

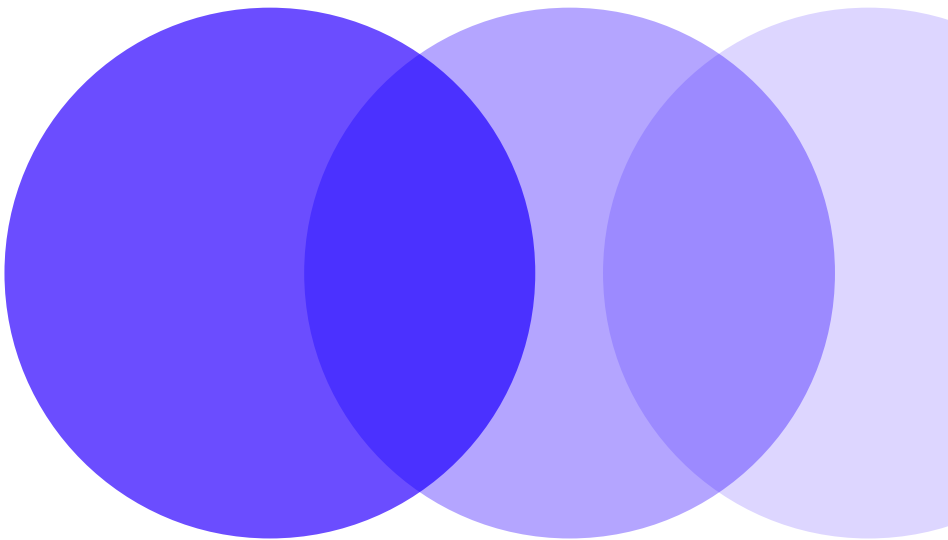
# Advice to the General Teaching Council for Scotland

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on aspects of its Fitness to  
Teach (conduct) process

2025

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April 2025

## 1. About the Professional Standards Authority

- 1.1 The Professional Standards Authority for Health and Social Care (PSA) is the UK's oversight body for the regulation of people working in health and social care. Our statutory remit, independence and expertise underpin our commitment to the safety of patients and service-users, and to the protection of the public.
- 1.2 There are 10 organisations that regulate health professionals in the UK and social workers in England by law. We audit their performance and review their decisions on practitioners' fitness to practise. We also accredit and set standards for organisations holding registers of health and care practitioners not regulated by law.
- 1.3 We collaborate with all of these organisations to improve standards. We share good practice, knowledge and our right-touch regulation expertise. We also conduct and promote research on regulation. We monitor policy developments in the UK and internationally, providing guidance to governments and stakeholders. Through our UK and international consultancy, we share our expertise and broaden our regulatory insights.
- 1.4 Our core values of integrity, transparency, respect, fairness, and teamwork, guide our work. We are accountable to the UK Parliament. More information about our activities and approach is available at [www.professionalstandards.org.uk](http://www.professionalstandards.org.uk).

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## 2. About the General Teaching Council for Scotland

- 2.1 The General Teaching Council for Scotland (GTC Scotland) is the independent regulator for teachers in Scotland. It works in the public interest to enhance trust in teachers by setting, upholding and promoting high standards. Its statutory role and core functions are set out in the Public Services Reform (General Teaching Council for Scotland) Order 2011.
- 2.2 It regulates people employed as teachers in Scottish schools and colleges.
- 2.3 It does this by:
- accrediting programmes of initial teacher education and setting minimum standards for entry to them
  - setting standards of competence and conduct
  - assessing suitability to join the profession
  - keeping the Register of Teachers
  - investigating serious concerns about teachers
  - encouraging teachers to use aspirational standards.
- 2.4 It uses the insights from its work to speak up for high standards and to improve the quality of teaching and learning in Scotland.

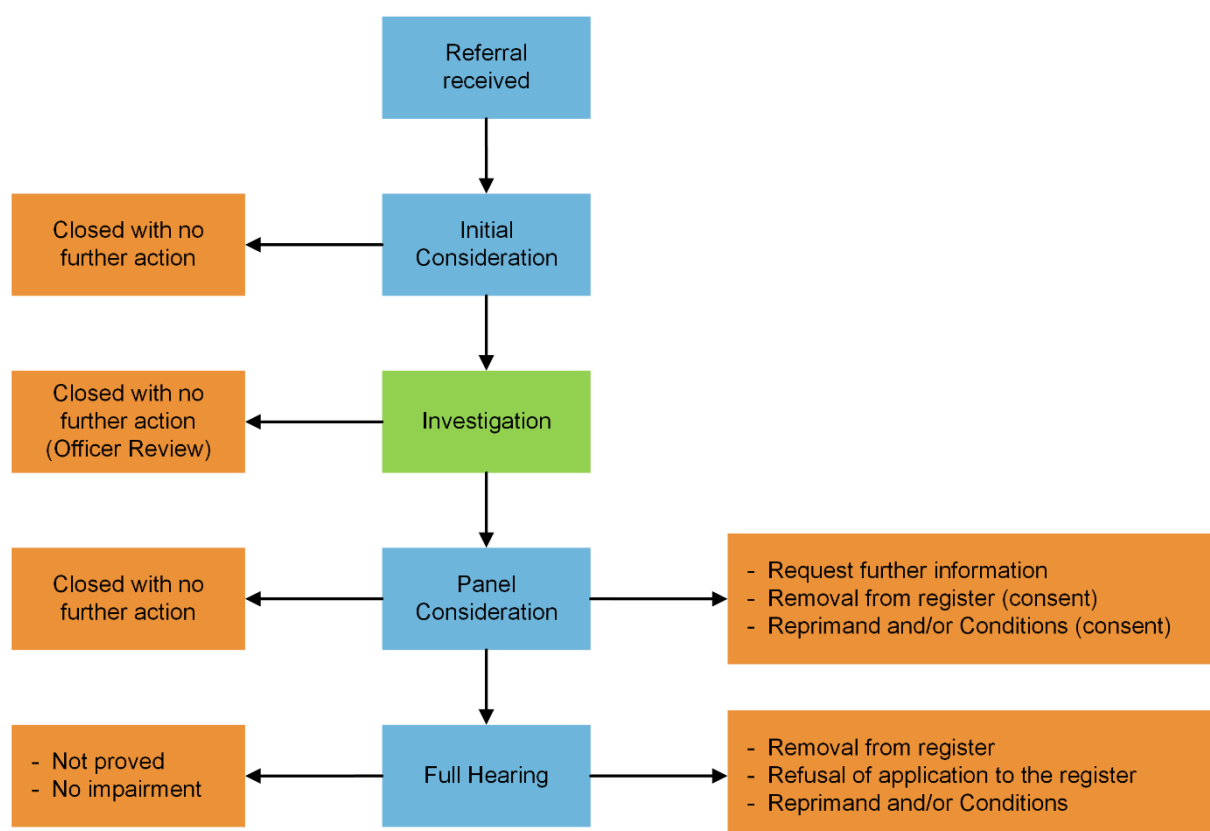
## 3. Introduction

- 3.1 This report follows a request from the GTC Scotland (which for brevity we refer to as GTCS throughout the report) for a review of its Fitness to Teach (conduct) function. Within the commission, GTCS asked us to undertake a review of three areas:
- A performance review of GTCS' Fitness to Teach (conduct) process, against Standards 14-18 of the PSA's Standards of Good Regulation, adapted so as to be appropriate for the context in which GTCS works; to include a case file audit and discussions with staff and stakeholders
  - A review of GTCS' legislation, rules and guidance relating to the process
  - A review of the operational efficiency of the process.
- 3.2 In Section 4 we discuss issues that go across the three areas of the review, together with suggested actions. We also provide a summary of the other recommended actions from each area. In Section 5 we provide the outcome of our performance review, which included a case file audit of 40 closed cases. Section 6 provides our commentary on matters relating to the legislation, rules, and other key documents governing the process. Section 7 provides our discussion of various aspects of the efficiency of the process.
- 3.3 We recognise that across the three areas of this review at some points we looked at similar issues, stages of the process, and key documents, but from different perspectives. We have presented where possible a single view of what we think

are the most significant overarching and specific issues in Section 4, with associated suggested actions that GTCS could take. In Section 4, we have also summarised opportunities for improvement that arose in each of the three review areas. We have endeavoured throughout to cross-refer between the different sections where similar points are under discussion. We felt that it was valuable to include Sections 5-7 in their entirety so it can be seen how the different points or perspectives on a single issue have arisen from the different types of review included in this commission.

- 3.4 Although we have no statutory oversight of GTCS, we consider that there are mutual benefits in this review. There is a benefit to GTCS in having an independent assessment of its conduct process, and we have made recommendations for consideration which we believe will help it to be a more effective regulator. We have had the opportunity to learn about different approaches to regulation in a different professional context. The publication of this report shares that learning with a wider community of regulators including internationally, and we are grateful to GTCS for commissioning this report.
- 3.5 GTCS invited us to undertake this review to contribute to their ongoing work to improve the Fitness to Teach (conduct) process. We welcome GTCS' willingness to seek an external review and its commitment to improvement of this process into the future.
- 3.6 We have provided a range of suggestions and opportunities for improvement and it is now for GTCS to determine which of these it would wish to prioritise and take forward. Some of our recommendations would require legislative change, and therefore would require discussion with Government; some would include onward work with stakeholders; some would be more internally focused projects, where again we have provided a range of suggestions for improvement. Our focus has been on identifying ways in which GTCS can improve this process in the future.
- 3.7 We have not looked at every aspect of the Fitness to Teach (conduct) process, but instead have focused on where we felt able to make constructive suggestions within the scope and time as commissioned by GTCS. This means we have not been able to comment on all of the matters that were raised with us by stakeholders. We have however provided GTCS with a summary of all points where these have not been covered.
- 3.8 We were grateful to receive correspondence from a number of people who had previous or current involvement with Fitness to Teach (conduct) cases. The scope to which we were working did not enable us to comment on or review individual cases other than those included in our case file audit. However, for the most part we believe that the recommendations we have made for the future will make a positive contribution in the areas that have been highlighted to us in this way.
- 3.9 We thank GTCS for their positive engagement throughout this review, responding to queries and providing information in an open and constructive way.

**Figure 1: The Fitness to Teach (conduct) process simplified**



## 4. Discussion of overarching issues and summary of findings within the three parts of this review

- 4.1 In this section we provide observations on issues that go across two or three areas of our review, our suggested approach to addressing these issues and the benefits that could result. We also provide a summary of other issues and proposals for consideration that have arisen within the individual parts of our review, where we think there are opportunities for improvement.
- 4.2 Here, and throughout the report, we suggest actions for GTCS to consider, including in relation to specific decision points in the Fitness to Teach (FtT) process. In doing so, we recognise that professional regulators have some difficult balances to strike in seeking to both protect the public and to work efficiently in their processes for receiving, investigating and adjudicating matters of concern that are brought to their attention, with different governing principles that are potentially in conflict. This includes seeking to reduce inappropriate referrals through clear explanations of the purpose of the process and how to refer to it, with the need to err on the side of caution so as not to deter the referral of matters where issues may be less clear. At initial consideration, this includes having access to the appropriate level of information to make a

sufficiently informed decision on whether to progress a case to investigation, without duplicating a subsequent investigation. Regulators should be able to have confidence that local processes will be able to deal with matters at an early stage, but also that they will be alerted to matters arising from those processes which are properly their concern.

- 4.3 All of the comments that we make throughout this report should be considered in the light of these recognised and continuing challenges in achieving right-touch regulation in a process of this type. The recommendations we make are intended to support GTCS to reflect on how well it is addressing the different aspects of these risks and challenges. We suggest areas to explore in order that GTCS can strengthen the assurance it provides to the public that it is working in full awareness of the risk parameters within which it operates, and to demonstrate how it is achieving an appropriate balance at critical points of the process.

### **Improving the arrangements for case management**

- 4.4 GTCS has already begun work towards a Case Management System (CMS) and we strongly support this. Having reviewed the current arrangements for case management, we believe that they are too complex, and not able to support optimally efficient work. For example, at present staff are required to work across a number of different systems in parallel, and these systems may not be directing the use of resources for the greatest overall benefits. The implementation of a CMS would be expected to yield a range of efficiency benefits and would enable the production of a wider range of performance data, a need that we have identified in our performance review. It would also be expected to release staff capacity, make compliance with process easier, and facilitate induction of new staff.
- 4.5 However, we recommend that GTCS gives serious consideration to review of its process guidance before entering into a formal commissioning process with a supplier, as at present we think it is too complex. We suggest that a CMS commissioning process would be greatly facilitated by the review, simplification and consolidation of much of the existing process documentation, and the creation of single process manual.

### **Length of time**

- 4.6 Our performance review highlighted the length of time taken to conclude cases that proceed to investigation and beyond, and we feel that this should continue to be a matter of priority and focus for onward improvement work by GTCS. We recognise that in many cases, delays are caused by difficulties in securing necessary information from other bodies, and we make a suggestion to that point below. However, we saw unexplained downtime in the case files we reviewed, where we assume that cases were not being progressed simply for lack of staff capacity to do so. We also saw some instances of information being pursued which GTCS already held. There are a number of suggestions that we have made which we think will have a positive effect on staff capacity and

therefore could be expected potentially to reduce the amount of downtime, and length of time overall – in particular, a CMS, which would also help to direct resources optimally across the caseload. However, we also propose a flexible approach to resourcing the process including to support targeted interventions for known causes of delay.

