

Review of the General Teaching Council for England's conduct function in cases involving allegations of racism

November 2010

About CHRE

The Council for Healthcare Regulatory Excellence promotes the health and well-being of patients and the public in the regulation of health professionals. We scrutinise and oversee the work of the nine regulatory bodies¹ that set standards for training and conduct of health professionals.

We share good practice and knowledge with the regulatory bodies, conduct research and introduce new ideas about regulation to the sector. We monitor policy in the UK and Europe and advise the four UK government health departments on issues relating to the regulation of health professionals. We are an independent body accountable to the UK Parliament.

Our aims

CHRE aims to promote the health, safety and well-being of patients and other members of the public and to be a strong, independent voice for patients in the regulation of health professionals throughout the UK.

Our values and principles

Our values and principles act as a framework for our decision making. They are at the heart of who we are and how we would like to be seen by our stakeholders.

Our values are:

- Patient and public centred
- Independent
- Fair
- Transparent
- Proportionate
- Outcome focused.

Our principles are:

- Proportionality
- Accountability
- Consistency
- Targeting
- Transparency
- Agility.

Right-touch regulation

Right-touch regulation is based on a careful assessment of risk, which is targeted and proportionate, which provides a framework in which professionalism can flourish and organisational excellence can be achieved. Excellence is the consistent performance of good practice combined with continuous improvement.

¹ General Chiropractic Council (GCC), General Dental Council (GDC), General Medical Council (GMC), General Optical Council (GOC), General Osteopathic Council (GOsC), General Pharmaceutical Council (GPhC), Health Professions Council (HPC), Nursing and Midwifery Council (NMC), Pharmaceutical Society of Northern Ireland (PSNI).

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1. Introduction

- 1.1 This report follows a request in June 2010 from the General Teaching Council for England (GTCE) for CHRE to undertake an independent review of its current conduct function in cases involving allegations of racism. The review was carried out in July and August 2010 and included examination of the eleven cases involving allegations of racism that the GTCE has dealt with during its lifetime.
- 1.2 CHRE undertakes annual performance reviews of the nine health professional regulatory bodies in the UK.² We publish the outcome of those reviews annually to Parliament and the devolved administrations in the UK.
- 1.3 Although CHRE has no statutory oversight of the GTCE, we considered that it would be valuable to undertake this review. We believed there would be benefits to the GTCE in having an independent assessment benchmarking their performance in relation to health professional regulators in the UK, and CHRE would learn about approaches to regulation and regulatory practice in a different sector. This could be shared with regulatory bodies in the UK and help CHRE in its work in defining excellence in regulatory practice.
- 1.4 We are very grateful to the Chair and Chief Executive of the GTCE and its staff for their help in enabling us to undertake this review. They readily provided all the information requested. We also wish to thank the Equality and Human Rights Commission for its advice during the review.

2. The objectives of the review

- 2.1 The objectives of the review were:
 - To provide the GTCE with an appraisal of the approach taken by the GTCE in its investigation of 11 teacher conduct cases involving allegations of racism and an evaluation of the decisions reached
 - To make recommendations for how to approach similar cases in future
 - To identify any issues for consideration in the longer term by any future body which may be charged with the regulation of teacher conduct.
- 2.2 Our work included:
 - Assessing the effectiveness of GTCE's rules and conduct processes in ensuring that cases are dealt with fairly and in line with race equality and human rights principles and legislation
 - Reviewing whether the GTCE followed its own rules and processes when investigating the 11 conduct cases
 - Reviewing whether the decisions made in the 11 conduct cases protected children, maintained confidence in the teaching profession and were in line with race equality and human rights principles and legislation

² We work under Section 26 of the National Health Service Reform and Health Care Professions Act 2002 and Section 114(6) of the Health and Social Care Act 2008

- Assessing whether any lessons can be learned from the 11 cases that can be applied to future cases.
- 2.3 In carrying out this work, we took account of:
- The Maurice Smith Review
 - The Equality Act 2010 and other relevant legislation
 - Any advice offered by the Equalities and Human Rights Commission
 - Any other relevant information.
- 2.4 Information about the legislation that is relevant to this review can be found in Appendix 4.
- 2.5 Our method included an analysis of the GTCE's policies and procedures; alongside a small audit team visiting the GTCE's office in London to examine and review the case files relating to 11 conduct cases. Observations were recorded on a standardised assessment form. The standard assessment form template can be found in Appendix 3. Following the review the team sought advice from the Equality and Human Rights Commission. Interim feedback on the outcome of the review was provided to the GTCE Executive Committee on 21 September 2010 and at a training session for Council members and panellists on 6 October. The GTCE were provided with an opportunity to comment on the factual accuracy of our draft report and its comments have been taken into consideration when finalising this document.

3. The role of the GTCE

- 3.1 The GTCE was launched in 2000. Its functions were introduced through the Teaching and Higher Education Act 1998 (THEA), and subsequently through the Education Act 2002. Its principal aim set out in Section 1(2) of THEA is:
'to contribute to improving the standards of teaching and the quality of learning, to maintain and improve standards of professional conduct amongst teachers (and to do both) in the interests of the public'.³
- 3.2 The GTCE's main duties are:
- To advise the Secretary of State or other such persons/bodies
 - To establish and maintain a register of eligible teachers
 - To raise the standing of the teaching profession
 - To exercise disciplinary powers
 - To make an annual report to Parliament.
- 3.3 In this report, we discuss matters relating to three of the GTCE's main duties - those listed in bullet points three to five – and highlight areas where the GTCE performs well, where improvements can be made by the GTCE and where further

³ The Teaching and Higher Education Act 1998

consideration could be given when determining the future model of regulation for teachers.

- 3.4 We also discuss the GTCE's governance arrangements in respect of the balance of professional and public representation. Currently, the Council has 64 members:
- 25 members are elected by registered teachers
 - 9 members are chosen by teacher trade unions and associations
 - 17 members are chosen by other organisations connected with teaching
 - 13 members are appointed through the public appointments procedure.

The GTCE register

- 3.5 As set out above, one of the main duties of the GTCE is to establish and maintain a register of 'eligible' teachers. As of 31 March 2010, 567,817 teachers held full registration with the GTCE.⁴ We note that the following types of teacher must be fully registered with the GTCE if they work in England:
- Qualified teachers in maintained (state) schools
 - Qualified teachers in pupil referral units (for children who have been excluded from other schools)
 - Qualified teachers in non-maintained special schools (schools outside the state sector for children who have special educational needs).
- 3.6 As of 2009, it is also a requirement for the following types of teacher to be provisionally registered with the GTCE if they work in England:
- Trainees
 - Overseas trained teachers
 - Instructors
- 3.7 Other qualified teachers can also choose to register. Several thousand teachers in independent schools in England are registered, as are teacher trainers, school inspectors and local authority advisers. However, not all teachers, private tutors and others must be registered. As the future model of regulation for the teaching profession is under consideration, we believe that this is a suitable time for reviewing whether this is appropriate. We discuss this further at section 7 of this report.
- 3.8 The GTCE does not have an online publicly available register in the way the health professional regulators do. If a member of the public wishes to know if a teacher is registered, they are required to email or telephone the GTCE with the teacher's details, who provide a yes or no response. We consider that this lack of accessibility and transparency is an issue that should be considered further when determining any future model of regulation. We discuss this further in section 7 of the report.

