

# Teacher-misconduct: code dilemma for school leaders

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Paper presented at the BELMAS conference, Sunday 13 July 2014, Stratford on Avon.

## ABSTRACT

Current policy in England, with regard to teacher misconduct, is such that school leaders have to decide what to refer to the NCTL conduct panel and what can be dealt with in-house.

Consistency of referral thresholds and subjectivity of interpretations regarding what constituted 'serious misconduct' was already a demonstrable issue before GTCE abolition. Now, school leaders' **duty** to refer is reduced to only **consideration** to refer (despite continuing legal duty to report safeguarding issues) accentuating and intensifying debate and confusion.

This paper explores the significance of shared understandings of what constitute 'appropriate boundaries' – the most commonly referred area of misconduct. It suggests that even within a single shared context there is distinct lack of consensus in interpreting and practicing such boundaries.

If school leaders rely on the panoptic accountability of the NCTL code for maintaining 'appropriate boundaries' and conduct, climates of anxiety and mistrust are inevitable yet without meaningful protection for any in the community. Alternately, Sachs' concept of Active Professionalism may offer opportunities for school leaders to engage their whole community in a locally developed, context-meaningful code.

Since National Teaching Standards were first issued (DfEE, 1997), they have included regulations for professional conduct.

Following the operational establishment of the GTC in 2000, these codes of conduct were profession-led. The disciplinary function of the Teaching Council meant that educational settings should refer to them cases both of professional incompetence *and* of misconduct.

Since the operational conclusion of the GTCE (after its 2011 abolition), their regulatory role regarding *competence* has been entirely devolved to school leaders and now only the most serious *misconduct* should be referred - to the NCTL. Cases that are unlikely to lead to prohibition should be handled locally (TA, 2012b; NCTL, 2013a; DfE, 2013b). The regulatory scope of the GTCE was broader and more flexible than that of the NCTL, from whom the only available sanction is a lifetime prohibition from teaching.

To quantify this: Only 4% of the 214 teachers prohibited (by the GTCE) in relation to misconduct between 2001 and 2012 are now allowed to teach again, with another 3% applying unsuccessfully for reinstatement.<sup>1</sup> (DfE, 2013c)

Interestingly, in responding to a subsequent freedom of information request (DfE, 2013d), the DfE chose to provide information additional to that requested for the stated purpose of, “showing the **increase** in prohibition orders which have occurred in recent years”; Suggesting the importance to the official narrative of demonstrating a tighter ‘clamping down’ on teacher misconduct.

In this response (*op cit*), the DfE documents 1303 referrals for misconduct between April 1<sup>st</sup> 2012 to October 30<sup>th</sup> 2013. Of these, **86%** were considered **not** to require further action or fell outside of the jurisdiction of the NCTL. This leaves **only 14% of cases as appropriate referrals**. Of those appropriate referrals - those that reached hearing stage - 76% led to prohibitions. These 143 cases constitute 11% of the total cases referred. This very small proportion of appropriate referrals might be considered to illustrate schools’ uncertainty as

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<sup>1</sup> Only GTCE prohibitions have been included in this data because the two year minimum prohibition period post-GTCE means that teachers prohibited by the TA/NCTL will only now - 2014 - be beginning to become eligible to apply to convince a panel to lift their prohibition.

regards what constitutes 'serious misconduct', as well as an anxiety that should any misjudgement occur it should be on the side of caution; logical uncertainties and anxieties within an official narrative that emphasises increasing severity.

Consistency of referral thresholds and subjectivity of interpretations regarding what constituted 'serious misconduct' was already a demonstrable issue before GTCE abolition: Research into GTCE casework in 2011 (Saunders, Jennings, Singleton and Westcott, 2011, p13) found 'incompetence' often incorrectly referred as 'misconduct', and questioned the motivation behind these referrals as pragmatic – due to lower verification thresholds for misconduct allegations in comparison to those for incompetence. They found “no consistently used criteria for making allegations” (p1) and did not consider the casework to be nationally representative (p2).

The most significant post-GTCE change for school leaders is that where they previously had a **duty** to refer serious teacher misconduct (regardless of that teacher's current employment status (GTCE, 2009b, p3)), now they must only **consider** whether or not to refer – if that teacher has resigned or been dismissed (TA, 2012, p5; NCTL, 2013b, p5). However, the distinction between misconduct and safeguarding remains, and schools are **required** to report concerns about safeguarding to the ISA (TA, 2012) as they were under the GTCE.