### **Process design changes**

- 4.7 We suggest that GTCS explores the potential of two specific process design changes, which are being adopted or are already in use elsewhere in professional regulation. The first would apply to the Initial Consideration stage of the process, where currently decisions are made on the basis of the information provided as part of the referral. We suggest that to build in the scope for some initial inquiries at this stage would have the twofold benefit of both increasing the proportion of appropriate referrals progressing to investigation and decreasing the number which progress to the next stage inappropriately. The second design change that we recommend GTCS to consider is to remove the Panel Consideration (PC) stage, and instead to have a single decision point at the conclusion or closure of an investigation with the decision being made under a case examiner model. We think both have the potential to yield benefits for the process' timeliness and cost.

### **Providing support to vulnerable people**

- 4.8 Regulatory processes such as FtT are stressful for all involved, and can expose and sometimes compound vulnerabilities. We have identified a number of points across the different elements of this review where we feel that GTCS could more effectively support the vulnerability of those participating in the process. These include more proactive promotion of routes to make a referral other than by the online form; the ready provision of onward links to sources of advice and support for participants in the process; and improvements to the tone of standard letters used in the process. Within the Rules we feel that a number of areas could be strengthened in this respect, including the updating of out-of-date language relating to mental health, and introducing greater flexibility over who is considered vulnerable. The improvements we suggest could help to secure the best possible evidence from witnesses and other participants.
- 4.9 In addition to the specific measures suggested in the report, we suggest also two further possible actions. We strongly encourage GTCS to follow the publication of findings from the NIHR-funded Witness to Harm research project, which has addressed issues of accessibility and support at every stage of the process. Although conducted in the context of health and care, we anticipate that its findings will be transferable to the FtT process. We also suggest that GTCS considers commissioning some expert, bespoke advice on supporting vulnerable people for example from a relevant charity.



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## **Guidance on whether to refer**

- 4.10 We recognise that the online referral form enables anyone to raise a referral, and there is clear guidance on the website on how to refer. However, improvements could be made in GTCS' explanations to the public of what the process is for, and whether to refer, as distinct from how. We have provided some detailed comments on the website page 'What is fitness to teach', where there is scope for a clearer explanation of how the process works which will make it more readily understood and support appropriate referrals being made. We recognise that in regulation it can be challenging to provide clear explanations in Plain English about a process which relies on complex judgements and abstract concepts, but nevertheless feel that there is considerable scope for improvement.

## **Explanations of how the process works**

- 4.11 We believe that there are improvements that could make process documentation more logical and accessible, and therefore more effective at supporting those managing the process and making decisions within it. For example, in the Threshold Policy the key concepts of the process, such as impairment, could be explained more clearly and logically, supported by a more accessible account of the stages and decision points of the process using flowcharts or other visual representations. GTCS' documentation is generally very 'word heavy' and we think it would benefit from an overhaul. This would have a number of benefits including giving participants a clearer understanding of how the process will work from the earliest possible stage of their involvement and therefore enabling them to fulfil their role efficiently. It will also make the process more transparent to all stakeholders and the public.

## **The five-year rule**

- 4.12 GTCS has a five-year rule by which it can close a case both at Initial Consideration (IC) and (unusually) later in the process if it is more than five years old. We recognise that the passage of time will often have an impact on how effectively a case can be progressed, and that the provisions allow GTCS to progress a case if it is in the public interest to do so. However, we do not think that an arbitrary time limit for bringing a referral is necessary, appropriate, or helpful. It can take a long time for the truth of complex situations to come fully to light, and for the responsibilities of those involved to become clear. In cases involving traumatic harm, it can take many years before the nature of that harm, and even the fact that harm has occurred, to be fully understood and recognised, and for people whose trust has been damaged to be able to engage with processes and organisations.
- 4.13 It is now the policy of the UK Government that the five-year rule should not apply in health and care professional regulation – it does not feature, for example, in the recent legislation to bring Physician Associates and Anaesthesia Associates under the UK General Medical Council, although it does continue to apply in

regard to allegations concerning doctors. We recommend that GTCS reviews its use of this rule, and that it gives serious consideration to seeking to remove it.

### **Closure at IC stage of referrals relating to matters under investigation by employers, or not yet investigated locally**

- 4.14 There are several inter-related areas across the review that relate to this discussion. The first is GTCS' policy to close cases at IC where these are the subject of ongoing local processes, or which have not yet been investigated locally, using the provision at Rule 2.1.1(d) to close cases that are 'frivolous and vexatious'. In its Threshold Policy GTCS explains that 'when we decide that a referral is frivolous on the basis that it is premature, we are not saying that the referral is itself frivolous simply that it has been made too early'.
- 4.15 GTCS' online guidance encourages members of the public to raise their concerns with the employer before contacting the GTCS. According to GTCS' data covering 2018-2023, after IC it progressed to investigation 26% of the referrals it received from members of the public, compared to 92% of the referrals received from employers.
- 4.16 We recognise that investigating concerns at the local level can often be the best first course of action. However, we consider that GTCS' approach may present some risks:
- Employer investigations may vary in quality, and GTCS has no control over how well they are carried out. GTCS may be unaware of cases handled by employers that result in outcomes which are insufficient to protect the public and are not referred to GTCS.
  - The time that an employer's investigation process takes may add to the time that elapses between the referral first being made and the final GTCS decision. GTCS has no control over how long employer investigations may take to conclude.
  - Members of the public or a teacher wanting to use this route to refer a concern about a colleague may have legitimate reasons to bypass the local process.
- 4.17 We recognise that GTCS will progress a case to investigation before employer investigations have concluded if it decides the concern is serious enough, including to allow it to apply for a Temporary Restriction Order. However we found a small number of cases in our audit sample that were closed at IC which, based on the evidence on file, we thought should have been progressed in the particular circumstances of those cases. We discuss these cases, issues relating to this point of the process, and our proposed measures to strengthen decision making in this respect, later in the report including at paragraphs 4.21, 5.14, 5.23 and 5.30, and in the opportunities for improvement identified after paragraph 5.26.
- 4.18 We recognise that GTCS needs to take a proportionate approach to its FtT work, as its legislation requires it to do across all its functions. Employers are often

best placed to investigate and resolve issues at the local level, and address them early, minimising the harm that might result.

- 4.19 However, in the course of our review, we heard of stakeholder concerns about the quality and consistency of employers' investigations into issues that may raise concerns about a teacher's fitness to teach. GTCS has recognised these concerns. In its FtT Insight Report, it noted that 'we see a wide variability in the investigative practice of employers across different types of cases. We believe there is a particular challenge in ensuring that there is the resource, knowledge and experience within employers to carry out these processes with neutrality and an understanding of best legal investigative practice. Continuity of resource and record management are other challenges we have observed. These are areas we are keen to discuss with partners and see how we can play our part in supporting improvements in the future'.
- 4.20 This is a complex matter. We do not think that it is the responsibility of GTCS to open an investigation on the basis of every referral that is made to it on the possibility that risks are present that are not being effectively managed elsewhere. Nor do we think that it is the responsibility for GTCS to have to use its resources to address any variability in the standards or effectiveness of other parts of the system. However, we do recommend to GTCS that it considers some actions in relation to this issue, to satisfy itself that risks are being managed effectively and appropriately, and:
- To give GTCS, its stakeholders and the public greater assurance that cases it closes at IC do not involve unmanaged risk of a level that would usually warrant regulatory attention, and that it is able to act on information from any source which raises concerns about a teacher's fitness to teach without any unnecessary barriers.
  - To demonstrate that its policy and practice align clearly with the legislation and Rules.
  - To clarify the relationship of the FtT process to other systems and processes concerned with safeguarding and protection.
  - To clarify, with the stakeholder bodies involved, who does what; who manages which risks, through what processes, and how these processes are quality assured.
  - To enhance public confidence through consistent communication across the sector on individual and collective responsibilities.
- 4.21 On the first bullet, we suggest that GTCS considers:
- Reviewing its approach when making decisions on referrals received from members of the public, including to confirm what the legislation and Rules as they currently stand do and do not enable in terms of any initial basic inquiries and investigation.

- The inclusion more formally of ‘initial inquiries’ at the IC stage as mentioned above at paragraph 4.7 – which we think would help address the concerns identified at 4.16 that arose in relation to cases in the audit sample.

4.22 On the second bullet we suggest:

- That GTCS seeks the inclusion of ‘premature’ in the list of reasons not to refer a matter for investigation in its Rules.

4.23 We discuss the remaining points covered in the third to fifth bullets below.

### **The relationship of the FtT process to other systems and processes**

- 4.24 GTCS has informed us that over recent years it has pursued discussions with Government and other stakeholders to seek greater clarity over respective roles in the system for protection and safeguarding. We understand from GTCS that the Child Protection Unit at the Scottish Government was working on process mapping between different stakeholders. GTCS have told us that it has been informed that this has been paused and that it has re-iterated to the Scottish Government the importance of re-commencing this work.
- 4.25 We support GTCS’ position that Government should, if possible, take steps to renew these stakeholder discussions, with the objective of seeking clearer agreement on ‘who does what’ in the system. We would recommend working towards a flowchart or map which is agreed between the parties as the basis for mutual understanding and clarity of who does what, and in what order. This could be the basis for consistent public communications to help steer both individuals and employers to refer their issue to the right place as early as possible. It would also support the rapid redirection of matters which have not gone to the right place first time.
- 4.26 Having this agreement in place could also then support further discussion and clarification of how critical information should best flow between the parties to support their different processes, the timescales for the communication of such information, and how otherwise these processes relate to each other. This could also support transparency as to, for example, the reasons for delays within GTCS’ FtT process, where it is necessary that a case does not proceed until critical information is received at the conclusion of another body’s process. This would allow GTCS more effectively to manage the expectations of the parties to a FtT case as to likely timescales through to conclusion. It would also assist in establishing a shared understanding of who is responsible for managing the different risks that arise in this sector, and for quality assuring the different processes that are designed to manage them.
- 4.27 This would provide reassurance to the public, in that (i) it would help identify the right place for different types of concern to be referred to and managed, reducing ambiguity and wasted time and (ii) would be a demonstration that public organisations were taking a proactive, collective and systematic view of managing risks rather than working in parallel. It could be expected therefore to promote public trust in the system.

- 4.28 It could also be an opportunity to introduce protocols between organisations about, for example, how quickly they would respond to each other's requests for data and information in the course of their individual processes. This may also highlight any gaps in information flows which might in turn support prioritisation of bridging those gaps. All such measures would have potential beneficial impacts on timescales within the FtT process and other processes. This would also assist in the identification of risk areas which are currently unmanaged, managed ineffectively, or where responsibility for risk management is unclear.
- 4.29 We recommend that GTCS considers, as part of this recommendation, discussing with stakeholders the scope and feasibility of building capacity into the system whereby a shared approach could be taken to support concerns being directed to the right place, first time and as soon as possible. There are of course various ways or levels by which this could be done, either by increasing signposting capacity within the individual organisations, or through a shared or collaborative arrangement for a shared 'front door' for concerns. The Local Authority Designated Officer Role, as exists in England, provides an example of a co-ordinated approach to directing concerns to the right place. A single point of contact of this kind can also enable more straightforward communication, in particular to the public, of the purposes and functions of different organisations, processes, outcomes and timescales. The important point is that the function should be fulfilled, by whatever structures and processes are most appropriate within this sector.
- 4.30 A further item for collective discussion that we recommend is how to guide people and handle concerns in circumstances where they have a legitimate reason to be hesitant to act locally. This could for example apply where there is a mutual employer and people fear the wider consequences of taking action, however well-grounded. We understand that this is a matter that has already been raised with the Government by GTCS.

### Other areas offering opportunities for improvement

- 4.31 In the remainder of this section we summarise the opportunities for improvement we have identified arising within the three aspects we looked at: performance review; legislation and Rules review; and efficiency review. We have identified points where we think there is the potential for improvement. It will be for GTCS to decide which it would wish to take forward.

#### Performance review

- 4.32 We identified further opportunities for improvement within the performance review element of this review which include the following.
- 4.33 On **timeliness** we recommend that GTCS:
- identifies all relevant parties and requests all relevant information as soon as possible

- keeps track of what information it already holds to reduce the risk of making repeat requests that may cause unnecessary delay (and which may add to the burden GTCS places on parties during an investigation)
  - provides parties with deadlines and proactively chases parties for outstanding information
  - acts on new information received on a timely basis
  - promptly notifies teachers (and other relevant parties) of its decisions.
- 4.34 On **quality of investigations**, we recommend that GTCS considers its approach to requesting and reviewing primary evidence for itself to make its own assessment, where it currently relies on the judgment of others. We outline an opportunity for improvement, and a potential process change, at 5.26.
- 4.35 On the **identification of, and response to risks**, we recommend that GTCS:
- introduces an initial assessment of risk at the point of receipt
  - ensures that all risk assessment forms are reviewed on a timely basis
  - ensures that risk assessments are promptly updated with new information
  - adapts the risk assessment template so that officers document how they have reached the overall risk rating
  - reviews how its risk assessment process can help to prioritise cases more effectively.
- 4.36 On **support to parties to an FtT case**, we recommend that GTCS:
- ensures that correspondence based on templates is tailored to the individual recipient
  - provides signposting to the support available from a wide range of organisations, as set out on the GTCS website
  - considers implementing a KPI for keeping other parties updated (as it already has for teachers and their representatives)
  - clearly sets out the planned frequency of updates it will provide to parties and adheres to those expectations
  - provides guidance and training to staff to identify and act on the need for additional/different support to vulnerable parties – particularly when the teacher’s mental health is being affected by the FtT process.