⁴ GTCE Annual Report 2009/2010

Raising the standing of the teaching profession

- 3.9 As part of the GTCE's duty to raise the standing of the teaching profession, it has developed standards for the teaching profession. These have covered the subject of equality and diversity.
- 3.10 Between 2002 and 2004, teachers' standards were set out in the GTCE's Statement of Professional Values and Practice for Teachers. In relation to equality and diversity, this stated that:⁵
- 'Teachers work within a framework of legislation, statutory guidance and school policies, with different lines of accountability. Within this framework they place particular importance on promoting equality of opportunity – challenging stereotypes, opposing prejudice, and respecting individuals regardless of age, gender, disability, colour, race, ethnicity, class, religion, marital status or sexual orientation'*
- 3.11 This set of values and practice continued in use beyond 2004 and was complemented by the GTCE's code of conduct and practice (2004) and (2007) which set out what amounts to unacceptable professional conduct, serious professional incompetence and a relevant offence. In relation to equality and diversity, the code set out that unacceptable professional conduct could include *'making racist remarks to pupils'* (version 2004 and 2007) and could also include *'when a registrant seriously demeans or undermines pupils, their parents, carers or colleagues, or act towards them in a manner which is discriminatory in relation to gender, marital status, religion, belief, colour, race, ethnicity, class, sexual orientation, disability or age'* (2007).
- 3.12 These documents have now been superseded by the code of conduct and practice 2009. This document sets out the GTCE's expectations of conduct and practice for registered teachers. Its purpose is to guide teachers' everyday judgements and actions. The code of conduct and practice makes it clear that responsibility for maintaining standards lies with the teacher.
- 3.13 The current code details how registered teachers should demonstrate respect for diversity and promote equality. This includes a requirement that the *'registered teacher should act appropriately towards all children and young people, parents, carers, and colleagues, whatever their socio-economic background, age, gender, sexual orientation, disability, race, religion or belief'*. The full text can be found in appendix 2.
- 3.14 We note that the GTCE uses the code of conduct and practice in its other regulatory work. For example, in its disciplinary function, the GTCE uses the code as a framework to assess whether the registrant has met the standards expected of a teacher.
- 3.15 The GTCE has also, along with the Nursing and Midwifery Council and the General Social Care Council, drawn up a 'Statement of Shared Values'⁶ (2007),

⁵ GTCE website. <http://www.gtce.org.uk/>

which outlines the principles by which professionals across the sectors should adhere to when working with children and young people.

- 3.16 Outside of the GTCE, expectations of teachers are also set out in national standards,⁷ statutory duties and employment contracts. The work of teachers is also shaped by values of public life, such as those set out by the Nolan Committee⁸ - selflessness, integrity, objectivity, accountability, openness, honesty and leadership.
- 3.17 As part of its work on improving the quality of teaching and learning, and in light of persistent concerns about the educational experiences and outcomes of some minority ethnic groups, the GTCE established a Race Equality Forum in December 2006. It aims, through thematic sessions and collaboration, to ensure that schools and teachers have the support they need to understand and meet their equalities responsibilities, and that organisations that work with schools have good awareness of equalities issues and the related work undertaken by each.
- 3.18 Alongside the Race Equality Forum (now called the Equalities Forum), the Achieve network managed by the GTCE supports teachers to develop their teaching practice to promote race equality. Its work includes the '*Race Equality and Your School*' project, set up to support schools to meet the duties of the Race Relations Act 2000 and a new resource entitled '*Promoting race equality*'. This publication makes accessible established research into ways that teachers can improve teaching and learning for minority ethnic pupils.

The exercise of disciplinary powers

- 3.19 Our review has focused on the GTCE's duty to exercise its disciplinary powers in relation to cases involving allegations of racism. To provide some context to this report, we set out below a summary of the GTCE's conduct function.
- 3.20 The GTCE considers allegations which may reflect on the teacher's suitability to continue to be registered. These may be allegations of:
- **Unacceptable professional conduct:** 'Conduct which falls short of the standard expected of a registered teacher... and which is a breach of the standards of propriety expected of the teaching profession'⁹.
 - **Serious professional incompetence:** 'Competence falling seriously short of that expected of a registered teacher taking account of the relevant circumstances'
 - **Relevant offence:** 'A conviction for a criminal offence, other than one having no material relevance to a person's fitness to be a registered teacher...'¹⁰

⁶ Statement of Shared Values for Integrated Working. 2007. <http://www.nmc-uk.org/Nurses-and-midwives/Advice-by-topic/A/Advice/Values-for-integrated-working-with-children-and-young-people/>

⁷ Important documents that articulate expected standards of teacher practice include: the School Teachers' Pay and Conditions Document; the National College for School Leadership National Standards for School Leaders; and the Training and Development Agency's Professional Standards for Teachers.

⁸ Later became the Committee on Standards in Public Life

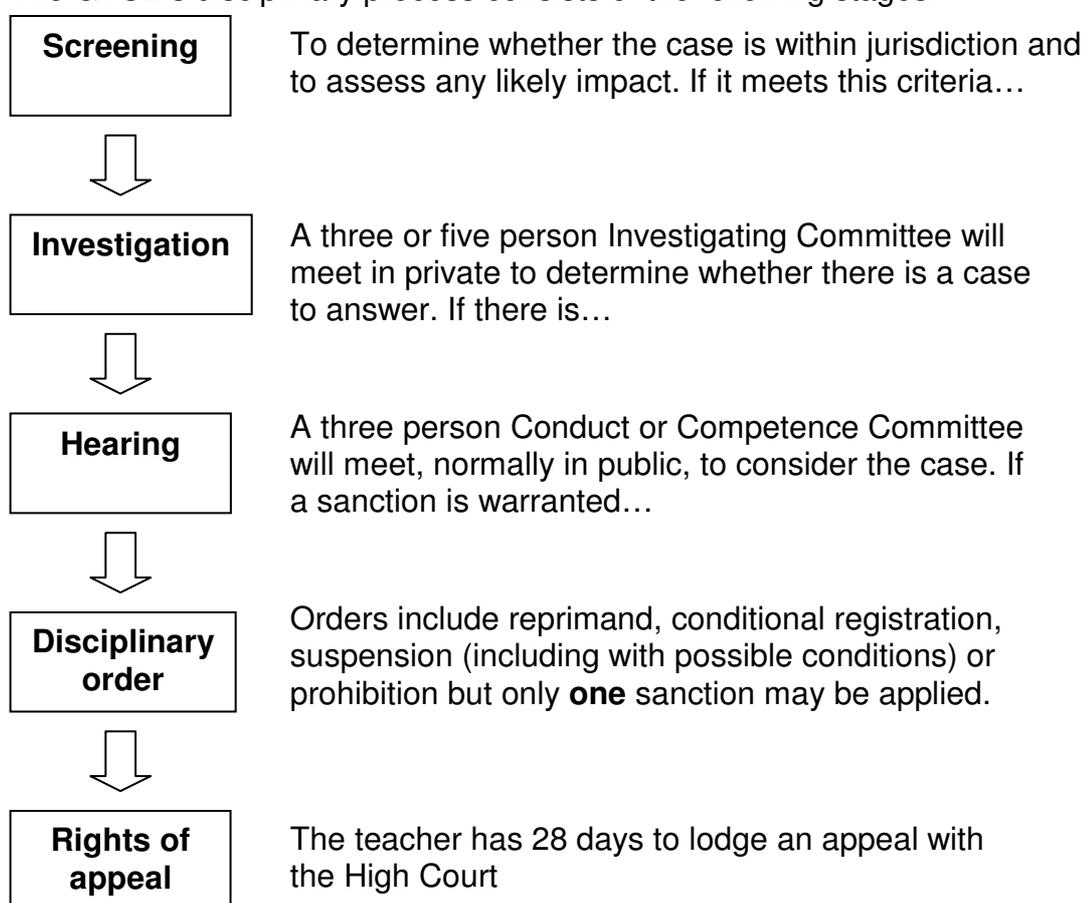
⁹ The Higher Education Act 1998 Schedule 2 Section 8(1)

¹⁰ The Higher Education Act 1998 Schedule 2 Section 8(1)

- 3.21 Employers are required to refer cases to the GTCE when a teacher is dismissed for reasons of misconduct or incompetence, or where they resign in circumstances where dismissal was a possibility. Members of the public may also refer an allegation of unacceptable professional conduct to the GTCE.
- 3.22 The GTCE is not responsible for considering misconduct relating to the safety and welfare of children. These cases are referred to the Independent Safeguarding Authority (ISA) by the employer. This means that there are two routes which employers must choose between when referring cases that raise concerns about the safety and welfare of children.

Overview of the disciplinary process:¹¹

- 3.23 The GTCE's disciplinary process consists of the following stages:



- 3.24 This review has considered 11 cases that reached the hearing stage of the GTCE's conduct function. We have not considered those cases that were closed at the investigation stage.