Even in parliament (Hansard, 2011), debate illustrates real confusion between ongoing legal duty to refer issues relating to safeguarding to the ISA, and a lesser requirement to 'consider' referral with regard only to misconduct *not* relating to safeguarding.

It is within this context of confusion and ambiguity that school leaders must decide what should be dealt with in-house, what should be referred to the ISA and what constitutes such serious misconduct that it should be referred on for prohibition.

At a legal level, what constitutes an abuse of a position of trust is covered by the *Sexual Offences Act* (2003), but at the level of professional sanction, what constitutes an abuse of position or 'departure from the personal and professional conduct elements of the Teachers' Standards' is less clear.

The Teachers' Standards retains phrases such as "at all times observing proper boundaries appropriate to a teacher's professional position" (DfE, 2013, p10). 'Appropriate professional boundaries' have been a (non-defined) code of conduct requirement since 2009 (GTCE, 2009, p8) - but what constitutes 'appropriate' remains ambiguous.

Several teaching unions raised the lack of definition around such regulatory concepts as a major concern. The NUT complained that conduct guidance was "often so vague and exposed to value judgement that it will be very difficult in some cases for teachers to know when they may be considered to have acted improperly" (2009, point 6). The whole code was seen as "riddled with vague statements that are open to wide interpretation and abuse and therefore put(s) teachers at risk" (NASUWT, 2009, np).

This is significant because analysis<sup>2</sup> of the 200 conduct panel records generated and made available online between 1 May 2012 and 31 January 2014, shows that of those sanctioned, 56% were prohibited for misconduct that included 'inappropriate teacher-student boundaries'. The vast majority of these (49% of total prohibitions) related to teacher-student relationships that were considered too close.

Maintenance of 'appropriate boundaries' between teachers and students is then a requirement that is both lacking in definition and results in a greater number of teacher prohibitions than any other area of teacher misconduct.

The whole-school INSET data this paper will now draw upon stems from exploring staff understandings of what constitutes 'appropriate teacher-student boundaries' in the particular setting of an Independent boarding school with a majority of staff resident. Once a shared definition had been agreed, staff (in groups of 8-9 people to which they had been randomly allocated) applied their agreed definitions to evaluate levels of propriety in a range of hypothetical scenarios (designed to be conceivable in their setting).

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<sup>2</sup> Analysis as part of the author's doctoral studies

Figure 1. Scenarios evaluated for propriety <sup>3</sup>

Sam	At the Head's request, Sam provides a student with Oxbridge tutoring on a Sunday morning. The tutoring takes place in Sam's home.
Jo	Jo invites a 6 <sup>th</sup> form student to the cinema over exeat to catch re-runs of a classic film they've talked about in class.
Pat	Pat's teenage children (who are students at Pat's school) often bring school-friends home. When they stay over for the night, Pat joins them for a couple of beers in front of the t.v. before bed.
Chris	Chris coaches the U18 tennis squad and often drive students back to their home, in a personal car, alone – with parental consent.
Mo	Mo bumps into one of last year's L6 leavers (J) in a pub. J is 18 and Mo is a good friend of J's brother. With the acceptance of J's family, Mo and J begin a physical, romantic relationship.

Of the five scenarios, when groups had to agree on evaluation of propriety, the only hypothetical teacher behaviour (HTB) deemed to maintain professionally appropriate boundaries (PAB) was Chris. The only HTB with consensus response from all six groups was Jo – who was evaluated with the lowest possible ranking of 'Definitely not PAB'. Averaged group responses to Sam, Pat and Mo were all on a par, and evaluated at only marginally below 'undecided'. However, all HTB other than Jo's generated a full breadth of evaluation, from 'definitely not PAB' to 'totally PAB'. This variance in evaluation of the same HTB was as broad as it could have been.

When staff had the opportunity to express an individual evaluation of the same HTB, variance from agreed group evaluations was notable and there was variance within every group. The HTB generating the most positive variance from group evaluation was Pat's. The HTB generating the most negative variance from group evaluation was Mo's.