### **Review of legislation, Rules and other key documents**

- 4.37 We recommend that in GTCS’ future review and development of these documents particular attention is given to how key concepts of the process are explained and expressed, with through-lines from receipt to conclusion based on a clear and consistent definition of impairment.
- 4.38 On the **Legislation**, we propose that GTCS consider taking forward discussion with the Scottish Government on the potential for change in a number of areas:

- to make reference to public protection and maintaining public confidence in the Principal Aims
  - to include suspension as an option for panels
  - to enable GTCS to investigate health concerns
  - to enable automatic removal on the basis of a serious criminal conviction
  - to establish regular reviews of TROs at set intervals.
- 4.39 Additionally on **Temporary Restriction Orders** (TROs) we recommend that GTCS explores the potential, through legislative change, of the following:
- to consider options to allow for full suspension from practice where a serious immediate risk to the public has been identified
  - to enable the GTCS to identify and impose temporary conditions.
- 4.40 On the **Rules**, our suggestions to GTCS include:
- to remove the duty to ‘seek informality and flexibility in proceedings’, proposing instead that this should be achieved through the guidance rather than a general duty
  - to remove the requirement for a registrant majority on panels, with instead a minimum of one registrant and one ‘lay’ person
  - to give discretion to panels and case managers to treat a witness as vulnerable
  - to clarify the threshold applied at IC, and to ensure a clear escalation of thresholds between IC and panel stages; ideally, giving the test different names and to use the term ‘real prospect test’ for the decision post-investigation
  - to consider changes to enable initial inquiries as discussed above
  - to remove the five-year rule as discussed above
  - to define ‘frivolous or vexatious’ as discussed above
  - to specify that the panel hearing must not include any panel members who have previously considered the case
  - to amend such that it is not a requirement for all allegations to be admitted in order for a consent order to be effective, rather ‘all material allegations’
  - to increase the maximum time frame before which a registrant can apply for re-admission to five years, noting that this should be expressed as the minimum were GTCS to obtain a power of suspension
  - to consider replacing panel consideration with case examiners.
- 4.41 On the **Threshold Policy**, our suggestions are:
- to clarify the guidance to the effect that FtT action can be taken solely in the wider public interest, to maintain confidence or uphold standards



- to clarify that there is case by case discretion in whether a matter is progressed, and that indicative lists are not of themselves determinative
- to clarify the extent to which the document relates to conduct and to competence.

We also discuss the Threshold Policy in the efficiency section.

4.42 On the **Indicative Outcomes Guidance Practice Statement**, we suggest:

- to expand the guidance in relation to insight, including that admissions are not necessary for a registrant to demonstrate insight.

## Efficiency

4.43 On **case management**, we recommend the replacement of the current arrangements with a case management system (CMS).

4.44 On **process documentation**, we recommend its simplification and consolidation into a single process manual – and that work is done in this respect before the commissioning of a CMS.

4.45 On **guidance and process documentation generally**, we recommend improvements to accessibility, clarity and format, building on observations made in the previous section.

4.46 On **guidance on the first stage of the process**, we recommend that work is done to improve the clarity and focus, in particular of the What is Fitness to Teach page on the website.

4.47 On **process design**, as mentioned above we recommend that GTCS considers two possible options:

- Introduction of initial inquiries as part of Initial Consideration
- Replacement of panel consideration with case examiners.

4.48 We make some comments for GTCS to consider in relation to **resourcing and staffing**, recommending an element of flexibility and the targeting of ‘down time’ in case progression.

## Summary of benefits from the recommendations we have made

4.49 In summary, we believe that the recommendations that we have made in this section of the report will help GTCS to secure improvements which will:

- make the process easier to understand
- make the process easier to run
- make the process quicker
- encourage the referral of appropriate matters and reduce inappropriate referrals, and inappropriate cases progressing to investigation
- improve the process’ sensitivity to the vulnerabilities, and potential vulnerabilities, of all participants



- promote collaborative working with stakeholders in the sector
- bring legislative provisions, Rules and policy more into line with current thinking in professional regulation more widely.

## 5. Performance review of the Fitness to Teach (conduct) process

### Introduction to performance review

- 5.1 The PSA carries out annual performance reviews of 10 regulators of health and social care in the UK. To do this, we use our 18 Standards of Good Regulation<sup>1</sup> ('the Standards'), which are organised as follows:
- General Standards
  - Guidance and Standards
  - Education and Training
  - Registration
  - Fitness to Practise.
- 5.2 The Standards are informed by our principles of Right-touch regulation<sup>2</sup> which state that regulators should act in a way which is proportionate, consistent, targeted, transparent, accountable and agile. More information about our approach to performance reviews is available on our website.<sup>3</sup>

### How we approached this part of our review

- 5.3 As the scope of our review as a whole related only to GTCS' Fitness to Teach (conduct) process, this part of the review only included an assessment against the Standards relating to the broadly equivalent process in the health and care sector, that is, Fitness to Practise. We made minor changes to the wording of our five Fitness to Practise Standards, for example replacing the phrase 'patients and service users' with the word 'learners' where appropriate. We agreed with GTCS that, unlike in our usual performance reviews of health and social care regulators, we would not conclude whether GTCS had met or not met individual Standards. Instead, we use the Standards to frame a discussion of GTCS' performance using the available data and other evidence.

<sup>1</sup> [www.professionalstandards.org.uk/publications/standards-good-regulation](http://www.professionalstandards.org.uk/publications/standards-good-regulation)

<sup>2</sup> [www.professionalstandards.org.uk/improving-regulation/right-touch-regulation](http://www.professionalstandards.org.uk/improving-regulation/right-touch-regulation)

<sup>3</sup> <https://www.professionalstandards.org.uk/organisations-we-oversee/our-work-regulators/our-performance-reviews-regulators>

### Figure 2 The adapted Standards

- The regulator enables anyone to raise a concern about a registrant.
- The regulator's process for examining and investigating cases is fair, proportionate, deals with cases as quickly as is consistent with a fair resolution of the case and ensures that appropriate evidence is available to support decision makers to reach a fair decision that protects the public at each stage of the process.
- The regulator ensures that all decisions are made in accordance with its processes, are proportionate, consistent and fair, take account of the statutory objectives, the regulator's standards and the relevant case law and prioritise the public interest.
- The regulator identifies and prioritises all cases which suggest a serious risk to the safety of learners and seeks interim orders where appropriate.
- All parties to a referral are supported to participate effectively in the process.

Adapted from Standards 14-18 of the *Standards of Good Regulation*

#### 5.4 To carry out our review, we:

- issued a call for evidence and engaged with stakeholders
- met with a range of GTCS staff
- reviewed published and internal GTCS documents.

#### 5.5 We also carried out a case file audit of cases closed between 1 April 2023 and 31 March 2024. GTCS provided us with an anonymised list of 132 conduct cases closed during this period, broken down by point of closure in the FtT process.<sup>4</sup> These closure points are Initial Consideration (IC), Officer Review (post-investigation) (OR), Panel Consideration (PC) and Full Hearing (FH).

Decision point	Decision makers	Summary
Initial Consideration	GTCS officers	GTCS officers review the referral and apply the Threshold Policy to decide whether to open an investigation.
Officer Review	GTCS officers	Once the investigation phase is complete, GTCS officers can decide to close the case with no further action if there is insufficient

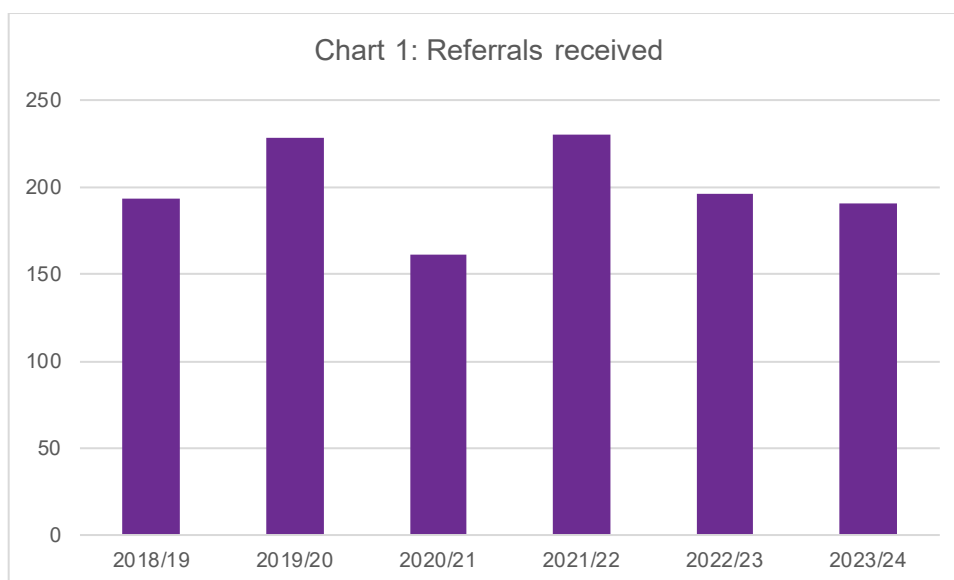
<sup>4</sup> Our sample of cases was drawn from a list of cases provided by the GTCS. We note that the cases selected did not include any that were investigated by the GTCS's external legal provider, Anderson Strathern. This had not been specified in advance as a category for inclusion or exclusion and is noted as a limitation.

		evidence to support the allegations, or if they consider that, from the information received during the investigation, it no longer meets the test for Relevant Conduct, ie, there is no longer a real prospect of a panel finding that the teacher's fitness to teach is impaired. Otherwise, the case will progress to be considered by a panel.
Panel Consideration	Independent panel	A panel meets in private to consider the information that has been collected and decide whether to close the case, issue a consent order, or refer onwards to a Full Hearing.
Full Hearing	Independent panel	By default, a panel meets in public to determine whether the allegations are proved, whether the registrant is fit to teach, and how the case should be disposed (including the sanction imposed on the registrant if they have been found to be unfit to teach). This is a formal and legal process and may involve witnesses providing oral evidence and answering questions.
Note: Independent panels are made up of at least three people including a majority of registrants and a lay person.		

- 5.6 We selected 40 cases for review, which included a mix of different sources of referral and reasons for closure. We are satisfied that the sample allows us to draw representative conclusions about cases closed during the review period. Many of the cases in our sample were opened before 1 April 2023, and our review therefore also considered activities and decisions made before the start of our review period. We have not included details about specific cases in this report where this might make individuals identifiable.

**Standard: The regulator enables anyone to raise a concern about a registrant.**

- 5.7 We have seen no evidence that people are unable to raise a concern with GTCS. As Chart 1 below shows, the number of referrals received in 2023/24 was in line with figures for previous years.



- 5.8 GTCS provides clear guidance on its website regarding how referrals can be made, with separate guidance tailored to employers/former employers and members of the public. At 7.29 however we discuss some possible areas for improvement on the guidance provided on whether concerns should be referred, and on the process more widely, in the context of our discussion of efficiency.

#### Referrals from members of the public

- 5.9 GTCS encourages members of the public to use its online referral form and does not promote other channels of communication on the FtT section of its website. The online form provides GTCS with information in a consistent format and improves the likelihood that sufficient relevant information is provided to enable GTCS to make a reasonable decision at the IC stage. We encourage regulators to provide a variety of channels through which referrals can be made in addition to online forms, such as emails, letters and phone calls. GTCS steers people away from these options, which could deter some people from raising their concerns – particularly those who may be unable to use online routes.

#### Opportunity for Improvement

GTCS could provide and promote a wider range of channels through which members of the public can make referrals.

- 5.10 In its Threshold Policy, GTCS usually closes cases at the first decision point if the issues have not been investigated by the employer. The Threshold Policy relates this to Rule 2.1.1(d) of GTCS' Fitness to Teach Rules 2017 ('the Rules'), advising that if a referral is made prematurely this will be a contributing factor to a decision that it is 'frivolous or vexatious'. GTCS' Threshold Policy explains 'we are not saying that the referral itself is frivolous simply that it has been made too early'.

- 5.11 GTCS' online guidance encourages members of the public to raise their concerns with the employer before contacting the GTCS. According to GTCS' data covering 2018-2023, following Initial Consideration, GTCS investigated 26% of the referrals it received from members of the public compared to 92% of the referrals it received from employers.
- 5.12 Investigating and resolving concerns at a local level can often be the best course of action. However, directing members of the public to employers can present risks:
- Employer investigations may vary in quality, and GTCS has no control over how well they are carried out. GTCS may be unaware of cases handled by employers that result in outcomes which are insufficient to protect the public and are not referred to GTCS.
  - The time that an employer's investigation process takes may add to the time that elapses between the referral first being made and the final GTCS decision. GTCS has no control over how long employer investigations may take to conclude.
  - Members of the public may feel that their concerns are not being treated seriously by GTCS, and this may have a negative impact in public confidence in GTCS as a regulator.
- 5.13 We further discuss issues relating to the relationship between the FtT (conduct) process and local processes from 5.29 below (decision-making) and 4.14-4.30 (including discussion about wider sector issues).
- 5.14 Under its Rules, GTCS can decide to progress cases through its FtT process before employer investigations have concluded, if it decides the concern is serious enough. As we have identified previously, and below at paragraph 5.23 and 5.30, we found a small number of cases in our audit sample that were closed at Initial Consideration under Rule 2.1.1(d) that we thought the evidence on file suggested should have progressed to investigation. We describe some opportunities for improvement after paragraph 5.26 that we think would strengthen decision-making at this point.