¹¹ GTCE website. <http://www.gtce.org.uk/>

4. Overall assessment of the GTCE's case handling

- 4.1 Overall, we consider that the GTCE has undertaken its responsibilities to apply race equality legislation reasonably, and its approach to handling cases has been sound.
- 4.2 In carrying out the review, we have considered the tools and guidance used by the GTCE's staff, legal team and decision-makers. Overall, we consider that the GTCE has well-prepared and sufficiently detailed procedural manuals to enable consistent and well-managed case handling. It has developed useful record keeping tools to enable the tracking of cases and the smooth handover of cases between different members of the conduct team. It has continually reviewed and improved disciplinary rules and the code of conduct and practice which has improved the conduct function overall. It has also reviewed and updated its indicative sanctions guidance to help committee members to make sound decisions about sanctions they impose on registrants.
- 4.3 We have highlighted some areas where we consider that the GTCE's tools and guidance could be strengthened. For example, we have suggested that the GTCE could include references, in its procedural manuals, to its statutory duty to promote race equality in exercising its functions. Inclusion of specific references to this statutory duty would act as a reminder for staff and panellists to be mindful of race equality issues when carrying out their functions. We have also suggested that the GTCE's code of conduct and practice 2009 could be made stronger by including specific reference to the principles of harassment.¹² We consider that the code should refer to the teacher's responsibility to protect the dignity of children and young people from unwanted conduct based on their race, ethnic or national origins, and to ensure that an intimidating, hostile, humiliating or offensive teaching environment is not created.
- 4.4 We also looked at the GTCE's adherence to case processes. We found that the GTCE adhered to its case-handling processes in eight cases, and that this consistency was assisted by the procedural manuals and checklist documentation produced by the GTCE. We did find deviation from the processes in three cases; the deviations had a significant impact in two of the cases. We explain this in more detail later in the report.
- 4.5 We looked at the quality of the investigations carried out by the GTCE and raised concerns about four cases in which we considered further investigation should have been carried out. We were particularly concerned that in three of the four cases, a reliance solely upon the evidence gathered during the employer's investigation appeared to impact negatively on the quality of the case presented to the Conduct Committee.
- 4.6 We have also considered the quality of the decisions made by the Conduct Committees in terms of finding the allegations of misconduct proved or not proved and if proved, the decision to impose a particular sanction. We found some variability in the quality of the decision-making in individual cases; this resulted

¹² Section 3A of the Race Relations Act 1976 as amended

from the quality of the investigation in two cases, and the drafting of an allegation and the committee's approach to the consideration of the allegation in another case. However, overall we considered that the decisions made by the Conduct Committee regarding allegations of misconduct appeared to be reasonable and to promote race equality.

- 4.7 We found that the Conduct Committee routinely took into account the GTCE's indicative sanctions guidance when deciding upon a sanction and that this generally led to reasonable sanctions being imposed. However, despite that good practice, in four cases that we reviewed we had concerns that the sanctions imposed did not address the specific area of misconduct, or may not have adequately protected pupils. Imposition of inappropriate sanctions has the potential to impact negatively on both pupil protection and public confidence in the profession and its regulation.
- 4.8 We have broken down our detailed findings on the GTCE's case-handling into two broad areas: in section 5, the GTCE's guidance and tools and in section 6, its adherence to its case-handling processes. We have also made recommendations for consideration by the GTCE about what it can do to improve its case-handling while it remains responsible for regulating teachers in England.
- 4.9 We have identified areas of concern resulting from the GTCE's underpinning legislation which we discuss in more detail in section 8. While these have only had a limited impact on the 11 cases (and only in relation to sanctioning), we consider they should be taken into account in any future model of regulation for the teaching profession in England. The issues range from: the need for a balance of professional and public representation in governance and adjudication arrangements, the need for the power to impose interim suspension orders, and improvements to the transparency of the regulation function. At section 9, we have made recommendations for consideration by the Department for Education who are currently considering future options for the regulation of the teaching profession in England.

5. The GTCE's guidance and tools

Guidance for staff/Committee panellists

- 5.1 The GTCE's conduct process consists of two stages. The investigating team manages referrals about a teacher's conduct from receipt of a concern to the decision of the Investigating Committee. The legal team manages the investigation and presentation of cases: following referral from the Investigating Committee to a final Conduct Committee. Both teams use procedural manuals, which set out the steps in progressing each case. There is a separate guidance document available to the Conduct Committee and one for the hearings team. Generally, we consider that these documents are well-prepared and sufficiently detailed to enable consistent and well managed case-handling. However, we identified some areas for improvement which we outline below.
- The procedural manuals and the guidance should include references to the GTCE's statutory duty to promote race equality in exercising its functions.

Inclusion of specific references to this statutory duty would act as a reminder for staff and panellists to be mindful of race equality issues when carrying out their functions.

- The legal procedural manual should include further guidance about the drafting of allegations. It is important that guidance is available to those staff members and lawyers responsible for drafting allegations in order to ensure consistency, particularly as drafting allegations well is notoriously difficult. Improving the clarity of allegations may also result in better decision-making by the Conduct Committee. In light of the findings from our review, we think it would be particularly helpful if the procedural manuals could include specific guidance on drafting allegations involving a breach of equality principles with reference to discrimination legislation and principles.
- The GTCE collects equality statistics as part of the conduct process. Given the importance of such monitoring, particularly in relation to disciplinary processes, it would be helpful if the procedural manuals for the hearings team and the investigating team described the methods and timing of collection of statistical data.
- The procedural manuals should include guidance to staff in relation to making changes (reasonable adjustments) to their standard processes, where appropriate. At paragraph 21, the legal team's procedural manual refers to taking witness statements by telephone, but it does not explain that reasonable adjustments should be made in relation to witnesses who are not able to provide statements in this way. For instance, if they have communication difficulties or if English is not their first language. Whilst the guidance available to teachers and witnesses refers to the potential for reasonable adjustments being made, this reference only appears towards the end of the guidance. While the GTCE has informed us that in practice adjustments do take place in consultation with the witnesses on a regular basis, we consider that the guidance should make it clear from the start that the GTCE will make reasonable adjustments where appropriate, to ensure no one is discouraged from participating.

Tools

5.2 The GTCE uses a number of record-keeping tools. We were particularly impressed with the general quality of the record-keeping on the case files. We found that there were a number of useful forms for staff to use. For example:

- A form for tracking case timelines
- A checklist to monitor case progression
- A case handover form for use following the Investigating Committee decision
- A template for the teacher to complete in order to facilitate pre-hearing case management – which includes a section asking if the teacher would prefer to take an oath on the basis of their religion or faith, and whether this would require any special arrangements to be made beforehand (similar arrangements are in place for witnesses).

- 5.3 Since the review, the GTCE has implemented an integrated casework management system. The GTCE told us that this system should enable it to build on its good record keeping, for example, by strengthening its ability to track and monitor case progression and by formalising the recording of case handovers.

Other key documents

- 5.4 As well as procedural manuals and tools there are three other key documents for staff and Committee panellists to use during the conduct process. These are: the disciplinary rules; the code of conduct and practice for registered teachers; and the indicative sanctions guidance.

The disciplinary rules

- 5.5 The rules set out how the GTCE's investigation and hearing process is organised. There have been four iterations of the GTCE's disciplinary rules – 2002, 2004 and 2008 (as amended in April 2009 and May 2010). Over time improvements have been made to the rules. We have highlighted below some of the most significant improvements that have been made.

- *Service of evidence*

- 5.6 The 2002 rules did not provide that the evidence to be considered at the hearing should be sent to the teacher in advance (in other words at the same time as the notice of the hearing). This meant that teachers had a limited time in which to prepare their defence. In our case review we found one case in which the teacher attempted to appeal the validity of the Conduct Committee's decision, on the basis that he had not been given sufficient time to prepare his defence before the hearing.
- 5.7 However, the 2008 rules amended the process so that any evidence that has not previously been sent to the teacher should be annexed to the notice of hearing which is served on the teacher eight weeks before the hearing.

- *Witnesses*

- 5.8 The 2002/2004 rules did not include provisions relating to vulnerable witnesses. This has been addressed in the 2008 rules – Rule 35 (1) and (2) sets out when and how evidence from vulnerable witnesses (including children) should be collected and presented at the hearings.
- 5.9 However we are concerned that the provisions relating to the number of witnesses that may be called to give evidence at hearings are unduly restrictive. Rule 34 (8) provides that '*The Council may make payment of (a) reasonable expenses, and (b) reasonable costs of employing a replacement Registered Teacher, in relation to witnesses called by a Registered Teacher and/or the Presenting Officer, the number of witnesses for each party not to exceed 2, or such other number as the Council may consider, in exceptional circumstances, as appropriate*'. While we have seen evidence that the legal team has in some cases made the case to vary the limit on the number of witnesses to be called to give evidence, we note that there is apparently no guidance available about what equates to 'exceptional circumstances'. In our view the limit set by this rule (if strictly adhered to) could

restrict the extent of the live evidence presented to the Conduct Committee at the hearing and therefore impact negatively on:

- The GTCE's ability to prove the allegations against the teacher
- The teacher's ability to mount their defence
- The overall fairness of the proceedings
- The quality of the Conduct Committee's decision-making; and therefore
- The GTCE's ability to protect the public and to maintain confidence in the teaching profession and its regulation.

