

Education Workforce Council response to the Welsh Government Independent schools regulations and guidance call for evidence

Email to: schoolfoodandindependentschools@gov.wales

Date: 02 February 2022

The Education Workforce Council (EWC) welcomes this opportunity to respond to the call for evidence issued by the Welsh Government on 9 December 2021.

Given the EWC's role as the independent regulator for the education workforce in Wales, our response is focused on those questions in the call for evidence which directly relate to our regulatory responsibility.

Independent schools registration and operational guidance

Question 1: What changes can we make to the Independent schools registration and operation guidance to make it a more useful source of advice and information for independent schools and prospective independent schools?

The EWC suggests the following changes which will be relevant if legislation to expand the EWC Register of Education Practitioners to include the independent schools sector is enacted:

- amend the section headed ***Checks on staff and volunteers*** to include the requirement for employers to check that EWC registration is in place as part of pre-employment checks and ongoing annual renewal of registration.
- under the heading ***What happens if the Welsh Government is satisfied that any person working at a school is unsuitable to work with children, unsuitable to work as a teacher or to take part in the management of the school?***, the guidance should be amended to include any findings made by a Fitness to Practise Committee of the EWC leading to the imposition of a disciplinary order for issues relating to misconduct, serious professional incompetence and / or conviction of a relevant offence. Disciplinary orders can include those that prohibit or restrict a practitioner's ability to practise.
- amend ***What are the requirements for reporting cases of staff misconduct or incompetence?*** to include an employer's statutory responsibility to refer cases to the EWC.

The call for evidence document on page 12 refers

"Introducing a requirement for all teaching staff and learning support staff in independent schools to register with EWC would be an additional step towards safeguarding learners. It would also be part of establishing a clear and well understood process for investigating concerns about individual members of staff, similar to that for staff in maintained schools, by providing a route for individuals or organisations to raise concerns with an external professional body"

It is worth clarifying this statement as the responsibility on employers would be more than 'raising a concern'.

If an employer dismissed a member of staff for a misconduct, criminal offence and / or competence issue or the person stopped working for the employer because of one or more of those issues (e.g. resignation, settlement agreement), the employer would be legally required to refer the matter to the EWC. That is in **all** cases. The EWC's consideration of a referral then is completely independent from that of an employer prior to the referral being made.

Regulations will need to be clear on who has the statutory responsibility for employees and therefore who would be responsible for reporting to EWC. According to the current Regulations, the 'proprietor' is the person who registers the school with Welsh Government. We understand that the proprietor may or may not be the headteacher, could be the governing body or a large organisations operating across the UK. Other schools may have a proprietor living overseas. The delegation of power and responsibility will need to be consistent across the sector.

Safeguarding learners

Questions 2 – Should Disclosure and Baring Service (DBS) checks on the proprietors and staff be updated more frequently?

In considering whether DBS checks should be carried out more often, the EWC wishes to highlight that an enhanced disclosure check is a 'snapshot' of a person's record and is only valid at the time it is produced. It does not provide a full and complete list of a person's criminal record but rather only those offences which are not considered filtered by the DBS. Consequently, it could be argued that in some circumstances it would be appropriate for the checks to be carried out more regularly. This is a judgement for individual employers.

A benefit of EWC registration is that practitioners are subject to compliance with the EWC Code of Professional Conduct and Practice and the principle of **Professional Integrity** which includes an expectation that registrants will inform the EWC of any recordable conviction or caution and also notify their employer of any matter which is required under their terms and conditions of employment.

Registration of teaching staff with the Education Workforce Council (EWC)

Before responding to question 12 specifically, the EWC considers it appropriate to provide some background information about public expectation and regulation of the education workforce and, more specifically, about the work the EWC has undertaken over many years to raise its concerns regarding the non-regulation of independent school practitioners.