**Standard: The regulator's process for examining and investigating cases is fair, proportionate, deals with cases as quickly as is consistent with a fair resolution of the case and ensures that appropriate evidence is available to support decision makers to reach a fair decision that protects the public at each stage of the process.**

#### **Timeliness**

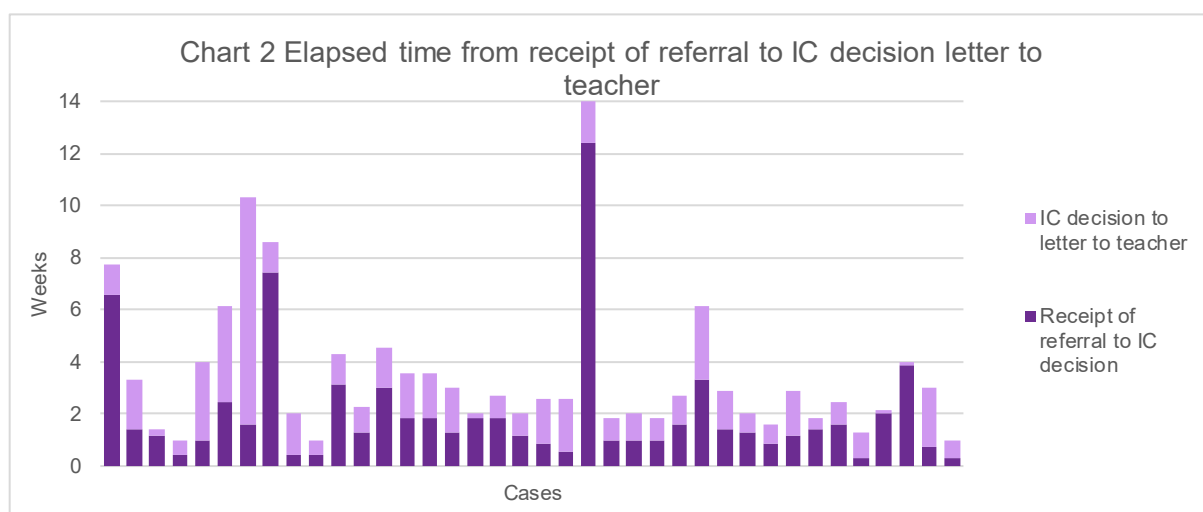
- 5.15 GTCS does not routinely record case progression data and we have therefore used our audit to generate our own timeliness data. We therefore do not have complete data for the year, and we do not have directly comparable data from

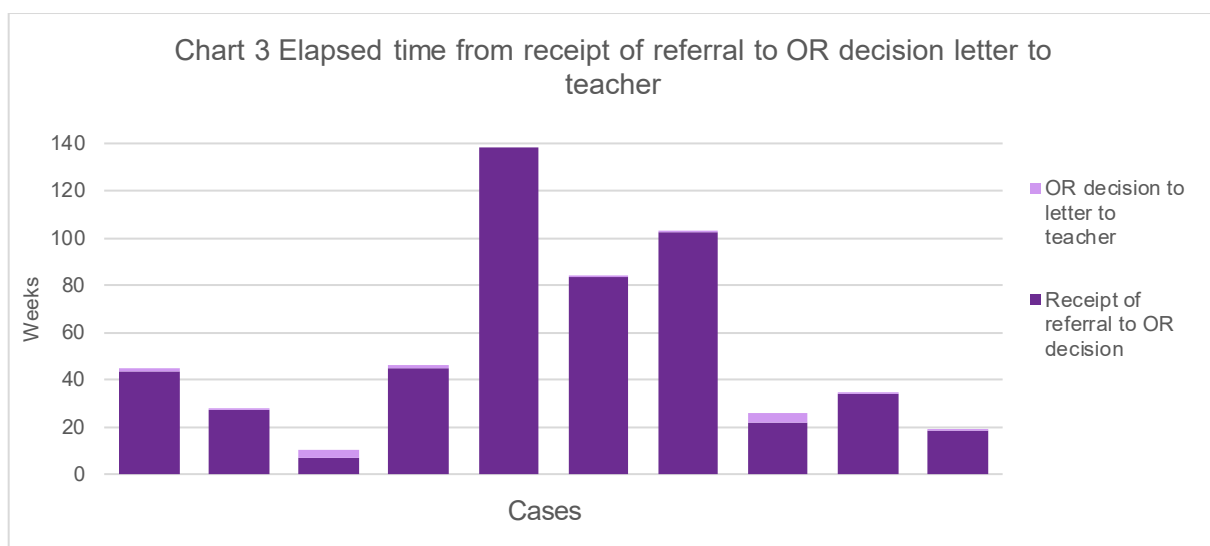
previous years. Where possible we have attempted to draw comparisons with performance information set out in the GTCS FtT Insights Report 2018-2023.

5.16 GTCS does not currently publish FtT performance data, although it has told us that it recognises this is important and that it intends to start publishing data on its website. As part of our review, GTCS provided us with the performance reports it provided to its Professional Regulatory Assurance Committee; this information is not published and was limited to data on case volumes, rather than timeliness. This data showed that, during 2023/24:

- the number of open cases fell from 223 to 212 – the second successive year this has fallen since it peaked at 237 cases in 2021/22
- the number of open cases over 15 months old was virtually unchanged (up from 104 to 105) over the year.

5.17 We generally saw decisions made promptly at the Initial Consideration (IC) stage of the process, with a median time taken between receipt of referral and GTCS making the IC decision of 1.4 weeks.<sup>5</sup> We did note, however, that there can be delays in informing the teacher of the IC decision; in a small number of cases this added significant time to the process, as shown at Chart 2.





5.20 The median time taken between receipt of referral and the Panel Consideration (PC) decision was 112.4 weeks (based on five cases). We saw several examples of unexplained delays, including two cases where we saw no evidence of any substantive activity for 10 months (predominantly within 2021).

5.21 The median time taken between receipt of referral and the Full Hearing (FH) decision was 211.1 weeks (based on 6 cases). In two of the cases we reviewed, it took over five years from the receipt of referral to the FH decision.

5.22 Stakeholders have told us about:

- their frustration with the time taken to conclude cases and a lack of proactivity from GTCS during investigations – reflecting what we saw in our case file review
- the fact that investigating officers are called upon to be servicing officers in hearings, and that therefore they are not able to focus on the complexity of the investigations they are undertaking<sup>7</sup> and

<sup>7</sup> This specific point is also referred to in the efficiency section at 7.47.

- a perceived lack of panel members and legal assessors, although we are aware that GTCS has taken steps to address this.

### **Opportunity for Improvement**

GTCS should establish a proportionate system for recording and publicly reporting key FtT performance metrics including timeliness and caseloads.

To improve the timeliness of case progression, we recommend that GTCS:

- identifies all relevant parties and requests all relevant information as soon as possible
- keeps track of what information it already holds to reduce the risk of making repeat requests that may cause unnecessary delay (and which may add to the burden the GTCS places on parties during an investigation)
- provides parties with deadlines and proactively chases parties for outstanding information
- acts on new information received on a timely basis
- promptly notifies teachers (and other relevant parties) of its decisions.

This would be facilitated by the introduction of improved case management arrangements, as discussed at 7.7.

### **Quality of investigations**

5.23 GTCS has told us that there is no provision under its Rules for it to carry out investigative work at the IC stage of its process, and it therefore makes decisions on the basis of the information provided in the referral form or attached to it. However, we did identify a small number of cases where we considered GTCS could have done more to assure itself that it was appropriate to close cases at IC, including:

- In two cases referred by another organisation, there was no evidence on file that GTCS had reviewed the outputs of employer investigations or the primary evidence those investigations had collected; it had closed the cases once the local employers had confirmed they had carried out investigations and concluded there was no evidence to support the allegations.



- In two other linked cases related to social media posts, we considered GTCS could have contacted the teacher's employer to establish the content of those posts before making the decision to close the case.
- 5.24 In nine of the 10 cases closed at OR, we concluded that GTCS had collected enough evidence to enable it to make reasonable decisions against each element of the referral. Investigation reports were clear and comprehensive, and we saw evidence of GTCS staff considering their approach and documenting their reasoning. We identified various examples of good practice in these cases.
- 5.25 We considered there were opportunities to improve the drafting of allegations in three of the five cases closed at PC. In two cases, we could not see that relevant information about previous referrals (which indicated a pattern of behaviour) had been provided to the panels. We also found that it was not always clear, from the bundles provided to the Panel, which (if any) of the allegations had been fully or partly admitted by the teacher.
- 5.26 A recurrent concern expressed by stakeholders was the length of time taken by GTCS to conclude cases including the length of time taken to complete the investigation. This is discussed further at 7.38 in the efficiency section of this report.

### **Opportunity for Improvement**

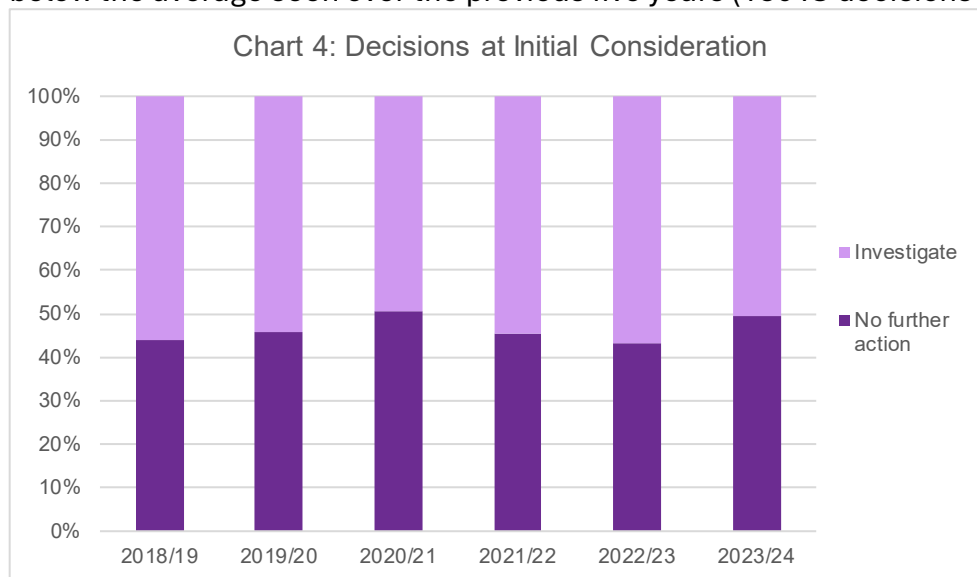
To improve the quality of decisions at initial consideration we recommend that GTCS considers its approach to requesting and reviewing primary evidence for itself to make its own assessment, where it currently relies on the judgment of others. Further to this, we recommend that GTCS also consider the inclusion of initial inquiries at IC stage, by which it could seek key information without the need to open an investigation. This would constitute a more formal process change.

**Standard: The regulator ensures that all decisions are made in accordance with its processes, are proportionate, consistent and fair, take account of the statutory objectives, the regulator's standards and the relevant case law and prioritise the public interest.**

### **Decision-making**

- 5.27 We would normally be concerned if we saw a significant increase in the proportion of cases closed with no further action at the early stages of a regulatory process; this could indicate that a regulator was seeking to reduce its caseload by closing cases inappropriately. As Chart 4 below shows, the data for

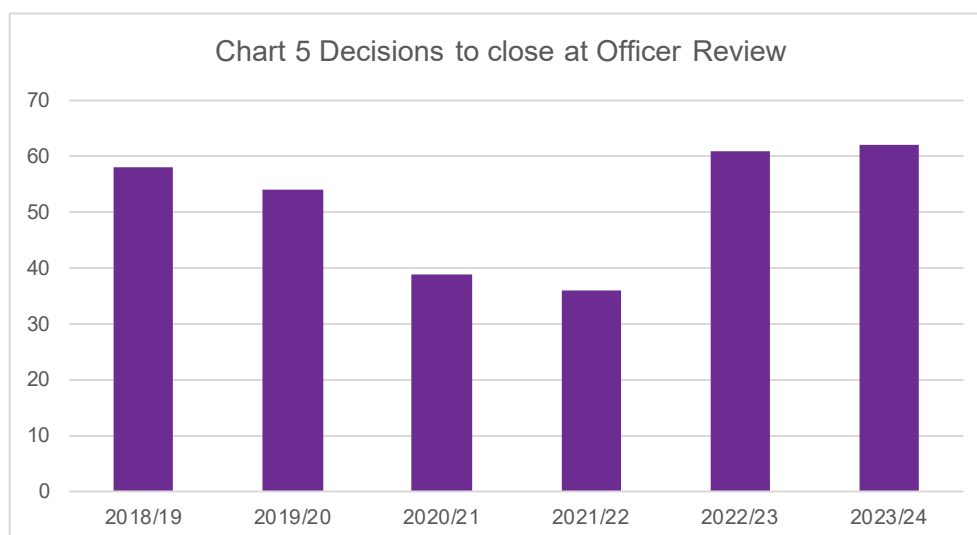
decisions made at IC has been very stable since 2018/19. In terms of the overall number of decisions, GTCS made 160 IC decisions during 2023/24, which was below the average seen over the previous five years (180 IC decisions per year).