The code of conduct and practice

- 5.10 There have been three iterations of the GTCE's code of conduct and practice for registered teachers – in 2004, 2007 and 2009. The 2007 code set out that *'registered teachers may be found guilty of unacceptable professional misconduct where they seriously demean or undermine pupils, their parents, carers or colleagues or act towards them in a manner which is discriminatory in relation to ...religion, belief, colour, race, ethnicity...'*
- 5.11 The 2009 code sets out a teacher's responsibility for demonstrating respect for diversity and promoting equality in greater detail (relevant sections of which can be found in Appendix 2). For example, it requires teachers to *'address unlawful discrimination, bullying and stereotyping no matter who is the victim or the perpetrator'*. It is clear that the 2009 code has a greater focus on equality and diversity matters.
- 5.12 While we understand that the GTCE obtained legal advice in relation to the terminology used in the code (with specific reference to the Equality Bill as well as other discrimination legislation) we consider that the 2009 code could also be strengthened by specific reference to the principles of harassment.¹³ We consider that the code should refer to the teacher's responsibility to protect the dignity of children and young people from unwanted conduct based on their race, ethnic or national origins, and to ensure that an intimidating, hostile, humiliating or offensive teaching environment is not created.
- 5.13 Both versions of the codes provide examples of circumstances in which the GTCE has taken action against teachers in relation to equality and diversity issues. This is helpful in reminding registrants that the GTCE takes racism seriously, and will take action when it is required.

Indicative sanctions guidance

- 5.14 The GTCE's indicative sanctions guidance document is a tool for use by the Conduct Committee's members when determining which sanction to impose. The sanctions available are: a reprimand; a conditional registration order; suspension; or a prohibition order. We note that the GTCE may only use one sanction and cannot apply reviewable sanctions as the health professional regulators can. We consider this to be a weakness in the GTCE's legislation. Having reviewable sanctions enables a regulator to enable a graduated return to practice.

¹³ Section 3A of the Race Relations Act 1976 as amended

- 5.15 The document provides useful guidance to Committee members on a number of topics relevant to sanctioning. The guidance reminds Committee members to apply the principle of 'proportionality', and that they are acting in 'the public interest'. It includes general considerations to be borne in mind when determining a sanction, such as assessing whether the registrant has demonstrated deep-seated personality or attitudinal problems, or has shown insight, and whether or not there appears to be a significant risk of repetition. It also provides guidance on how panellists should consider mitigation. Paragraph 1.21 and 1.22 of the document helpfully explains that there might be cultural reasons for registrants not requesting testimonials/references as to their standing in the community or profession and reminds Committee members that there may be cultural differences reflected in the way that insight is expressed, how an apology or expression of regret is framed and delivered, and the process of communication. The guidance reminds Committee members to be mindful of these potential cultural differences when considering whether the teacher has recognised that steps need to be taken to address their behaviour.
- 5.16 We do not consider that the guidance should draw any distinction between the Committee's approach to sanction in relation to equality and diversity allegations, compared to other allegations. However, it would be helpful if the guidance could include within the sample conditions of practice provided at paragraph 1.7 a sample condition relating to attendance at equality and diversity training/race awareness training.
- 5.17 Whilst recognising that each case is individual and must be judged on its own facts, given the relative infrequency of allegations raising equality and diversity issues, the Committee panellists might find it helpful to have access to information about previous similar cases and the sanctions imposed. It may be that future training sessions for committee panellists could reflect on such issues as well as wider equality issues. Use of the summaries of cases included within the GTCE's Annual Report on Registration and Regulation could be used as a basis for such discussions.

6. Adherence to case processes

- 6.1 Our review confirmed that the GTCE caseworkers generally adhere to the GTCE's case processes and that this consistency is assisted by the procedural manuals and checklist documentation produced by the GTCE. However, we did find evidence of deviation from the standard processes in three cases. These involved: in two cases a reliance on statements made by the registrant which were not supported by evidence; and a delay in notifying the registrant by telephone of the decision of the final conduct hearing. Further details about these matters are set out below.
- 6.2 The GTCE has told us that it has always been its practice to seek verification when a teacher requests a hearing adjournment because of circumstances such as appealing a conviction. The GTCE has also told us that if a teacher relies upon ill-health to mitigate their conduct, it will be for the teacher to present evidence of that ill-health to the Committee.

- 6.3 However, in one case the teacher stated that he was appealing his conviction to the Criminal Cases Review Commission and that he was appealing an Employment Tribunal decision. Such appeals can be legitimate grounds for the adjournment of a conduct case. However, the case was adjourned on that basis by a GTCE committee, even though it had not seen evidence that the GTCE had verified the validity of the teacher's statements. It later transpired that in fact the teacher had not lodged either appeal, and therefore the adjournment had been granted on a false premise. While it does not appear that the adjournment resulted in harm to pupils, it led to a significant delay in conclusion of the case – which involved a serious conviction for six counts of indecent assault on females. The teacher had also been arrested for the possession of extreme racially aggravating material. We consider that delaying the conclusion of a case in these circumstances is likely to damage public confidence in the profession and its regulation. It is important that committees make evidence-based decisions.
- 6.4 In a second case, the Conduct Committee in reaching its decision took account of the teacher's claimed adverse mental and emotional state at the time of the misconduct (which consisted of using racist language) despite there being no medical (or other) evidence of the teacher's claimed stress and anxiety other than his own account. While it does not appear that this deviation impacted on protection of the public, it is important that committees make evidence-based decisions in order to ensure maintenance of public confidence in the profession and its regulation.
- 6.5 The final deviation we noted was a slight delay in notifying the teacher of the final decision of the Conduct Committee by telephone after the hearing (the teacher in fact only learnt of the outcome via the local press). It is not the GTCE's standard practice to notify a teacher, who is not present at the hearing, of the outcome by telephone, however, they do this where requested. They did not do so promptly in this case. Further, when the teacher telephoned the GTCE, the staff were unable to explain the details of the decision to him. Such deviation from procedure was significant in this case because the registrant had conditions imposed on his registration of which he was unaware until informed about them. The consequences would have been even more serious in a case in which the sanction imposed was suspension or prohibition.
- 6.6 We would encourage the GTCE to review their processes in light of the deviations that we have identified, in order to make them more robust.

Drafting of allegations

- 6.7 The drafting of the allegations in the 11 cases that we reviewed were appropriate in nine of the cases. However, we had concerns about two individual allegations in two separate cases. We consider that in one of the cases this impacted on the decision-making of the committee. Our concerns are detailed below.
- 6.8 The first allegation which caused us concern read *'On 13 November 2006, you sought to attract the attention of a pupil of oriental extraction by calling him 'chinky'.* We are concerned by the GTCE's use of the word 'oriental' within the allegation. 'Oriental' has been used to describe people from a particular part of Asia for instance Japan, Korea, and China and is a term associated with European colonialism in China. Whilst we note that there is not absolute

consensus about the use of the term, we consider that it is not an appropriate word to use when referring to an individual. It would have been more appropriate for the allegation to refer to the pupil's actual ethnic origin. We note that this wording did not have any impact on the outcome of the case.

- 6.9 The second allegation which caused us concern was '*that whilst using the laptop you accessed the internet and contributed to an on-line discussion forum in which you demonstrated views suggestive of racial and religious intolerance*'. Any case involving allegations of racist conduct has the potential to be scrutinised particularly closely by the subject of the allegation, as well as by others with an interest in the proceedings and it is therefore particularly important that the allegations are worded carefully. 'Racial intolerance' is used colloquially as another term for racism; however, its literal meaning is not the same. It would have been preferable to use a non-ambiguous term in order to avoid any risk of an overly-literal interpretation of the term 'racial intolerance'.
- 6.10 For example, the allegation could have been drafted as 'in which you made inappropriate comments which did not promote equality and diversity' or '...in which you made inappropriate comments suggestive of racial/ethnic/national origins prejudice' or '...in which you made inappropriate comments suggestive of undermining the dignity of those from particular racial/ethnic/national origins'. Our concerns about the drafting of these allegations support our previous finding that the procedural guidance available to GTCE staff should be further strengthened to include guidance on drafting allegations involving a breach of equality principles.