It is an established principle in the UK and many other countries worldwide that professions in which the public have a legitimate interest, should be regulated in order to protect / safeguard the "service users" concerned and the general public. In practice, this means that:

- the public can be reassured that the people working in a particular profession are suitably qualified, their knowledge and skills are kept up to date and their conduct and competence is of an appropriate standard (they are fit to practise their profession).
- those working within a particular profession can demonstrate that they:
 - individually and collectively, have a commitment to maintaining and raising standards, in the interests of the public.
 - are part of a profession of high status and standing, with specific entry requirements and expectations of conduct and competence.

Registration is essentially "a licence to practise" in a particular profession. This is the same in a range of other regulated professions in the UK, for example in health, the law, social care, accountancy, engineering, architecture. It would be unthinkable for a doctor to practise without the necessary qualifications, skills and

adherence to proper standards of conduct – the public expects nothing less and they should have the same expectations of the education workforce.

Currently, two scenarios exist in education in Wales that are not found in other countries / professions:

- the EWC can refuse registration to an applicant or place a disciplinary order on a registrant, yet they are free to work in an independent school;
- a teacher or member of learning support staff can be dismissed from an independent school, yet they are not investigated by the EWC, unless they are registered voluntarily. A person in the maintained sector could be subject to similar allegations, in which case their employer would be legally required to refer the matter to the EWC.

Both of these scenarios represent safeguarding risks. Regardless of where a child is educated (a maintained or independent school), the level of protection / safeguarding and commitment to professional standards should be the same. For a number of years, the EWC (and previously the GTCW) has highlighted to Ministers, Welsh Government officials and others the anomaly and potential safeguarding risks, providing real case examples to evidence the risks.

This has included:

- a range of responses to Welsh Government consultations and requests from the Senedd CYPE Committee for evidence;
- meetings and communication with the then Minister for Education and Skills, Huw Lewis who commissioned a review in 2015-16 which supported the registration of independent school staff;
- meetings and communication with the then Minister for Education, Kirsty Williams in 2020 who, following a high profile case in the independent sector, committed to consulting on legislation to introduce registration for staff in independent schools;
- meetings with the Chief Inspector (Estyn), who supports EWC's position on registration;
- meetings and communication with the Children's Commissioner and in particular, in 2020 to inform her review of the exercise of Welsh Government functions;
- witness evidence in 2020 and 2021 from the EWC Chief Executive to the Independent Inquiry into Child Sexual Abuse.

The EWC is pleased to see that the current Minister for Education and Welsh Language has made a commitment to now address the risks the EWC (and previously the GTCW) has continually highlighted.

Question 12: Which categories of independent school staff should be required to register with the Education Workforce Council (EWC)?

Having set out the background above, we turn to address question 12 specifically.

For staff in maintained schools, there are currently two categories of registration, "school teacher" and "learning support staff". The requirement for registration is based on the 'services' the individual is providing rather than their actual job title. Indeed, in the case of learning support staff, the range of different roles / job titles is particularly wide ranging. The Education Workforce Council (Main Functions) (Wales) Regulations 2015 set out clearly the services to be provided by both school teachers and learning support staff.

The EWC strongly believes that any practitioners in the independent sector who undertake similar work (services) to those in maintained schools (as currently defined in the Regulations) should be required to register with the EWC within the existing categories of "school teacher" and "learning support staff".

However, the EWC is aware that there is a complexity within independent schools in this regard. Notably, it is not unusual for some persons who do not hold Qualified Teacher Status (QTS) to work as teachers. This is

not acceptable in the maintained school sector in legislation, save for certain specific exemptions. Where such a person without QTS does practise in a maintained school, they are registered as a learning support worker (rather than a school teacher) as they do not hold QTS.

A similar situation was seen in Scotland when, in October 2017, legislation was enacted that required independent school teachers to register with the General Teaching Council for Scotland (GTCS). Those with the recognised qualification in Scotland were registered and those without were required to gain it by 1 June 2021. For new appointments since October 2017, the recognised qualification has been a mandatory requirement. To address the issue of unqualified teachers, a programme of training was co-designed by the Scottish Council for Independent Schools (SCIS) and an ITE provider with participants having to hold provisional (conditional) registration with the GTCS before being able to complete the training.