- 5.28 We reviewed 18 cases closed at IC in our audit and found that the decisions to close were in line with GTCS' FtT Rules and Threshold Policy and were clearly explained in the decision forms.
- 5.29 As discussed at paragraph 5.11, the vast majority of referrals received from members of the public are closed at IC with no further action. During the course of our review, we discussed with GTCS how it applied FtT Rule 2.1.1(d) to close cases at IC on the basis that referrals from members of the public had been made prematurely, in that they had not been investigated by the employer.
- 5.30 In two cases we reviewed, we considered on the basis of the evidence on file that GTCS' decision to close at IC had left risks unmanaged, and it should have progressed those cases to investigation. In one case the employer referred the matter but it was not clear that they were investigating the teacher or otherwise managing risks to learners, and in the other case the anonymous referrer told GTCS why they felt unable to use the employer's disciplinary process before raising their concern with the GTCS.
- 5.31 In our review of cases closed at later stages of the FtT process, we did see cases that had progressed through the IC stage even though employers' investigations had not been exhausted. We considered those IC decisions to be reasonable in terms of the seriousness of the allegations.
- 5.32 At paragraphs 4.14-4.23 we describe some actions that GTCS could take in regard to its practice and policy in this area. At paragraphs 4.24-4.30 we further discuss actions that GTCS might additionally take to support resolution of wider contextual issues about risk management in its sector, which we think would support greater clarity in the longer term about the collective and individual responsibilities of GTCS and its stakeholders. At Table 6 in relation to Rule 2.1.1(a) and from paragraph 7.41 we describe possible amendment to the IC stage which we think would enhance this part of the process and support the

consistent and appropriate onward progression of relevant cases to the investigation stage.

- 5.33 Once it has concluded the investigation phase of the process GTCS will progress the case on for Panel Consideration, unless it decides it is suitable for closure via the OR process. As Chart 5 below shows, GTCS closed 62 cases via OR in 2023/24, which was in line with figures seen in the previous five years, except for a dip in 2020/21 and 2021/22.



- 5.34 We reviewed five of the eight cases closed at PC in 2023/24 and concluded that we agreed with three of those decisions. In two cases, both closed with no further action, we disagreed with the panel decision, on the basis of the evidence on file. We summarise our reasoning in relation to these two cases in paragraphs 5.35-5.38 below.
- 5.35 In one of these cases, the Panel took the position that because the type of incident in this case was not expressly covered in the local child protection policy the teacher had not failed to identify the incident as a child protection concern and report it as such. The Panel took a very narrow view of the policy (not every kind of incident can be covered in such a policy), ignored the policy's clear guidance that teachers should escalate if in any doubt, and gave insufficient weight to the evidence of the Regional Manager that the teacher should have reported it. This case also raises wider questions around COPAC 2.4 which is phrased very narrowly in terms of compliance with the child protection policy in place at the teacher's workplace. This relies on every workplace having a child protection policy that is fit for purpose.
- 5.36 In the other case the decision relied heavily on the Panel's assertion that the teacher was entitled to respect for their private life and to freedom of expression under Articles 8 and 10 of the ECHR. It was not clear why the Panel placed so much weight on elements of the ECHR compared to the GTCS rules and guidance it had been directed to on page 2 of the Panel Consideration Practice Statement. There was also no evidence in the decision that the Panel considered the public interest in this case.
- 5.37 There was also no evidence the Panel considered:

- the denial of allegations and lack of insight from teacher
  - that Persons A, B and C had been considered to be vulnerable when in education
  - a pattern of behaviour in which the teacher used his position as a teacher to contact the individuals concerned.
- 5.38 The Panel did not refer to the commentary contained within COPAC (at page 7) which states that teachers should ‘be mindful that professional boundaries can be perceived to extend beyond a pupil’s educational establishment leaving date; therefore, in situations of this nature, you should exercise great care and professional judgement, taking into account all the factors involved’. GTCS may wish to provide further guidance in this area.
- 5.39 In considering applications for anonymity from teachers in two PC cases, we saw no evidence that the Panels had considered public interest or public protection, and no evidence that GTCS had made a submission to the Panels regarding anonymity. In one case the Panel granted anonymity to a teacher even though their conviction was a matter of public record and had already been reported in the media.
- 5.40 We were satisfied with the decisions reached at FH in terms of public protection and public confidence, and did not have any concerns regarding the sanctions that were imposed.
- 5.41 Although we generally found the decisions to be well-reasoned, in the four cases where panels made decisions regarding impairment, it was not clear how they had used the different components of impairment (in terms of public protection and public confidence) to reach an overall decision. So that decisions can be more easily understood by members of the public, it would be helpful for panels to set out clear findings against each component.

### **Quality assurance**

- 5.42 It is important that regulators have an appropriate system of quality assurance at various levels to ensure that decisions are reasonable, that the risk of error is reduced, and that lessons are learned and good practice shared.
- 5.43 In the cases we audited we found that decisions were reviewed promptly by appropriate officers. We saw evidence that GTCS Internal Review Group met quarterly during the year, and that learning from those meetings had been shared with the FtT team as a whole and with individual officers where appropriate.
- 5.44 The GTCS Decision Process Review Group (DPRG) only met once (rather than twice) during the year due to issues with member availability.<sup>8</sup> We saw evidence of the DPRG reviewing different types of case, and GTCS taking forward actions as a result.

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<sup>8</sup> The DPRG is a subgroup of the Professional Regulatory Assurance (PRA) Committee. The PRA Committee provides assurance to the Council regarding the FtT function.

- 5.45 GTCS told us that it has not commissioned any internal audit work on its FtT function in recent years, but that it will consider this for future years. We would encourage GTCS to embed FtT in its forward programme of internal audit work; the focus can be adapted over time to address relevant risks and issues.
- 5.46 A proportion of FtT cases are handled by an external legal provider to provide resilience to the FtT function. These cases are subject to quality assurance by GTCS' regulatory solicitors. These were not included in our audit work, but we did not see any evidence of any specific concerns around these cases. See also discussion at 7.51 about use of flexible external resourcing.

**Standard: The regulator identifies and prioritises all cases which suggest a serious risk to the safety of learners and seeks interim orders where appropriate.**

#### **Risk assessments**

- 5.47 GTCS conducts a risk assessment on cases once the decision to investigate has been made and reviewed. From our review of case files, we noted that it can take several weeks from receipt of referral to that IC decision point, during which time there may be an unmanaged risk to public protection. In the absence of an initial risk assessment made at the point of receiving a referral, it is not clear how GTCS is able to effectively prioritise cases to minimise risk to the public during this period. Our findings below are made in the context of GTCS' current approach to risk assessment.
- 5.48 We reviewed the risk assessment forms completed for each of the cases in our audit and we were satisfied that, in most cases, the GTCS had identified the relevant risks and that the overall risk assessments were reasonable. However, we saw little evidence that risk assessments had been reviewed as per the GTCS process, and we saw no evidence that risk assessments were updated with new information during the course of investigations. It is important that GTCS acts on new information that suggests that its original risk assessment may need to be revised, particularly if the risk indicates that GTCS may need to apply for a Temporary Restriction Order (TRO).

- 5.49 GTCS has told us that it is planning to look at an enhanced risk assessment process and prioritisation framework in 2025 and will use the feedback we have provided during our review to inform that work.

### **Opportunity for Improvement**

To improve the way GTCS identifies and acts on risks, we recommend that it:

- introduces an initial assessment of risk at the point of receipt
- ensures that all risk assessment forms are reviewed on a timely basis
- ensures that risk assessments are promptly updated with new information
- adapts the risk assessment template so that officers document how they have reached the overall risk rating and
- reviews how its risk assessment process can help to prioritise cases

### **Temporary restriction orders (TRO)**

- 5.50 GTCS does not have the same powers to suspend registrants that the 10 health and social care regulators in the oversight of the PSA have. While the specifics vary between those regulators, these powers allow the regulators to prevent registrants from practising or to restrict their ability to practise in some way while the regulator investigates a case, or between a hearing and the sanction coming into effect. The effect of a TRO is to restrict a teacher's registration such that they may only be employed as a teacher by their existing employer and in their existing post. If the teacher is currently unemployed, they are not able to gain employment as a teacher in a Scottish school.
- 5.51 As we note elsewhere, it is not clear how effective TROs are in protecting the public. The GTCS told us that, in the majority of cases where a TRO is put in place, the teacher is or has been suspended from employment or has already been dismissed. The legislation therefore largely relies on employers to manage the risks to learners in these cases. However, the GTCS does not monitor the application of TROs and may therefore not be aware if a teacher in employment has breached their TRO. One stakeholder told us that it is aware of teachers changing jobs while subject to a TRO.
- 5.52 GTCS has reflected to us that it has been given no remit in overseeing that employers comply with their legal obligations in respect of teachers with a TRO or been given any enforcement powers against employers. It has told us that it has repeatedly raised with the Scottish Government its concern that there is a lack of effective oversight of employers in respect of these and other processes, and a lack of clarity of what actions should be taken where local processes are insufficient.
- 5.53 GTCS imposed 29 TROs in 2023/24, which is within the range of 12-30 imposed in each of the previous five years. In our audit of cases closed at PC, we saw the

GTCS apply promptly for one TRO. However, in two other cases, there was no evidence that the GTCS had sought further information (which had been flagged as relevant in the risk assessment) that would have allowed it to make a more robust decision regarding whether a TRO application was required.

- 5.54 In one case we reviewed that went to FH, the teacher was found unfit to teach and the panel determined that the teacher should be removed from the register with the period of time before which the teacher could reapply to the register being set at two years (the maximum term available). It was not clear why the panel did not impose a TRO at this point, as allowed under the FtT Rules. In the absence of a TRO, the teacher was not subject to any regulatory restriction to teach in the time between the panel reaching its decision and their removal from the register. In this particular case, that period was some 10 weeks.
- 5.55 GTCS does not record how long it takes to apply for a TRO, so we have not been able to make an assessment of its performance in terms of timeliness, or how it compares to previous years.
- 5.56 We discuss TROs further at Tables 2 and 3.

### **Opportunity for Improvement**

We would encourage GTCS to collect TRO timeliness data as part of a wider piece of work to improve its recording, monitoring and reporting of FtT timeliness data. This would be facilitated by the introduction of a CMS as discussed at 7.7.

### **Standard: All parties to a referral are supported to participate effectively in the process.**

- 5.57 It is important that regulators provide support to all parties involved in their regulatory processes. A lack of support can contribute to parties disengaging, resulting in a less effective process and consequently higher risks to the public. This consideration should apply both to a regulator's understanding of the effects of harm in the situations it is investigating, but also to the impacts of engagement with its own processes. It can be an extremely stressful experience and can have significant negative effects on the health of all involved. An approach to engagement which is appropriately informed by, for example, the causes and effects of trauma will support participants, including witnesses, to contribute the best possible evidence to the process. This in turn will contribute to the most fair, timely and efficient achievement of appropriate outcomes.
- 5.58 Our audit identified a number of opportunities for improvement in the way GTCS provides support to parties:
- In the majority of cases closed at OR and PC, we found evidence of GTCS not adhering to its policy of providing updates to teachers or their representatives every three months. In some cases, teachers or their



representatives had to chase GTCS for updates, and we saw evidence that delays to case progression and the lack of updates from GTCS had caused stress and anxiety to teachers. In two cases closed at PC, GTCS did not provide an update to the teachers involved in over a year.

- In a number of cases, we saw the teacher or their representative proactively inform GTCS of a mental health condition such as anxiety or stress and – in some cases – made it clear that the FtT process was a contributing factor. In most of those cases, we did not see any evidence of GTCS considering or acting on this information. It is important that regulators identify and act on information that may suggest a party could be vulnerable; we noted that although this issue is covered to some extent in relation to attending hearings in the FtT rules and the Witnesses and Hearsay Evidence Practice Statement, there was a lack of guidance for GTCS staff that would be relevant to the earlier stages of the FtT process.
- Much of the material contained in the outcome letters we reviewed was copied and pasted from GTCS' internal decision-making forms. We recognise that this is an efficient approach and means that the letters accurately captured the decisions. However, we found that they were not always appropriately tailored to the recipient and the tone of voice could feel somewhat impersonal. Letters included template phrasing like 'the referrer' rather than 'you', and 'the officer' rather than 'we/our'. They also included phrases such as 'minimum regulatory force' which are unlikely to be understood by most recipients.
- The outcome letters we reviewed did not provide a link to the relevant page on GTCS website which provides FAQs and signposting to a wide range of organisations for referred teachers and college lecturers.<sup>9</sup> This is a helpful resource which parties should be regularly made aware of.
- We did see some examples of good practice in terms of GTCS taking a person-centred approach and providing tailored support to those involved in the FtT process. We saw GTCS carefully considering the wellbeing of vulnerable young people in deciding whether it would be proportionate and necessary to involve them in the FtT process.

5.59 GTCS told us that it does not currently have a structured process for collecting feedback from FtT parties. It does meet regularly with teachers' unions, and we understand it plans to develop a more structured approach covering referrers, witnesses and teachers.