Quality of investigations

- 6.11 The GTCE obtains at the start of its conduct process a substantial bundle of evidence from the teacher's employer. We are concerned that in three of the cases that we reviewed, reliance solely upon the evidence gathered during the employer's investigation appears to have impacted negatively on the quality of the case as presented to the Conduct Committee. This in turn affects the Committee's decision-making. We provide further details below.
- In one case, the GTCE considered an allegation against a teacher which had not been sufficiently investigated by the employer. The GTCE did not take a witness statement from the pupil who was directly involved in the incident nor was there a recorded explanation for not taking such a statement. This meant that the Conduct Committee had to base its decision on the only evidence that was presented to it – by the registrant. Had the GTCE presented evidence from the pupil (or elsewhere) the Committee might have reached a different conclusion.
 - Statements provided by the teacher in another case should, in our view, have prompted the GTCE to investigate whether the teacher had maintained appropriate boundaries with a vulnerable pupil. However it appears that no such investigation was undertaken by the GTCE.
 - In another case, the GTCE relied solely upon the investigation carried out by the local education authority in relation to allegations concerning racist comments. The GTCE did not call any witnesses to give evidence at the hearing, and therefore the Conduct Committee had to rely on hearsay evidence. We consider that the lack of first hand evidence presented by the

GTCE at the hearing limited the findings that the Conduct Committee was able to make in this case, in particular with regard to the surrounding circumstances of the alleged misconduct (the registrant's mental health).

- Reliance upon a local investigation raised similar concerns in another case. The local investigation had not addressed a number of issues that were of relevance to the GTCE and which should therefore have been investigated by the GTCE, including: inappropriate behaviour by the teacher on a number of occasions; an incident in which a child indulged in inappropriate sexual behaviour and this teacher was involved; and warnings the teacher had received about his inappropriate behaviour towards female staff and parents, particularly those from ethnic minority backgrounds. It is not clear why this information was not acted upon by the GTCE. While the Conduct Committee ultimately decided to prohibit the teacher on the basis of the evidence that was put before it at the hearing, in a similar case, lack of thorough investigation by the GTCE might result in the imposition of a sanction that does not adequately protect pupils or maintain public confidence in the profession and its regulation.

Quality of the Conduct Committee's decision-making

- 6.12 Although we found some variability in the quality of decision making on individual cases, overall the decisions made by the Conduct Committee regarding the allegations of misconduct appeared to be reasonable, and to promote race equality principles. We note that the Conduct Committee has demonstrated the GTCE's promotion of race equality by making findings of unacceptable professional conduct in cases involving teachers: lacking cultural sensitivity; promoting racial stereotypes; identifying pupils through their ethnicity; accessing, storing and disseminating racist material; directing racist remarks at students; and encouraging and listening to jokes of a racist nature. The decisions in these cases clearly serve to uphold professional standards and to maintain public confidence in the profession and its regulation by the GTCE.
- 6.13 In addition to the issues noted above relating to the potential impact of inadequate investigation/case preparation on the quality of the Conduct Committee's decision-making, we also identified areas for improvement in one additional case. In that case we considered that, in light of the evidence presented to the Conduct Committee, either a differently-drafted allegation, as described in 6.9, and/or a different approach by the Conduct Committee to considering the allegation might have led to a finding of unacceptable professional conduct, as opposed to the finding that was actually made. The Conduct Committee in this case decided to consider the allegation, by splitting up the words 'racial' and 'intolerance'. They used a dictionary definition of 'intolerance' and considered both words, 'racial' and 'intolerance', in isolation of each other. This appeared to us, to cause the conduct committee to lose the whole sense of the allegation.
- 6.14 When reviewing the 11 cases we frequently found that the determinations did not act as 'stand alone' documents which clearly explain the Committee's findings and the reasons for the sanctions imposed. We found that they could only be fully understood by reference to additional materials within the case file. Determinations should more clearly identify proven breaches of the Code or other

conduct which, in the Committee's view, is unacceptable. It is important both for upholding professional standards and for maintaining public confidence in the profession and its regulation that everyone understands the decision, including how the sanction that has been imposed will protect pupils and the public interest. We would encourage the GTCE to provide some further training to the members of the Conduct Committee about the principles of drafting a good determination. We have published a 'learning points'¹⁴ document setting out guidance about drafting determinations, which the GTCE may find useful, in addition to reviewing the principles derived from the relevant case-law.

- 6.15 As the GTCE has been unable to make its full Conduct Committee determinations available on its website, it should ensure that the publicly available announced decision (a shortened form of the full determination) fully explains the Committee's reasoning. This would both assist public confidence in the regulation of the profession, and represent good regulatory practice by promoting transparency of decision-making.

Quality and consistency of sanctions

- 6.16 From our review of the 11 cases, it is clear that the Conduct Committee routinely takes into account the GTCE's indicative sanctions guidance when deciding upon a sanction. However, despite that good practice, in four cases that we reviewed we had concerns that the sanctions imposed did not address the specific area of misconduct or may not have adequately protected pupils. Imposition of inappropriate sanctions clearly has the potential to impact negatively on both pupil protection and public confidence in the profession and its regulation. We provide further details about the cases that raised concerns below.
- A teacher was given a reprimand for use of inappropriate language towards pupils. However, we consider that the imposition of a condition of practice that the teacher should undergo race awareness training before being allowed to teach again would have been more appropriate than a reprimand. Imposition of such a condition would have addressed the particular area of concern in the case, which related to inappropriate use of language. This would have provided better protection to pupils as well as having the effect of upholding standards.
 - A teacher was suspended for six months, with a condition that he undergo training in diversity awareness. This decision might have been appropriate in our view, if there had been any provision for a review hearing at which the teacher's insight into his previous behaviour could have been assessed. However, given that no review hearing could be arranged, (the current legislation does not allow for review of conditions in this way) and that at the hearing the teacher had demonstrated a lack of insight and an unwillingness to learn from the incident (which involved racial stereotyping and inappropriate language) we consider that the Committee should have considered prohibiting the teacher. In our view prohibition would have been more consistent with the GTCE's indicative sanctions guidance, and was the only sanction that was sufficient to protect pupils and maintain public confidence.

¹⁴ http://www.chre.org.uk/_img/pics/library/090817_Learning_Points_Bulletin.pdf

- A teacher had conditions of practice imposed. This decision seemed appropriate. However, the conditions did not cover all of the areas of misconduct that were found proved. They related only to use of IT on school property. As the allegation relating to race equality was found proved, we consider that imposition of a condition requiring the teacher to undergo race awareness training (including use of language) would have better protected pupils and promoted confidence in the profession.
- A teacher had conditions of practice imposed. We were concerned that this was not an appropriate sanction in this case, given the number of instances of inappropriate conduct (bullying and making comments of a racist and sexual nature) that the Committee had found proved, and the lack of remorse and insight shown by the registrant. While we recognise that the registrant's ill-health may have mitigated his conduct to some extent, we consider that only a prohibition order or a suspension with conditions would have been sufficient to maintain confidence in the profession and its regulation. In our view, this sanction was unduly lenient.

6.17 In six of the other cases that we reviewed, there were a mixture of allegations relating to race issues and allegations relating to other conduct issues. While we had no concerns about the sanctions imposed in those cases, it was not possible for us to evaluate whether the allegations relating to race issues would have resulted in similar sanctions (and therefore been appropriate) had they been dealt with in isolation from the other conduct issues.