The model adopted in Scotland recognises that all school teachers, regardless of the phase / sector they teach in, should hold a minimum standard of qualification in order to practise. In Wales, for a practitioner to be eligible to register in the category of school teacher they must hold QTS (save for certain exemptions in legislation).

The EWC's preference would be a similar model to that in Scotland. To be clear, this would mean:

- independent school teachers who hold QTS, register in the existing school teacher category;
- learning support workers register in the existing school learning support worker category;
- independent school teachers without QTS register provisionally (conditionally) in a new category which will include a mandatory requirement to gain QTS within a set period of time.

However, we understand that Welsh Government officials are considering a separate new category for independent school teachers to accommodate those school teachers in the sector who do not hold QTS but without the requirement to gain it within a set period of time. If this is the approach to be taken, we would ask that Welsh Government officials work closely with the EWC in order that it can implement in practice whatever the Welsh Government stipulates in legislation.

Question 13: What fees should registrants working in the independent sector be expected to pay?

The EWC is not able to set its own registration fees, in legislation that is the responsibility of the Welsh Government. However, our view is that the fees payable by practitioners in the independent school sector should mirror those paid by practitioners in the maintained schools sector. However, as with question 12 there is a complicating factor which the EWC needs to explain and which is set out below.

Registration fees are received by the EWC in one of two ways. Those registrants in contracted employment receive a statutory deduction of the fee from their March salaries annually and each employer then remits one payment for all fees to the EWC. Those registrants not in contracted employment remit their fees directly.

Historically (pre 2015), school teachers, under their terms and conditions of employment, were entitled to receive a reimbursement from their employer towards the cost of the annual fee and the Government provided the funds to employers to make the reimbursement into a practitioner's salary. Note, this did not apply to all registrants, only those employed through local authorities.

When the GTCW was reconfigured as the EWC in 2015 and Regulations were broadened to include the additional categories in further education, work-based learning and youth work, the Welsh Government consulted on three possible models of fee payment before adopting the model below in 2017.

Practitioner Group	Registration Fee	Subsidy	Actual Contribution
School Teachers	£46	£1	£45
FE Teachers	£46	£1	£45
School LSW	£46	£31	£15
FE LSW	£46	£31	£15
W BL Practitioners	£46	£1	£45
Professional Youth Workers	£46	£1	£45
Youth Support Workers	£46	£31	£15

The Welsh Government decided that the most effective way to ensure practitioners continued to receive a subsidy from Government towards their EWC registration fee was to remove the burden on employers to reimburse each registrant and remit it to the EWC directly as a single bulk sum (£1million).

The EWC proposes that for consistency the fees for staff in independent schools are £45 and £15, however it must highlight to the Welsh Government that this masks the actual cost which is £46 and £15, which will impact on EWC income.

Welsh Language

Question 14: We would like to know your views on the effects of the proposals would have on the Welsh language, specifically on opportunities for people to use Welsh and on treating the Welsh language no less favourably than English. What effects do you think there would be? How could positive effects be increased, or negative effects be mitigated?

Question 15: Please also explain how you believe the proposals could be formulated or changed so as to have positive effects or increased positive effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language, and no adverse effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language

The EWC has carefully considered both questions 14 and 15 relating to the Welsh language.

The EWC is a bilingual organisation that is fully committed to compliance with category four of the Welsh Language Standards. This requires us to comply with 148 standards covering service delivery, operational matters, policy making, and record keeping. The Council monitors its compliance with the standards and publishes an annual report on it.

Given our commitment to providing a bilingual service the EWC does not consider there to be any barriers for a practitioner to use the Welsh language should they wish to do so.

The EWC has no further comments to make under question 16 and is grateful for the opportunity to respond to this call for evidence. We hope the above comments are useful; should any further detail be required please do not hesitate to contact us.

We are content for our organisational name and content of our response to be included in any report published from this call for evidence.