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<sup>9</sup> <https://www.gtcs.org.uk/fitness-to-teach/resources-for-those-involved/for-referred-teachers-and-college-lecturers>



### **Opportunity for Improvement**

To improve the support GTCS provides to FtT parties, we recommend that it:

- ensures that correspondence based on templates is tailored to the individual recipient
- provides signposting to the support available from a wide range of organisations, as set out on the GTCS website
- considers implementing a KPI for keeping other parties updated (as it already has for teachers and their representatives)
- clearly sets out the planned frequency of updates it will provide to parties and adheres to those expectations and
- provides guidance and training to staff to identify and act on the need for additional / different support to vulnerable parties – particularly when the teacher’s mental health is being affected by the FtT process.

## **6. Legislation and policy framework**

### **Introduction to this section**

- 6.1 We have reviewed the key documents that guide the Fitness to Teach framework (described below), and identified some potential areas for improvement, in terms of:
- public protection
  - public confidence
  - efficiency (cross-referred where appropriate to the advice we are providing specifically on this topic).
- 6.2 The documents that we have reviewed in this section are:
- The Public Services Reform (General Teaching Council for Scotland) Order 2011
  - The General Teaching Council for Scotland Fitness to Teach Rules 2017
  - The Fitness to Teach Threshold Policy
  - The Fitness to Teach Indicative Outcomes Guidance Practice Statement
  - The Temporary Restriction Orders Practice Statement.
- 6.3 Our analysis in this area of the review is informed primarily by:
- our knowledge of the legislative frameworks of the 10 regulators in health and care that we oversee

- our experience of critiquing professional regulator legislation through consultations, and the legislative reform programme that was being developed under previous UK Governments
  - our knowledge of relevant research evidence.
- 6.4 As far as possible we have triangulated our findings from the textual analysis with the performance review and case review elements of this commission.

### About the opportunities for improvement we identify

- 6.5 As in the other areas of the review, we have presented a range of potential improvement actions for GTCS to consider and explore. These range from relatively minor amendments to those which would require more radical change including to legislation.
- 6.6 Therefore, not all of our suggestions for improvement are mutually compatible – for example some of our suggested improvements to the legislation would require comprehensive redrafting of the rules and policies that flow from it, making some of our other suggestions relating to those documents in their current form redundant. Similarly, if Memoranda of Understanding (MoUs) and data sharing agreements were agreed between the key bodies in the sector and the individual and collective responsibilities for risk management more clearly agreed (see discussion at 4.24-4.30), some of our suggestions for strengthening GTCS’ own processes in that respect would lose some of their relevance. As with all other recommendation areas in this review, it will be for GTCS to navigate the way forward, dependent on the resources and opportunities available to it to implement changes at different levels.
- 6.7 Each suggestion describes a way of achieving a policy aim under one or several headings. There may be different ways of achieving the same policy aim in the redrafting of the different documents.
- 6.8 There are elements of legislation (mainly The Public Services Reform (General Teaching Council for Scotland) Order 2011) where we believe there may be scope through amendment to enable the regulator to become more effective and efficient in its public protection role. While we recognise of course that GTCS is not empowered to amend its own legislation, we hope that these suggestions are nonetheless helpful to GTCS should it wish to explore and discuss these possibilities further with the Scottish Government.

### Overview of legislative and policy framework

- 6.9 The framework guiding the Fitness to Teach process and decisions is made up of a hierarchy of documents flowing from the legislation.

#### **The Public Services Reform (General Teaching Council for Scotland) Order 2011**

- 6.10 Broadly speaking, this is a piece of enabling legislation containing powers and duties, including:

- Principal Aims – ‘(a) to contribute to improving the quality of teaching and learning; and (b) to maintain and improve teachers’ professional standards’ (Art 5)
  - General functions (Art 6)
  - A duty to have regard to the interests of the public (Art 7)
  - The Better Regulation duties of proportionality, accountability, transparency, consistency, and targeted regulation (Art 8)
  - Rule-making powers and duties relating to each of the functions; for fitness to teach, the rule-making powers sit under Schedule 4, paragraph 1.
- 6.11 It introduces the concept of ‘fitness to teach’: ‘An individual is “unfit to teach” for the purposes of this Order if GTCS considers that the individual’s conduct or professional competence falls significantly short of the standards expected of a registered teacher (and “fitness to teach” is to be construed accordingly)’ (Art 18(3)).

**The General Teaching Council for Scotland Fitness to Teach Rules 2017  
(made under Sched 4 of the Public Services Reform (General Teaching Council for Scotland) Order 2011)**

- 6.12 These rules set out the process to be followed relating to the handling of information received that relates to a registrant’s fitness to teach (FtT). They include:
- a general objective for the FtT rules, which is to deal with cases ‘fairly and justly’, which includes dealing with cases in ways which are proportionate, seek informality in proceedings, ensure all parties are able to participate fully, and avoid delay
  - requirements relating to Panel quoracy, decision making, and proceedings including burden and standard of proof
  - the test to be applied at Initial Consideration for conduct cases, which includes the ‘relevant conduct’ test, exclusion of cases older than five years (though that is not what the rule says), ‘frivolous or vexatious’ cases, and cases brought anonymously (where the concerns cannot be verified)
  - provisions for investigation, panel consideration (to consider onward referral to a hearing), case management, procedural and preliminary matters, temporary restrictions, consent orders, full hearings, conditional registration order reviews, and decision and disposal, including a facility for cancelling a case
  - a section on professional competence cases (out of scope of this commission).

**Other policies and guidance documents**

- 6.13 These include:

- The Fitness to Teach Threshold Policy – explains which FtT referrals GTCS will investigate. It covers, among other things: the interpretation of the ‘public interest’ clause in the Order, an explanation of impairment, a number of factors to consider, and types of concern that will not be investigated
- The Fitness to Teach Indicative Outcomes Guidance Practice Statement – provides guidance for making FtT impairment and sanction decisions (reprimand, conditions, conditions with reprimand, and removal), a bank of conditions, and a summary of the relevant case law
- The Temporary Restriction Orders Practice Statement – sets out the procedure for determining whether to impose a TRO, and how to approach the decision.

### Focus of our observations

- 6.14 Most of our suggested improvements for the legislation and policy framework relate to one of the following policy aims:
- A clearer purpose in legislation – removing any ambiguity relating to the legislative basis on which FtT decisions are made, in particular relating to the wider public interest; in our experience, where a professional regulator’s overarching duty or objective is not clear, this can have a negative impact on decision-making.
  - More effective public protection powers – more effective powers of temporary restriction, powers to suspend a registrant at a full hearing, the ability to consider health as an issue that may affect a teacher’s ability to practise safely, the ability to remove a registrant on the basis of a serious conviction. These would all enable a more targeted, effective, and proportionate approach to identified concerns.
  - Policies that work for the public – building into the framework a modern approach to dealing with vulnerable witnesses, removing obstacles to investigating cases older than five years, removal of requirement for professional majority on FtT panels.
  - More efficient, quicker processes - the ability to remove a registrant on the basis of a serious conviction, replacing panels with case examiners to make decisions about disposal of a case at the end of the investigation.
- 6.15 We have also made a small number of comments relating to clarity of drafting.

### Detailed review of legislation and policy framework

#### **The Public Services Reform (General Teaching Council for Scotland) Order 2011**

- 6.16 In this section we highlight areas of GTCS’ legislation where we believe that changes have the potential to be beneficial for public protection and public confidence. We recognise that legislative change would need to be taken

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forward by the Scottish Government and approved by the Scottish Parliament, and is therefore not within the direct control of GTCS.

- 6.17 Our observations are based on our experience, including our work on the reform of the legislation for health and care professional regulators in our oversight. We recognise that some of the changes proposed, if taken forward and implemented, would involve significant process changes and resource implications. It is for GTCS to determine which, in its legal context and operating environment, would be feasible, achievable, and most likely to add value, and would therefore merit further cost-benefit analysis.
- 6.18 In the tables below we have made comments with suggested changes for GTCS to consider, and the potential benefits. We have also noted the potential impact, and an initial view on whether this will most significantly be through effectiveness at protecting the public, increased public confidence and/or efficiency.

<b>Table 1 Commentary on the 2011 Order</b>				
<b>Ref</b>	<b>Comment</b>	<b>Suggested area for change to discuss with Government</b>	<b>Potential benefits of change</b>	<b>Potential impact &amp; category</b>
Para 5, Principal Aims	Makes no reference to public protection or public confidence, mentions only competence and standards, with a requirement to have regard to the interests of the public.	To bring into line with health and care regulators by referring to GTCS' role in protecting the public and maintaining public confidence.	Would provide a clear and unambiguous basis for GTCS to take action where the public is at risk, or where there may be wider public interest concerns; consistency with other regulators would enable easier application of the body of case law which is relevant to the FtT function, which GTCS is in any case having to have regard to.	High  More effective at protecting the public  Increased public confidence
Sched 4, 1(2)(a)	Options for action by a panel at a hearing do not include suspension. Without this, panels are restricted in their options for action, where the misconduct is serious enough to require a restrictive public protection and public interest sanction but not serious enough to warrant removal.	To include suspension as an option for panels at FtT hearings.	To give panels a wider range of options that would allow for the imposition of the appropriate proportionate sanction in every case.	High  More effective at protecting the public
18(3), definition of 'unfit to teach'	The definition of 'unfit to teach' appears to prevent GTCS from investigating health concerns. This is anomalous when compared to the approach taken in health and care and may create a risk to the public; it may also result in stigmatisation of	To amend the definition of 'unfit to teach' so as to make clear that health concerns can be investigated, provided a link can be made to risk to the public. This could be by including health as an explicit ground for impairment, or	To allow GTCS to take action where health concerns give rise to a risk to the public in a way that is compliant with equalities legislation and enables compassionate handling of case involving health concerns.	High  More effective at protecting the public

Table 1 Commentary on the 2011 Order				
Ref	Comment	Suggested area for change to discuss with Government	Potential benefits of change	Potential impact & category
	health issues, where they have to be pursued as lack of competence or misconduct. Health issues can affect a person's ability to practise safely, as well as their behaviour, for example when linked to alcohol or substance abuse. While the health condition itself should not be used as a reason for regulatory action, if it is shown to create a risk to the public in the professional context, we would usually expect that a regulator would be able to take action.	by broadening 'competence' to 'ability to practise to a sufficient standard'. <sup>10</sup> In addition, if this were to be taken forward, the GTCS would need the power to require a health assessment for the purposes of ascertaining fitness to teach (rather than just adjustments to the hearings process, which is the sole focus of the existing practice statement) in the FtT process. Neither of these options would require the GTCS having to assess applicants' health at registration – a self- declaration of fitness to teach by the registrant should suffice. <sup>11</sup>		

<sup>10</sup> This latter option would be similar to what is in the blueprint legislation for health professional regulators, and is currently untested. The PSA has some concerns about how removal of the specific health ground will work in practice, but to have a broader ground to encompass competence, health (where this doesn't fall under 'conduct') and anything else affecting a registrant's ability to practise to a sufficient standard would nonetheless, in our opinion, improve GTCS' ability to protect the public.

<sup>11</sup> This approach is standard among the regulators we oversee. The self-declaration would include a requirement to declare any health conditions that affect the person's ability to practise, and be accompanied by guidance explaining what this means.

<b>Table 1 Commentary on the 2011 Order</b>				
<b>Ref</b>	<b>Comment</b>	<b>Suggested area for change to discuss with Government</b>	<b>Potential benefits of change</b>	<b>Potential impact &amp; category</b>
n/a	No facility to remove a registrant automatically on the basis of a serious criminal conviction.	To include in the Order a facility for automatic removal on the basis of a list of specified criminal convictions. This facility is part of the blueprint legislation for the health professional regulators.	To avoid having to go through all stages of FtP proceedings in such cases, and so speeding up the process and saving resources.	High  More efficient  More effective at protecting the public

*The Requirements for Teachers (Scotland) Regulations 2005/355 (Scottish SI) Reg 4 re: Temporary Restriction Orders, The Registration of Independent Schools (Prescribed Person) (Scotland) Regulations 2017*

<b>Table 2 Commentary on the TRO legislation</b>				
<b>Ref</b>	<b>Comment</b>	<b>Suggested area of change for consideration</b>	<b>Potential benefits of change</b>	<b>Potential impact and category</b>
Reg 4 (2), 2005/355 (Scottish SI); Reg 1(2) 2017/259 (Scottish SI)	<p>These pieces of legislation define restriction of registration as follows: for the duration of a teacher's registration being marked as restricted, the teacher may only be employed as a teacher– “(a) by his or her existing employer, and (b) in his or her existing teaching post.”</p> <p>This has the effect that Temporary Restriction Orders (TRO) do not enable GTCS to restrict the registration</p>	<p>To consider options for amending legislation and policy framework to:</p> <ul style="list-style-type: none"> <li>- allow for full (temporary) suspension from practice where a serious immediate</li> </ul>	To enable GTCS to protect the public effectively in a timely way, where a serious immediate risk is identified.	High  More effective at protecting the public



<b>Table 2 Commentary on the TRO legislation</b>				
<b>Ref</b>	<b>Comment</b>	<b>Suggested area of change for consideration</b>	<b>Potential benefits of change</b>	<b>Potential impact and category</b>
	<p>of a teacher through suspension from practice or conditions, other than by requiring that they remain in the same post for the duration. This provides very limited, if any, protection for the public.</p> <p>In addition, and perhaps as a consequence, the identification and imposition of conditions on employment appear to be the responsibility of the employer – we would expect this to be the responsibility of the regulator, not the employer.</p>	<p>risk to the public has been identified</p> <ul style="list-style-type: none"> <li>- enable GTCS to identify and impose temporary conditions.</li> </ul>		

