs to be suspended it should be done in accordance with the school's disciplinary policy and in conjunction with the guidance in the [Keeping Children Safe in Education document](#).

If after conducting a fair and appropriate disciplinary process the outcome is dismissal (or would have been if the teacher had not resigned before the process concluded), schools may be tempted to move on and focus on other pressing matters. However, a school's duties do not end there. It is important that it considers whether it needs to refer the allegation of teacher misconduct to the National College for Teaching & Leadership ("NCTL").

### Who is the NCTL?

The Education Act 2011 gives responsibility to the Secretary of State to regulate teachers' conduct and to hold a list of teachers who have been prohibited from teaching. The NCTL operates the regulatory system on the Secretary of States behalf.

In summary, the NCTL is responsible for regulating the teaching profession in England. It investigates cases of serious teacher misconduct and decides whether to refer a case to a professional conduct panel (PCP). If the case is referred to a PCP then the panel will investigate whether a prohibition order should be issued.

If a prohibition order is made it means that the person concerned is not allowed to undertake unsupervised teaching work in schools or other education settings. A prohibition order is likely to be appropriate where the behaviour of the person concerned has been fundamentally incompatible with being a teacher. A prohibition order is generally a lifetime ban, although in some cases the teacher may be able to make a request to have it reviewed after a specified period of time.

### **Duty to refer to the NCTL?**

The Department for Education (DfE) has issued helpful guidance on the factors which are to be considered by a PCP at the hearing when deciding whether to recommend that the teacher should be prohibited by the Secretary of State from carrying out any further teaching work. This is the same guidance that schools should consider when deciding whether or not to report the misconduct to the NCTL.

It is important to note that allegations of serious misconduct against a teacher may be referred to NCTL by any of the following:

- a teacher's employer, including an employment or supply agency;
- members of the public who think that a case of misconduct by a teacher is serious enough to warrant a prohibition order;
- the police; or
- the Disclosure and Barring Service (DBS) and other regulators who are aware of relevant information.

Schools have a statutory duty to consider referral of cases involving serious professional misconduct and a referral to the NCTL is appropriate if the alleged misconduct is so serious that it warrants a decision on whether the teacher should be prevented from teaching.

This does not cover the cases of less serious misconduct, incompetence, or under-performance, and these should be dealt with internally via the Schools correct procedures.

Where there are safeguarding concerns and the allegation against the teacher is substantiated and the teacher is dismissed or would have been had they not resigned before dismissal was sanctioned or they otherwise cease to provide their services to the School, the designated officer will discuss with the School and their HR adviser whether the school should refer the matter to the NCTL to consider prohibiting the individual from teaching.

The DfE guidance makes it clear that where a school is in any doubt as to whether to refer to NCTL, they should refer and referrals should be made promptly. Would you want a pupil's parent to make the referral before the school did?

**[A copy of the referral form to the NCTL can be found here.](#)**

### **The professional conduct panel (PCP)**

Before a prohibition order should be made the PCP must consider the following questions in the following order.

1. Are they satisfied that the facts of the case have been proved on the balance of probabilities, based on the evidence available?
2. Has there been:
  - a. unacceptable professional conduct";
  - b. "conduct that may bring the profession into disrepute"; or
  - c. "conviction, at any time of a relevant offence"?
3. Is a prohibition order appropriate?

Therefore, a school should refer the following issues to the NCTL;

- **Unacceptable professional conduct and conduct that may bring the profession into disrepute**

This is misconduct of a serious nature, falling significantly short of the standard of behaviour expected of a teacher. Misconduct outside of the education may amount to

“unacceptable professional conduct” if it affects the way the person fulfils their teaching role or if it may lead to pupils being exposed to or influenced by the behaviour in a harmful way.

The DfE guidance clarifies that if a teacher accepts a caution for any of the criminal offences listed below or displays behaviours associated with those offences they are likely to have committed unacceptable professional conduct and brought the profession into disrepute even if they are not convicted of an offence.

- **Conviction at any time of a relevant offence**

This applies to British convictions and overseas conviction where the offence would also have been an offence in England and Wales, and where the offence is relevant to a person’s fitness to be a teacher.

An offence can be considered relevant even if it did not involve misconduct in the course of teaching. Any conviction for which the teacher was imprisoned and any of the following are likely to be ‘relevant’ offences:

- Violence;
- Terrorism;
- Fraud/serious dishonesty;
- Theft;
- Possession of class A drugs;
- Supply of any illegal substances;
- Sexual activity;
- Arson/major criminal damage;
- Serious driving offences especially those involving alcohol or drugs;
- Other serious offences involving alcohol or gambling;
- Possession of firearms, knives or other weapons;
- Activity relating to any indecent photo or image of a child.

It is unlikely that minor driving offences, minor gambling offences or isolated minor cases of theft will be classed as a relevant offence.

### **Not sure what to do?**

If you are in any doubt as to whether to make a referral to the NCTL, then you should make one. The point of a prohibition order is to protect pupils, maintain public confidence in the teaching profession, and uphold proper standards of conduct. It is the PCP who are responsible for making a decision on a teachers future career, not the Schools.

It can be understandably hard for Head Teachers to make referrals, especially where the member of staff concerned is a long standing member of staff and with whom they have worked closely with, however, remember, by making the referral this does not mean that you are responsible for ending the teacher’s career. The PCP makes a decision based on all the evidence available, and after all it is the teacher themselves who is ultimately responsible for this!

### **Referral to Disclosure and Barring Service (DBS)**

In addition to a referral to the NCTL Schools must also consider if a referral to the DBS is required.

There is a legal requirement for employers to make a referral to the DBS where they think that an individual (all employees not just teachers) has engaged in conduct that harmed (or is likely to harm) a child; or if a person otherwise poses a risk of harm to a child.



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