7. Conclusions and recommendations: the GTCE's handling of cases involving racism

- 7.1 Only eleven incidents of teachers allegedly making racist remarks or holding racist materials have been considered by Conduct Committee hearings of the GTCE. From the information we have reviewed, we consider that the GTCE has generally well-handled the cases involving allegations of racism, and that it has appropriate procedures and processes in place.
- 7.2 We have seen examples of good case handling and decision making. We have also identified where improvements could be made to the GTCE's procedural manuals, the quality of investigation, and the sanctions imposed on registrants. We make recommendations to address these areas of improvement below.
- 7.3 We recommend the following to the GTCE:
- The GTCE works with others such as the Department for Education to develop guidance for schools and teaching training providers on investigating disciplinary cases to improve the quality and consistency of such investigations
 - The GTCE updates its guidance and tools to incorporate the changes set out above relating to equality and diversity issues, and that it reviews all documentation to ensure compliance with the Equality Act 2010

- The GTCE reviews CHRE’s learning points bulletin on drafting determinations to assist its Conduct Committee in improving the quality and transparency of its determinations/announced decisions
- The GTCE considers holding training sessions with its panellists regarding decision-making in relation to the imposition of sanctions as well training on equality issues
- The GTCE continues to work with teachers and schools through its Equality Forum and Achieve Network to help improve their ability to challenge and tackle inequality and to meet their equality duties.

8. Issues for consideration about the future of the regulation of teachers

8.1 We considered the GTCE’s conduct function more widely when reviewing the 11 cases and have identified a number of areas that we think should be considered when devising any future model of regulation for the teaching profession. As we did with the case review, we have taken account of the five Principles of Good Regulation established by the Better Regulation Taskforce.¹⁵ These state that any regulation should be transparent, accountable, proportionate, consistent and targeted. We considered a sixth principle – agility - which we recommended to the Regulatory Reform Committee and was accepted by them. We believe it is important that regulation is able to adapt to change. CHRE advocates right-touch regulation.¹⁶

Referral mechanisms

- 8.2 Until January 2009 employers were required to refer all misconduct¹⁷ dismissals and relevant resignations (those resigning where dismissal might have followed), to the Department for Children, Schools and Families (DCSF) so that the DCSF could screen the cases and deal with any in which the teacher presented a risk to the safety and welfare of children (in which event the teacher was placed on List 99).¹⁸ The DCSF also used to send warning letters to teachers if they were concerned about their conduct.
- 8.3 In January 2009 the role of the DCSF was taken over by the Independent Safeguarding Authority (ISA) and the referral arrangements changed, so that instead of sending all cases to the DCSF, employers now have to decide whether to send cases to either the ISA (if there is a risk of harm) or to the GTCE (all other misconduct cases).

¹⁵ Better Regulation Task Force (2003). Principles of Good Regulation Leaflet. London: Cabinet Office

¹⁶ We describe right-touch regulation is the minimum regulatory force required to achieve the desired result. We have published a paper on our website which details our approach to right-touch regulation. <http://www.chre.org.uk/media/18/335/>

¹⁷ In cases of misconduct, it is possible for parents to complain directly to the GTCE. However, it strongly advises that parents first raise the issue with the school directly.

¹⁸ A list of teachers barred from teaching managed by DCSF and now ISA.

- 8.4 The practice of both the DCSF and subsequently the ISA was to send the GTCE the papers they had received from the employer, if they decided that the teacher should not be barred. They would inform the teacher that they were doing so - in which event the GTCE would then open its own investigation into the case.
- 8.5 In our view, this arrangement builds unnecessary delay into the GTCE's receipt of conduct referrals, and therefore impacts negatively on the entire conduct process. It also builds in a lack of clarity for employers – who have to decide which body would be the most appropriate to deal with the conduct concerned. We believe that routing some cases to the ISA instead of the GTCE has a negative impact on the GTCE to act as an effective 'whole market' regulator, because it means that it does not deal with all misconduct cases, and therefore the learning it can draw from the cases (and disseminate through its standards, education and training workstreams) is limited.
- 8.6 Any future model of regulation would need to be all encompassing, simple to use for employers, parents and pupils and enable learning to be identified, disseminated and used to drive up standards of teaching.

Balance of professional and public representation in the governance and adjudication function

- 8.7 The rule that both the Investigating and Disciplinary Committees must have a majority of teacher panellists is inconsistent with current good practice in the healthcare regulators and may give rise to a perception of bias. Whilst it is important that teaching expertise is available to the committees, that can be achieved without having a professional majority (eg by use of expert evidence or specialist advisers or by the inclusion of a minority of professionals on the panel). Additionally, there does not appear to be separation between the Council's governance and adjudication function. The GTCE's Investigating and Disciplinary Committees have Council member representation. Given that 25 members are elected by registered teachers, and nine by Unions (out of 64), this could undermine (or be perceived to undermine) the objectivity of the Committees, and may undermine their credibility with the public.
- 8.8 In the Shipman Inquiry,¹⁹ Dame Janet Smith questioned the legitimacy of the medical profession dominating its own regulation. She noted that issues were bound to arise in which there was a conflict between the interests of the profession and those of the patients and the public. Members/other Committee panellists would need to deal with that conflict. She considered that it would be difficult for a member/panellist who depends for their position on an electorate of the profession or who represents the profession to act or be seen to act in the public interest.
- 8.9 Our concerns about this issue are lent weight by the findings of the GTCE's Council Members' Review²⁰ (undertaken in September 2009) which observed that *'some Council members appear to have made assumptions about the case in advance and have become diverted from the issues in the case by their own experience of practices within schools. This has been more notable in the*

¹⁹ Available at <http://www.the-shipman-inquiry.org.uk/home.asp> [Accessed 15 October 2010].

²⁰ GTCE Council Members Review, Foster Learning, April 2010

observations of teacher rather than lay members and in particular those who represent Teaching Unions who have focused on the role of school management.'

- 8.10 Having a public majority on each Committee would enable the public interest to be better represented. This would also be the case if there was complete separation of the GTCE's governance and adjudication function. Both these changes would bring the GTCE's committee empanelment procedure in line with best practice within the health professional regulators and might improve public confidence in the regulation of teachers. We note that the Council had begun a project considering the separation of governance and adjudication at the time of writing the report. We would support this work, and for this change to be reflected in any future model of regulation.
- 8.11 In addition to the separation of the governance and adjudication function, we note that health professional regulation in the UK has moved from a model of self regulation alone to shared regulation, with public members of councils having at least parity with professional members and with the majority of councils having a publicly appointed lay chair. This makes clear that public not professional protection is the first priority of a regulator. (The health professional regulators' overriding duty to protect the public is enshrined in their legislation). This is something that should be borne in mind for any future model of regulation. We would suggest that our report which identifies the characteristics of an effective board is taken into account in the development of any future organisation.²¹

Interim order powers

- 8.12 The GTCE does not have the statutory power to impose interim orders either suspending or placing conditions on a teacher's practice pending the outcome of the final Conduct Committee hearing. This has obvious risks for pupil protection and for maintaining public confidence in the profession and its regulation, particularly given the evidence that even those conduct cases which involve very serious allegations may take a long time to conclude. In one case we reviewed, which involved very serious allegations, it was two years and three months after the teacher's conviction before the decision to prohibit the teacher was made, which was one year and seven months from the date of the referral to the GTCE.
- 8.13 We note that other safeguards exist, which may help to protect the public during the period before a case can be concluded. These include the requirement for teachers to notify prospective employers of any cases/sanctions against them, and the requirement for employers to check a potential recruit's status with the GTCE before recruiting them. However, there is no means of enforcing these safeguards so they cannot provide comprehensive assurance that the public is adequately protected. Nor does the fact that some teachers awaiting a hearing are not teaching and have no intention to teach provide adequate assurance that the public is not at risk. We are aware that the GTCE has been trying for some time to amend its legislation to enable them to impose interim orders but have not been successful. In our view the GTCE's lack of power to impose an interim order

²¹ Implementing the White Paper: *Trust, Assurance and Safety: Enhancing Confidence in health care professional regulators* Final Report. Appendix 3 Paper from the Council for Healthcare Regulatory Excellence for Enhancing Confidence Working Group, 6 November 2007. Department of Health. June 2008.

poses not only a risk to public protection, but also to the maintenance of public confidence in the profession and its regulation.

- 8.14 To avoid similar issues in the future, the ability to suspend a teacher from practice, where necessary, when a case was progressing against them, would need to be introduced.