In a school with a large proportion of resident staff whose children do attend the school as students; it is perhaps understandable that Pat's HTB might generate the most positive variance. This instance alone is an interesting example of subjective enactment of an espoused or imposed professional boundary that aspires to be uniform.

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<sup>3</sup> NB: Teacher names were intentionally selected to be gender neutral to attempt to avoid influencing the evaluation of propriety based on a given teacher gender.

We have so far considered that ambiguity and subjectivity of interpretations means there is a “centrality of incoherence” (Ball, Maguire, Braun and Hoskins, 2011, p637) to the code of conduct for teachers. The INSET data shared focuses on the one particular area of the code that leads to the greatest proportion of teacher prohibitions. If the code is intended to “uphold public trust in the profession” (DfE, 2013, p10), yet even across a single school staff with permeated values and a strong identity, there can be such variance in understanding and applying key aspects of the code, how *can* the code uphold public trust? How can it guide the actions and reflect the intentions of teachers? Does this make inevitable that the responsibility (and liability) for ‘interpreting, selecting and enforcing meanings’ (Ball, Maguire, Braun and Hoskins, 2011, p626) must fall to senior leaders? Should it? Is this a desirable model of practice?

Where policies are developed centrally or at the top of a chain of leadership and pushed down, “moving down the chain, the boundaries of what might or might not be done become more permeable” (Groundwater-Smith and Sachs, 2002, p342). If the views across our communities about what ‘professional teacher conduct’ looks like are not aligned and understood, *any* teacher action is open to a range of interpretation (and misinterpretation) that leaves *all* teachers exposed or constraining their behaviour in efforts at self-protection that also constrain their pedagogy and students’ learning experiences (Sachs, 2004).

There may be a way, through the ‘devolved’ approach of current Government, which allows schools to use this ambiguity in code requirements positively; as a space to *generate* trust and engagement, supporting and developing active teacher professionalism. Through building from an individual level within our distinct communities, we can develop context-responsive codes that still sit within the overall framework of the DfE Teachers’ Standards.

“While parents and the wider community may have a distrust of schools in general they have a higher regard for the school that their children attend and the teachers who work in these schools in particular” (Groundwater-Smith and Sachs, 2002, p344). This is an opportunity.

One of the arguments for devolving regulation of professional competence and less serious misconduct to school leaders is that it allows for responses that are more context-relevant. Universal rules may be considered necessary to ensure “a professional obligation” that is profession-wide (Carr, 2005, p258). However, what those universal rules *look* like when

translated into practice in diverse settings *will* differ; and therein lies the risk. Rather than ever-increasing anxiety about how ambiguity at a universal level will direct our practice and shape others' perceptions and mistrust, we have an opportunity to take charge of our own direction by working with our communities to agree context-responsive clarifications within the framework of the universal DfE code.

Sachs' Active Professionalism is "a strategy to re-instate trust in the teaching profession by the community at large" (Sachs, 2003, p4). Inadequate clarity about what constitutes 'appropriate' professional conduct, whilst being held **accountable for** 'appropriate' professional conduct, reduces the function of that accountability to threatened punishment through a system of comprehensive surveillance – that includes self-surveillance. The presented need for such comprehensive surveillance is what erodes trust (Sachs, 2011).

Using Sachs' approach to develop a context-responsive code would mean, "debating and negotiating a shared set of values, principles and strategies" (Sachs, 2003, p8) with full inclusion of our entire school communities in this ongoing process to support the necessary substantive engagement. We need to build consensus (Sachs, 2003, p12) across all factions of the community for this approach to be successful. We need a community-agreed code, with documented and accessible debates demonstrating openness and transparency, to re-shape the function of **our** code. This will require "a rethinking of the form, content and assumptions underpinning teacher professionalism and professional identity" (Sachs, 2003, p13) as well as committed networks to sustain the energy and process.

"It is clear that dimensions of context greatly impact on how schools understand and negotiate audit policy technologies and practices and, especially, the extent to which they must shift their beliefs and dynamics to fit with, or satisfy, the performative demands of these technologies and practices" (Keddie, 2013, p765).

Active Professionalism may offer schools a space not to **shift** their beliefs, but to **use** them - to develop a more detailed, community agreed and understood, context-responsive code within the top-level framework of National policy.

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