



Fitness to Practise

**Guidance for employers and agents:
the responsibility to refer**

The employer and agent's responsibility to refer

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**)

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

- **Settlement or mutual agreements** where dismissal was a possibility.
- **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).

In any event, 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.

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.

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.

Referrals and the Disclosure and Barring Service (DBS)

Where the EWC receives a referral from an employer or agent, and it appears such a referral may involve the harm, or the risk of harm to children or vulnerable adults, it will forward the referral to the DBS.

The DBS may either decide to include the registered person in the Children's Barred List or Adults' Barred List, or refer the case back to the EWC for separate consideration on professional grounds.

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

Key contact

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