Reviewable sanctions and review hearings

- 8.15 There is a lack of provision in the GTCE's legislation for requiring a review hearing to be arranged before any suspension or conditions of practice order expires. In our review we identified cases in which conditions of practice or a suspension were imposed on a teacher. However, there was limited opportunity for the GTCE to assure itself before that order came to an end that the teacher had complied with conditions, had demonstrated insight, and had learnt from the incident.
- 8.16 Currently, the GTCE reviews compliance with conditions of practice on an annual basis through written representations made to the Registrar. In our view, this is inadequate to ensure public protection and the maintenance of public confidence in the profession and its regulation. It is also out of step with the processes in place within the health professional regulators and with the importance placed on the reviewability of such sanctions in the case-law concerning appeals of health professional regulators' sanctions.
- 8.17 We also note that the GTCE cannot apply reviewable sanctions as can the health professional regulators. (For example, imposing a suspension, holding a review hearing and then imposing conditions of practice instead of continuing the suspension.) We consider this to be a weakness in the GTCE's legislation. Having reviewable sanctions enables a regulator to enable a graduated return to practice.
- 8.18 For any future model to ensure public protection and maintain confidence in the profession and its regulation, there should be provision for a comprehensive check to occur before a teacher who has been suspended/placed under conditions of practice is allowed to return to teaching.

Harmonisation of sanctions

- 8.19 During our review we noted that the GTCE informs the other three General Teaching Councils of Scotland, Wales and Northern Ireland of the decision and sanctions imposed in each case. We understand that this process has been agreed between the four bodies in order that they can comply with the regulatory requirements in the separate jurisdictions. We consider that this is good practice. However, we are concerned that there are differences in the legislation meaning that, for instance, all disciplinary orders apply automatically across England and Wales, but that only prohibition orders imposed by Northern Ireland and Scotland apply in England – no other sanctions imposed by Northern Ireland and Scotland apply in England. We note that the GTCE chairs a group considering harmonisation measures across these jurisdictions. In our view, it would be sensible for there to be harmonisation across the four countries. While we understand that this would require changes to the legislation in all four countries, we consider that harmonisation would enhance pupil protection and confidence in the regulation of the teaching profession across the UK.

Adverse health

- 8.20 The GTCE does not have specific powers to investigate allegations that relate to a teacher's ill-health. However, an early successful appeal in the High Court clarified that health issues are relevant to the Disciplinary Committee's consideration of allegations relating to conduct, competence and convictions. We identified some concerns about the GTCE's processes with regard to investigating teachers' health issues and about the Conduct Committee's approach to ill-health as mitigating evidence.
- 8.21 Our review identified four cases in which the teacher relied upon their mental health status as mitigation of their misconduct. In one of these four cases, the teacher did not provide evidence to support their claims about their mental health status, but nevertheless the Conduct Committee's decision relied upon the teacher's statement as evidence that they had been suffering from stress and anxiety at the relevant time. We would suggest that it is inappropriate to rely upon statements about ill-health without corroboration by appropriate medical evidence. Further, despite having accepted as a fact that the teacher was suffering from stress and anxiety at the time, the Conduct Committee in that case did not appear to consider whether it might be appropriate to impose a condition to ensure the public were adequately protected from any risk arising from the teacher's mental health condition.
- 8.22 We are aware that the GTCE had planned to move to an inclusive model of considering whether a teacher was fit to teach, which would enable them to consider allegations of adverse health alongside conduct, competence and conviction allegations. However, as it stands, the GTCE's lack of specific powers to investigate health conditions, and the apparent lack of appropriate action in the identified cases, causes us some concern. Allowing teachers to continue to teach without appropriate oversight of their medical condition may, in some circumstances, have consequences both for pupil protection and for public confidence in the profession and its system of regulation.
- 8.23 Any future model of regulation would have to be holistic to ensure that it was able to function effectively, so that only those teachers fit to teach are able to do so.

Issues of transparency

- 8.24 The GTCE's legislation currently prevents it from making publicly available full Conduct Committee determinations on its website and limits the period of accessibility of its announced decisions to three months. We note that these matters are under review through the GTCE's programme of changes for its regulatory work.
- 8.25 Making more detailed information available for a longer period would both assist public confidence in the regulation of the profession and represent good regulatory practice, by promoting transparency of decision-making. These changes would bring the GTCE's procedures in line with those of the health professional regulators.
- 8.26 For those considering the future model of regulation, there is scope for wider consideration of transparency issues throughout the conduct process. For

example, considering whether allegations should be publicly available (for instance on the successor body's website) prior to the hearing. In taking forward any issues of transparency, a balance will have to be achieved between fairness towards the complainant and fairness to the teacher.

A register of teachers

- 8.27 In terms of public protection it is a matter of concern that the GTCE does not register all teachers. Only teachers in maintained (state) schools are required to be registered, though others opt to be registered. This contrasts with the position in health, where those health professionals who fall within statutorily regulated groups are required to be registered even if they are private employees, or self-employed practitioners. Given that the regulation of teachers is under review, we believe that this would be an appropriate time to look at this again, to ensure that the risks associated with teaching profession in the independent sector are being appropriately managed.
- 8.28 We also note that the GTCE's register is not publicly available on its website. This means that parents, pupils and others cannot access the register online to identify whether a teacher is registered or has had a sanction imposed against them. In our recent report on '*Maximising the contribution of the health professions regulators to public protection*',²² we recommended that the regulators should provide information about all current fitness to practise sanctions on their online registers. We would similarly suggest that the GTCE's (or any future register) should be publicly available on its website (including all current sanctions). We understand that any move towards this would have to address the complication in relation to barred teachers and the inability of ISA to inform the public about barring decisions which currently restricts the information that can be provided.

9. Conclusions and recommendations for consideration by the Department for Education

- 9.1 This report has highlighted a number of issues which the Department for Education may wish to consider when determining any future model of regulation for the teaching profession in England. It is important that lessons are learnt from the GTCE's experience and that these inform any successor regime.
- 9.2 We recommend that the Department for Education should consider the following when determining the future model of regulation for the teaching profession in England:
- Whether the risks associated with teachers in the independent sector are being appropriately managed
 - Any referral process for employers or the public to use should be simple, to ensure that complaints are referred to the right place as quickly as possible

²² Available at: http://www.chre.org.uk/img/pics/library/100301_CHRE_Registers_Report.pdf

- The composition of the board/council of any successor body to the GTCE should reflect good practice including having a balance of professional and public representation, and separation of its governance and adjudication functions
- Any successor body should have a wide range of sanctioning powers including reviewable sanctions and the power to impose interim orders
- Any successor body should ensure that its regulatory function is transparent, for example, through the publication of a register of regulated professionals, that displays current restrictions on their practice and the publication of full determinations in disciplinary cases.
- Any future legislation, rules and procedures regarding conduct, competence, conviction and health cases should be adequate to protect pupils and maintain public confidence in the profession and its regulation, and that it should reflect good practice in professional regulation.

10. Appendix 1: Terms of Reference

Background

- 10.1 In June 2010, the General Teaching Council for England (GTCE) invited the Council for Healthcare Regulatory Excellence (CHRE) to lead an independent review of its current approach to equalities within its conduct function. The review will also benefit from any advice offered by the Equality and Human Rights Commission. The findings of the review will be made public.
- 10.2 Although the CHRE does not have statutory oversight of the GTCE it is able to conduct this review at the invitation of the GTCE. CHRE judges that the learning that will derive from the review will assist in improving health professional regulation and will assist in its work in defining excellence in regulatory practice.
- 10.3 The GTCE will meet the cost of this review as set out and agreed in a separate exchange of letters.

Objectives

- 10.4 The review will provide:
 - An appraisal of the approach taken by the GTCE in its investigation of 11 teacher conduct cases involving allegations of racism and an evaluation of the decisions reached
 - Recommendations for how to approach similar cases in the future
 - Issues for consideration in the longer term by any future body which may be charged with the regulation of teacher conduct

Review Requirement

- 10.5 To provide an independent and objective appraisal of GTCE's approach to race equalities within its conduct function. This will include:

An independent review of 11 GTC conduct cases relating to allegations of racism

1. Reviewing whether the GTC followed its own rules and processes when investigating the 11 conduct cases
2. Assessing the effectiveness of the GTC's rules and conduct processes in ensuring that cases are dealt with fairly and in line with race equality and human rights principles and legislation
3. Reviewing whether the decisions made in the 11 conduct cases protected children, maintained confidence in the teaching profession and were in line with race equality and human rights principles and legislation
4. Assessing whether any lessons can be learned from the 11 cases that can be applied to future cases.