### *Temporary Restriction Orders Practice Statement*

<b>Table 3 Commentary on the TRO Practice Statement</b>				
<b>Ref</b>	<b>Comment</b>	<b>Suggested change for consideration</b>	<b>Potential benefits of change</b>	<b>Potential impact and category</b>
n/a	There is no facility for review of a TRO, at set intervals.	To consider complementing the existing facility for GTCS and registrant to prompt a review at any point, by amending the policy so that TROs are additionally reviewed at set intervals (typically every six months), as per the normal practice with health and care regulators.	<p>To ensure the ongoing appropriateness of a TRO being in place, specifically:</p> <ul style="list-style-type: none"> <li>• that ongoing restrictions on a registrant's practice are still proportionate and justified, and</li> <li>• that there is review of any changes in the nature or scale of the risks that suggest additional safeguards are needed.</li> </ul>	<p>High</p> <p>More effective at protecting the public</p>

*The General Teaching Council for Scotland Fitness to Teach Rules 2017*

<b>Table 4 Commentary on the Rules</b>				
<b>Ref</b>	<b>Comment</b>	<b>Suggested change for consideration</b>	<b>Potential benefit of change</b>	<b>Potential impact and category</b>
Rule 1.3.7. & 1.3.8., General Objective	The duty to 'seek informality and flexibility in proceedings' sets unclear expectations for the operationalisation of the rules, and it does not appear from reviewing the other documents that this duty is in fact being applied.	Remove 1.3.8.(b) 'seek informality and flexibility in proceedings'.	We support the intention, but enshrining informality and flexibility through specific process requirements in the rules themselves, or in the guidance that sits beneath it, is likely to be more effective than imposing a general duty, and will support greater consistency of application.	Medium  More efficient
Rule 1.4.1., Panel Quorum	The Rules stipulate a registrant majority.	To remove requirement for a registrant majority, and replace with requirement for a minimum of one registrant and one lay person.	This change would bring GTCS in line with most of the UK health and care professional regulators, who moved away from a requirement for registrant majorities for fitness to practise panels as part of the move away from professional self-	Medium  More effective at protecting the public

Table 4 Commentary on the Rules				
Ref	Comment	Suggested change for consideration	Potential benefit of change	Potential impact and category
			regulation, following <a href="#">Bristol</a> and <a href="#">Shipman</a> .	
Rule 1.7.29, Vulnerable Witnesses	The provisions and terminology relating to vulnerable witnesses are too prescriptive and do not reflect current thinking or practice for obtaining best evidence.	Retain 1.7.29 (a) and (b) iii; replace the rest of this Rule with drafting that gives full discretion to panels <i>and case managers</i> to treat a witness as vulnerable, unless the person objects; remove outdated references to ‘mental disorder’, ‘impairment of intelligence and/or social functioning’.	To move to a more compassionate approach that recognises the often situational nature of vulnerability, in order to support them to give best evidence, while taking a compassionate approach that seeks to avoid compounding trauma.	Medium  More effective at protecting the public
Rule 2.1.1(a), Initial Consideration, and 1.2.1. Interpretation of ‘Relevant Conduct’	According to the case law, there must be a clear differentiation between the thresholds applied at the different stages of any fitness to practise process, going from low to high – there is a risk of legal challenge where this is not the case. But in the FtT Rules, the first sifting point following receipt of a referral requires GTCS to assess the real prospect of a panel finding impairment, a test that is repeated also at the Panel consideration stage, by virtue of the definition of ‘relevant conduct’. The combination of this	To clarify the threshold applied at IC, to ensure that there is a clear escalation of thresholds between IC and Panel stages, and to make this clear to all stakeholders.  Ideally giving the tests different names, and to use ‘real prospect test’ for the decision post-investigation once sufficient evidence has been gathered to make a decision	To increase the likelihood that decisions made at IC are neither closing cases that should be investigated or referring for investigation cases that should be closed.	High  More effective at protecting the public  More efficient

<b>Table 4 Commentary on the Rules</b>				
<b>Ref</b>	<b>Comment</b>	<b>Suggested change for consideration</b>	<b>Potential benefit of change</b>	<b>Potential impact and category</b>
	drafting, and the Threshold and Panel guidance do not, in our view, explain with sufficient clarity how the two thresholds should differ. Clarity is essential for referrers, teachers, and staff. Also, if the threshold is too high at IC – as might be inferred from the use of the term ‘real prospect test’ – there is a risk of these decisions being made on the basis of insufficient evidence. This could result both in cases that should be pursued being closed, and in cases that should be closed being pursued.	about the prospect of finding impairment.		
2.1.1(a), Initial Consideration	Linked to the previous comment, there does not seem to be the ability to conduct initial enquiries before making an IC decision. This could result in decisions to pursue a case that should be closed and vice versa.	To consider options for amending rules or other parts of the framework to allow initial enquiries to be made in order to make better informed decisions about whether to close a case or proceed to an investigation	To ensure that decisions are made to close and to pursue cases on the basis of adequate information.	High  More effective at protecting the public  More efficient
2.1.1.(b), Initial Consideration, five-year rule	It is the <a href="#">policy</a> of all four UK Governments that the five-year rule – the presumption that a concern where the events took place more than five years prior to referral should not be investigated unless it is in the public	To remove 2.1.1.(b), as is now proposed in UK health and care regulation; GTCS would retain the ability not to take a case forward if there was insufficient evidence, as it does in all cases.	To give GTCS full discretion over cases it takes forward based on risk to the public	High  More effective at protecting the public

Table 4 Commentary on the Rules				
Ref	Comment	Suggested change for consideration	Potential benefit of change	Potential impact and category
	<p>interest to do so – should no longer apply in health and care professional regulation, and that there should be no time limit. Arbitrary time limits on making a referral to a regulator can lead to unjust decisions not to proceed, and run counter to a trauma-informed approach that acknowledges that it can take time, sometimes years, for someone to be in a position to make a referral. We recognise that the passage of time has an impact on processes of this type, and on how cases can be progressed, and that GTCS can currently progress a case if it is in the public interest to do so. However, we do not think that an arbitrary time limit for bringing a referral is appropriate. See also discussion at 7.21.</p> <p><i>N.B. There appears to be a mistake in the drafting of this rule – it refers to ‘events that occurred 5 years or more before the date of the most recent event referred to’; we presume the intention is to allow closure of cases where the events occurred five years or</i></p>			

Table 4 Commentary on the Rules				
Ref	Comment	Suggested change for consideration	Potential benefit of change	Potential impact and category
	<i>more before the date of referral to the GTCS.</i>			
2.1.1.(d), Initial Consideration, 'frivolous or vexatious'	These terms are not defined in the legislation or the rules, and their meaning in this context is not clear without further definition. See also the suggestions for the Threshold Policy below at Table 5.	To define 'frivolous or vexatious' in the Rules.	If these criteria are to be used, it would be transparent to define them in the Rules.	Medium  More effective at protecting the public
n/a	Panel membership – there is no requirement to have different decision-makers post-investigation and at a full hearing. This would ensure demonstrable separation and independence of decision-making at the different stages.	To specify in rules that the panel for a hearing must not include any panel members who have previously considered the case – to note that we recommend consideration that panels be replaced by case examiners for consideration of a case at the end of the investigation.	To improve the quality of decision-making.	Medium  More effective at protecting the public  Increased public confidence
2.7.1(b), Consent Orders	Consent orders – the requirement for the registrant to accept all allegations may result in consent orders being turned down on the basis of a factual disagreement over a non-material detail.	To amend Rules to ' <i>admits all material allegations</i> ' or words to this effect, accompanied by guidance to explain what this means.	To enable cases to be concluded by consent order where there is a dispute over minor facts that are immaterial to the concerns.	Medium  More efficient

<b>Table 4 Commentary on the Rules</b>				
<b>Ref</b>	<b>Comment</b>	<b>Suggested change for consideration</b>	<b>Potential benefit of change</b>	<b>Potential impact and category</b>
2.10.6 Time before allowed to apply to return to the register	Following removal under the FtT process, a former registrant may reapply as soon as a period of time to be specified as part of the removal decision, and not exceeding two years, has elapsed. Two years is shorter than we see in the regulators we oversee, who typically have a five-year restriction. Ideally, removal would be reserved for only the most serious cases where the likelihood of the registrant becoming fit to teach again within two years should be slim. There is also a risk that this short timeframe erodes the perception of seriousness that a removal should carry, and that this has a negative impact on the sanction's capacity for maintaining public confidence and upholding professional standards. We note however that this provision may be drafted in this way to compensate for the lack of a power to suspend – with shorter timeframes being available (before an application for re-registration is permitted) for cases that	To increase the maximum timeframe before which a registrant can apply for readmission following FtT removal to five years – noting that if GTCS were to obtain a power of suspension (as recommended above) we would recommend that the minimum is fixed at five years.	To give FtT decision-makers access to a sanction that is proportionate to the most serious misconduct, on a par with other professions.	High  More effective at protecting the public  Increased public confidence

<b>Table 4 Commentary on the Rules</b>				
<b>Ref</b>	<b>Comment</b>	<b>Suggested change for consideration</b>	<b>Potential benefit of change</b>	<b>Potential impact and category</b>
	might otherwise be dealt with by means of a suspension.			
n/a	There is no provision for voluntary removal – however consent orders include removal as an option. If 2.7.1(b) were amended as suggested above, this could be an adequate alternative.	n/a	n/a	n/a
2.3, Panel Consideration	Use of panels to determine next steps at the end of the investigation – this is a resource-intensive approach, that health professional regulators have been moving away from.	To consider replacing panels with case examiners who consider cases in pairs, on the papers, and not at a meeting. See also 7.44.	To make the process shorter, enabling quicker decisions which should benefit all parties, and public protection	High  More efficient  More effective at protecting the public

*The General Teaching Council for Scotland Fitness to Teach Threshold Policy (July 2023)*

<b>Table 5 Commentary on the Threshold Policy</b>				
<b>Ref</b>	<b>Comment</b>	<b>Suggested change for consideration</b>	<b>Potential benefits of change</b>	<b>Potential impact</b>
Key principles, p1	The definition of the public interest, while a welcome addition, should ideally feature in the primary legislation. As set out above at Table 1 re: Para 5, we think this is what the <i>Principal Aims</i> should cover.	See above, Table 1 re: Para 5- suggested change to <i>The Public Services Reform (General Teaching Council for Scotland) Order 2011</i> .	See above, Table 1 re: Para 5.	-



<b>Table 5 Commentary on the Threshold Policy</b>				
<b>Ref</b>	<b>Comment</b>	<b>Suggested change for consideration</b>	<b>Potential benefits of change</b>	<b>Potential impact</b>
Degree of harm or risk of harm to learners or young people, p3	The document states that ‘there must [...] be an ongoing risk of harm’. However elsewhere it is stated that FtT action can also be taken in the wider public interest to maintain confidence or uphold standards. It is legitimate for FtT action to be taken solely in the wider public interest to maintain confidence or uphold standards, and this should be clear to decision-makers.	To amend the guidance to make clear that FtT action can be taken solely in the wider public interest to maintain confidence or uphold standards. When reviewing guidance documents, seek to ensure that there is clarity and consistency on key definitions and concepts throughout. See also discussion in efficiency section at 7.34.	Greater clarity for decision-makers, registrants, and anyone making or considering making a referral.	Medium  More effective at protecting the public  Increased public confidence  More efficient
Behaviours not likely to raise a concern, p4	The document lists behaviours ‘not likely to raise a concern’. The wording implies that there may be situations in which these behaviours do raise a concern but then goes on to prohibit their investigation. (‘The following provides a non-exhaustive list of the behaviours that are not likely to raise a concern about a teacher’s fitness to teach and we will not investigate them’)	To amend the guidance to clarify that concerns involving these behaviours may be investigated and that this is matter of case-by-case discretion. For example, replace the phrase ‘we will not investigate them’ with ‘We are unlikely to investigate these situations unless, for example, they involve ongoing harm to a learner, and/or suggest that regulatory action may need to be taken to maintain public confidence or uphold professional standards’.	To enable the investigation of all relevant cases.	High  More effective at protecting the public  More efficient

<b>Table 5 Commentary on the Threshold Policy</b>				
<b>Ref</b>	<b>Comment</b>	<b>Suggested change for consideration</b>	<b>Potential benefits of change</b>	<b>Potential impact</b>
Definition of 'frivolous or vexatious', p5	The definition of 'frivolous' includes cases which are referred 'prematurely', ie before they have been considered at a local level, and/or by the policy. This is not how the term 'frivolous' would generally be understood, and it is not clear that this is what was intended in the rules.	See discussion above in relation to potential for clarification in Rules, and at 4.11 onwards.	To enable the investigation of any and all cases that raise questions about a teacher's conduct or competence; to improve transparency; to help clarify responsibilities for risk management in the sector	High  More effective at protecting the public  More efficient
General	The document is inconsistent in how it presents the concept of impairment of fitness to teach, insofar as it relates to competence. While it is presented as a FtT threshold policy, it does not set out the thresholds to be applied to cases relating to competence. Despite referring to both competence and conduct as being relevant to FtT in several places, it goes on to refer to FtT as being only linked only to conduct (see the first sentence under section 4, p2).	To clarify the extent to which the policy relates to conduct and competence. We recognise that competence is outside the scope of this commission, but it is important for transparency to be clear about what applies to conduct and what applies to competence.	Greater clarity for decision-makers, registrants, and anyone making or considering making a referral.	Medium  More effective at protecting the public  Increased public confidence