10.6 In carrying out this work, CHRE will take account of:

- The Maurice Smith Review
- The Equality Act 2010 and other relevant legislation
- Any advice offered by the Equalities and Human Rights Commission
- Any other relevant information

Principles of good regulation

10.7 The review should take account of the five principles of good regulation. These state that any regulation should be:

- Transparent
- Accountable
- Proportionate
- Consistent
- Targeted

Review arrangements

10.8 The Review will be led by a senior representative of the Council for Healthcare Regulatory Excellence with support from colleagues. It will assess the outputs of this work and decide on the conclusions to be drawn.

10.9 Much of the material need for the review is in the public domain where access is needed to background material that is confidential or sensitive specific agreement will be obtained from the GTCE and CHRE will operate under a strict confidentiality agreement.

10.10 CHRE will provide the GTCE with a draft report and will take account of the GTCE's corrections of fact and comments on findings before submitting its final report to the GTCE.

10.11 CHRE will present a report to the GTCE by the end of November 2010. The GTCE has agreed to publish the report once it has been finalised. The report will provide an independent assessment of the current situation and recommendations to improve the GTCE's practices in managing conduct cases involving racial equality issues. Recommendations will be evidence-based, proportionate, legal and have due regard to race equality and human right considerations.

11. Appendix 2: Extract from the 2009 Code of Conduct and Practice for Registered Teachers

11.1 Section 4: Demonstrate respect for diversity and promote equality

'Registered teachers should:

- Act appropriately towards all children and young people, parents, carers and colleagues, whatever their socio-economic background, age, gender, sexual orientation, disability, race, religion or belief
- Take responsibility for understanding and complying with school policies relating to equality of opportunity, inclusion, access and bullying
- Address unlawful discrimination, bullying, and stereotyping no matter who is the victim or the perpetrator
- Help create a fair and inclusive school environment by taking steps to improve the wellbeing, development and progress of those with special needs, or whose circumstances place them at risk of exclusion or under-achievement
- Help children and young people to understand different views, perspectives, and experiences and develop positive relationships both within school and in the local community.'

12. Appendix 3: Standard assessment template

Case reviewer:
Case reference:
Concerns raised:
Second read:

Questions	Responses
What is the nature and context of the decision?	<p><i>The auditor will provide a brief summary of the case and outline the regulator's decision to close the case.</i></p>
Where there is deviation from the regulator's procedures. Does this impact on race equality or human rights principles? If so, give details.	<p><i>The auditor will as necessary provide a summary of the deviation from the regulator's decision making procedures and the impact this has on the case in respect of race equality.</i></p>
Was the decision appropriate, and if not, what would have been a better outcome?	<p><i>The auditor will provide a brief summary of why the decision was appropriate taking into consideration:</i></p> <ul style="list-style-type: none"><i>• The nature and context of the alleged misconduct</i><i>• Whether any children were directly affected</i><i>• The vulnerability of the children affected</i><i>• Whether the teacher has shown any remorse, insight or undertaken remedial action</i><i>• Whether the decision exerts sufficient deterrent effect</i><i>• Whether the decision protects the confidence of the profession</i><i>• Whether it is in line with the ISG</i><i>• Whether there is evidence of bias</i><i>• Whether there is evidence of non compliance with race equality and human rights principles</i> <p><i>If the decision was not appropriate, the</i></p>

auditor will explain why this is; what would have been a better outcome and why.

Is there evidence that the decision protected children, maintained confidence in the teaching profession and was in line with race equality and human rights principles and legislation?

The auditor will assess whether the regulators procedures relevant to this decision appropriately protect children and maintain public confidence in the profession and are in line with race equality and human rights principles and legislation?

Any possible good practice points

The auditor will identify and record any good practice

Questions for the advisers

The auditor will record any questions where we need expert advice.

13. Appendix 4: Relevant Legislation

Human Rights Act 1998 (HRA)

13.1 The HRA does not create new substantive human rights law, but instead provides a domestic mechanism for enforcing the European Convention of Human Rights. The following articles are relevant to our review.

13.2 Article 6 - the right to a fair trial:

*'in the determination of any civil right or obligation a person is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law'*²³

13.3 Article 9 - 'Freedom of thought, conscience and religion'

'Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance.'

*'Freedom to manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others.'*²⁴

13.4 Article 14 - the prohibition of discrimination:

'The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status'

Race Relations Amendment Act (1976) as amended²⁵

13.5 The Act places a statutory general duty on public authorities to promote race equality. The aim of the general duty is to make promoting race equality central to the way public authorities work. The duty says bodies must have 'due regard' to the need to:

- Eliminate unlawful racial discrimination
- Promote equality of opportunity and good relations between people of different racial groups.

²³ Ibid

²⁴ Human Rights Act 1998.

²⁵ Taken from The Standards Site. <http://www.standards.dfes.gov.uk/>

13.6 The Act places specific duties on schools:

- To prepare a written statement of the school's policy for promoting race equality, and to act upon it
- To assess the impact of school policies on pupils, staff and parents of different racial groups.
- To monitor the operation of all the school's policies.
- To take reasonable steps to make available the results of its monitoring.

Definitions of 'religion' and 'belief'

13.7 There has been much debate around definitions of religion and belief. The Employment Equality (Religion or Belief) Regulations 2003 defines 'religion or belief' as any religion, religious belief or similar philosophical belief. The 2006 Equality Act defined 'belief' as including philosophical beliefs, such as humanism, which are considered to be similar to a religion. Other categories of beliefs, such as support for a political party, are not protected by the Equality Act. In order to be protected, a religion or belief must be recognised as being cogent, serious, cohesive and compatible with human dignity.²⁶

Equality Act 2010

13.8 The Equality Act 2010 is a cross-cutting legislative framework which simplifies and strengthens existing legislation. It was published on 27 April 2009 and became an Act of Parliament on 8 April 2010. The provisions will come into force at different times to allow time for the people and organisations affected by the new laws to prepare for them, but the core provisions are expected to commence in October 2010. It will replace the following legislation: Equal Pay Act 1970; Sex Discrimination Act 1975; Race Relations Act 1976; Disability Discrimination Act 1995; Equality Act 2006 (most of); Employment Equality (Religion or Belief) Regulations 2003; Employment Equality (Sexual Orientation) Regulations 2003; Employment Equality (Age) Regulations 2006; Equality Act (Sexual Orientation) Regulations 2007.²⁷

13.9 The separate Acts were still individually in force within the timeframe of the 11 cases under review. Provisions of the Equality Act 2010 which would be relevant if similar cases were considered now are:

Part and schedule	Overview
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Part 3 including Schedules 2 and 3	Makes it unlawful to discriminate against, harass or victimise a person when providing a service (which includes the provision of goods or facilities) or when exercising a public function.
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Part 5 including	Makes it unlawful to discriminate against, harass or victimise a person at work or in employment services.
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²⁶ EHRC website

²⁷ Emplaw.co.uk

Schedules 6, 7, 8
and 9

Part 6 including
Schedules 10, 11,
12, 13 and 14

Makes it unlawful for education bodies to discriminate against, harass or victimise a school pupil or student or applicant for a place.

Part 11 including
Schedules 18
and 19

Establishes a general duty on public authorities to have due regard, when carrying out their functions, to the need: to eliminate unlawful discrimination, harassment or victimisation; to advance equality of opportunity; and to foster good relations.

- 13.10 The review team also took account of The Disability Discrimination Act 1995 (as amended by the DDA 2005); and The Employment Equality (religion or belief) Regulations 2003 (SI2003/1660).

Maurice Smith review

- 13.11 The Maurice Smith Review (January 2010) examined the existing measures in place in maintained schools in England to prevent the promotion of racism and intolerance. The review concluded that the ten existing measures (detailed below) in place are well-grounded and comprehensive enough to mitigate the risks. The review also specifically looked at whether there is a case for barring members of the teaching workforce from joining organisations or political parties that promote racism. It concluded that barring teachers in such circumstances was not currently necessary, though this should be kept under 'active review'.
- 13.12 These are:
- The requirement for schools to have equal opportunity policies
 - The duty to promote race equality
 - The requirement to report racist incidents
 - The duty to forbid the promotion of partisan political views in the teaching of any subject in a school
 - The duty to promote community cohesion
 - The registration powers of the GTC(E)
 - The disciplinary powers of the GTC(E)
 - The professional standards for teachers
 - The National Standards for Headteachers
 - The inspection of schools' duties to promote equal opportunities and community cohesion

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