*General Teaching Council for Scotland Fitness to Teach Indicative Outcomes Guidance Practice Statement (May 2018)*

<b>Table 6 Commentary on the Indicative Outcomes Guidance Practice Statement</b>				
<b>Ref</b>	<b>Comment</b>	<b>Suggested change for consideration</b>	<b>Potential benefits of change</b>	<b>Potential impact</b>
General	There is insufficient emphasis on the importance of a teacher demonstrating insight into their actions. While insight is mentioned on four occasions in the document, there is no clear statement about what might constitute a demonstration of insight, and the centrality of insight to understanding the risk that the registrant may pose in the future. There is mention of it in relation to whether the registrant has admitted the allegations, that draw too close a link between admissions and insight, bearing in mind insight can be demonstrated in the absence of admissions.	Expand on guidance relating to insight in this document; explain that admissions are not necessary for a registrant to demonstrate insight.	Improved FtT decision-making based on a clearer understanding that insight can form a key part of any assessment of impairment, as well as being relevant to aggravating/mitigating factors when deciding on a sanction.	Medium  More effective at protecting the public

*Comment spanning several parts of the framework*

<b>Table 7 General comment</b>				
<b>Ref</b>	<b>Comment</b>	<b>Suggested change for consideration</b>	<b>Potential benefits of change</b>	<b>Potential impact</b>
General	The explanation of key concepts in the process lack clarity, consistency and overall coherence.	Review the full suite of documents that guide the initial consideration, panel consideration and hearing decisions to ensure that there are through lines from receipt to conclusion, based on a clear and consistent expression of the meaning of impairment. See discussion under efficiency for further detail of this at 7.34, in relation to the explanation of impairment in the Threshold Policy.	Improved FtT decision-making based on a clearer understanding.	High  More effective at protecting the public  Increased public confidence

## 7. Efficiency

### Introduction to this section

- 7.1 As part of this review we have looked at various aspects of the efficiency of the Fitness to Teach (conduct) process. In assessing efficiency in the agreed areas listed below, we have considered such matters as:
- Are there ways in which we think GTCS could reduce work that does not add value or enhance the fulfilment of its statutory responsibilities?
  - Are there ways in which GTCS could improve the support to those involved in running the process, and making decisions within it, so as to free capacity to enable, for example, reduced throughput time or lower costs?
  - Are there ways in which GTCS could explain and guide those potentially referring cases to the process, in order to (i) maximise the likelihood that appropriate matters will be referred and (ii) reduce inappropriate referrals?
  - Are there ways in which GTCS could deploy capacity more effectively to, for example, reduce overall throughput time or lower costs?
  - Are there ways in which the FtT process could be redesigned to achieve GTCS' statutory duties more quickly, at lower cost and/or with reduced throughput times?
- 7.2 We have not assessed every aspect of the Fitness to Teach (conduct) process in this way, and we have not examined every aspect of efficiency in each of the areas agreed with GTCS as below. Instead, we have provided a range of observations which we think offer helpful and constructive suggestions for improvement in these areas within the time that has been contracted to conduct this review. We have tried, as in other areas, to make a range of suggestions, from those which would be resource intensive in themselves but with the biggest potential returns (such as a CMS), to more modest improvement suggestions that would nevertheless yield benefits and add value.

### Agreed areas of focus

- 7.3 The areas that we agreed with GTCS to focus on are as follows, together with an outline of how we have addressed them. More detailed discussion on each area is then provided.

Aspect of process	What we have reviewed
Case management arrangements	Review of different systems involved in the management of cases.
Decision-making support & process guidance and direction	Review of practice guidance statements and process documentation.

Profile of cases closed at first stage (ie inappropriate referrals)	Review of guidance provided on website in regard to the FtT process, purpose and how to refer to it. Performance review findings in relation to cases closed at this stage.
General operational/process design	Consideration of overall FtT process design, in particular in light of reform of UK health and care professional regulators. We have made two recommendations for process redesign for consideration within the legislation section of this review, as referenced above.
Other issues highlighted in the Fitness to Teach Insight Report 2018-2023 – in particular, information sharing with other organisations	We have considered information sharing within the context of our recommendation for discussions with stakeholders as described below. Other issues highlighted in the Insight Report would potentially be beneficially impacted by recommendations we make below, including: managing increases in referral and spikes in referrals; caseload growth; variability in the investigative practices of employers; clarity of purpose of FtT; participation difficulties eg arising from school holidays and closure periods.

- 7.4 We have not looked at costs or cost-effectiveness, but our recommendations would of course have cost /resource implications if taken forward – either through the need to source funds for larger scale developments, or the allocation of resource for lower cost improvement tasks, or the potential for cost savings through more efficient working. We have not, as part of this commission, been asked to provide cost-benefit analysis or impact assessment of any particular proposal or suggestion. This would be a matter for GTCS to take forward, dependent on which elements of these recommendations it would wish to, and be able to, pursue.
- 7.5 Other aspects of efficiency we agreed with GTCS we would not cover are subsidiarity of decision-making and staff skills/roles. We do comment tangentially on one aspect of role design as it was raised in stakeholder feedback and relates to potential benefits to a case management system as discussed below. We agreed that we would comment on some other issues only in so far as they might arise in the performance review against the standards and the case file audit that was part of that: factors affecting case progression, rework, effective operation of thresholds, clarity of roles, and adjournments; and some of the discussion here and in other sections does go to those points.

## Summary of our suggested areas for improvement

The following table summarises the areas of our recommendations. Each is then discussed in more detail.

Suggested area for improvement	Why?
Continue discussions towards the introduction of a case management system.	Several existing systems are operating in parallel for the management of cases. Consolidation into a single CMS would have numerous benefits
Review the structure and accessibility of practice statements and other process guidance, and the potential benefits of consolidation into a single process manual.	These documents are currently numerous and separate, and individually too complex. Consolidation into a single guide together with improvements as below would allow for staff and decision makers and others to understand and apply the guidance more quickly and consistently. This would also be likely to facilitate work to establish a CMS
Review the guidance provided at the front end of the process, to ensure that key concepts and categories are clear and accessible.	We think that the explanation of the front end of the process could be made clearer, enabling people more quickly and easily to understand whether they should make a referral, and how the process will then work. This has the potential to increase the proportion of referrals that are appropriate for investigation.
Evaluate potential benefits to the timeliness of case progression and conclusion, and cost savings, of (i) introduction of initial inquiries prior to opening an investigation and (ii) removal of the panel consideration stage, replaced with officer decision-making (case examiners).	Cases that go to investigation and beyond are taking too long. These are two process design changes that could be implemented to reduce end to end time. NB: these potential changes are also described at Table 4 in relation to Rules 2.1.1(a) and 2.3 within the legislation part of this review and discussed further only briefly in this section.
Review the tone and content of the practice guidance statements and other process guidance, to consider accessibility, clarity and format.	There are a number of ways in which the language and structure of these documents does not enable efficient understanding and application. Review, together with the recommendations above, could greatly contribute to improving the transparency of the process.

## Case management arrangements

- 7.6 We reviewed current provisions for case management including:
- Case tracking spreadsheet
  - The Kanban Board, including attending one of the staff team's weekly Kanban meetings
  - Data dashboard spreadsheet samples.
- 7.7 Behind these arrangements are a detailed flowchart with 162 junctures and over a hundred documents setting out the detail of different points in the process. For example, practice guidance statements are individual word documents which are published on the website and describe specific considerations at various points of the process or provide advice on issues that apply throughout the process.
- 7.8 We found these arrangements to be capable of fulfilling basic requirements for performance reporting and resource deployment. For example, the Kanban board system provides a visual way to present the progress of cases and to identify upcoming deadlines, and to prioritise work. However we do not believe that they are optimally efficient. Parallel systems designed to support the same process will inevitably absorb resources just to make them work together. The Kanban Board system is undoubtedly motivating for staff with the routine pattern of weekly meetings to oversee progress in cases. However, there is a potential risk that this system over-emphasises directing resource to those cases where a deadline is close, rather than directing resources optimally to progress the whole caseload. There is a range of manual activities happening in parallel which again, makes efficient working throughout the system more difficult to achieve.
- 7.9 There would be a number of potential benefits from the introduction of a single case management system which would include:
- Greatly eased navigation of the complexities of the process by those running and overseeing it, and therefore making compliance easier and reducing the potential for error.
  - The facility to more easily generate performance data and reports, as per our opportunities for improvement identified above following paragraph 5.22.
  - The facility to more easily record, analyse, understand and explain key information about the process, for example, on the representation within it of people with particular protected characteristics.
  - The facility to better support quality assurance activity.
  - The reduced work for staff currently operating parallel systems, which may also alleviate issues as mentioned at 5.22 and discussed below at 7.46, in relation to staff both managing investigations and supporting full hearings.
  - More straightforward temporary handover arrangements between staff working on a case to more easily cover absences, reducing 'down time' in cases.

- Easier and more straightforward onboarding of new staff members, including temporary staff, by creating a less steep learning curve.
  - Consequently, a positive impact on the capacity of staff, and benefits to timeliness in case progression and staff morale.
- 7.10 We recognise that the development of a CMS would be significant investment of time and money. However, we believe that the longer term benefits are such that this would be likely to have a significant positive impact on the efficiency of the process. We understand that the development of a CMS is an objective of GTCS' Digital Skills and Applications project for initiation from 2026, and strongly recommend that this continues to be pursued.

### **Decision-making support and process guidance and direction**

- 7.11 One of the key factors towards the efficiency of a process is that all participants have a shared understanding of it, know what their contribution will be at different points and stages, when these points and stages occur and in what sequence, how decisions will be made, and what the potential outcomes will be. We believe that the kinds of change that we discuss below have the potential to make a significant contribution to this dimension of efficiency.
- 7.12 We have reviewed the practice guidance statements and the threshold policy in particular to assess whether they present an accessible, transparent and consistent way to guide people through the process and therefore support the achievement of efficiency in this way.
- 7.13 We discuss the practice guidance statements below. We discuss the threshold policy at 7.34 as we believe that this is most helpfully joined with issues relating to the presentation of the first stage of the process.

### **Practice guidance statements**

- 7.14 These documents provide very comprehensive and detailed advice at the critical decision points of the process and provide advice on issues that apply throughout the process. However, there are numerous separate documents which have various formatting, stylistic and structural inconsistencies such that they may not be conducive to optimally efficient working. They represent a substantial body of knowledge which would add greater value if it could be more easily accessed and navigated.
- 7.15 This being the case we recommend that GTCS considers the creation of a fully integrated process manual bringing together all of this material. This could be set up with internal cross-referencing and linking, incorporating and supported by the existing process flowchart and other guidance documents, and integrated with a CMS.
- 7.16 We would also very strongly recommend however that GTCS looks to review how the guidance is written, with a view to presenting this information in a way which is more readily understood and in Plain English. We have closely reviewed the practice guidance statements in particular and found the content is written,



formatted and presented in a way which is unnecessarily complex to read and understand. We explain this further below.

- 7.17 We welcome the fact that GTCS publishes these documents online and therefore promotes transparency and understanding to all interested parties of how decisions will be made at the different points of the process. However, the fact that they are publicly available documents also strengthens the case for GTCS producing them in a more accessible way, and by doing so removing all unnecessary barriers to them being readily understood by a wide potential readership.
- 7.18 We have set out below the key ways in which we think the documents could be written more accessibly. We advise that when these documents are reviewed, particular attention is given to:
- deciding a consistent format that will apply to all
  - avoiding generic content that can apply to all practice statements, focussing instead on the particular situation or issue at hand
  - using Plain English and avoiding unnecessarily complex or formal language
  - using shorter, simpler sentences that focus on required actions and decisions
  - using diagrams and flowcharts, setting out the different steps to be taken
  - making all language and content sensitive to the needs of vulnerable people
  - providing links directly to other documents that are referred to
  - making onward tasks or decisions that may be required as easy as possible.
- 7.19 The simplification of the range of documentation supporting the FtT (conduct) process would be likely to facilitate the development and introduction of a CMS.

## **Issues relating to the initial stage of the process**

### **The Five-year rule**

- 7.20 We have commented on the five-year rule in the legislation section of this review. This is also a matter of efficiency, as we believe that a five-year rule is a potential deterrent to the referral of matters which should be brought to a regulator; efficiency in this context includes getting the right matters to the regulator as soon as possible, with as few barriers as possible. We recognise that the passage of time has an impact on processes of this type, and on how cases can be progressed, and that GTCS can currently progress a case if it is in the public interest to do so. However, we do not think that an arbitrary time limit for bringing a referral is appropriate.
- 7.21 It can take a long time for the truth of complex situations to come fully to light, and for the responsibilities of those involved to become clear. In cases involving traumatic harm it can take many years before the nature of that harm, and even the fact that harm has occurred, to be fully understood and recognised, and for

people whose trust has been damaged to be able to engage with processes and organisations.

- 7.22 We note that GTCS has provision to apply the five-year rule at later points in the process than initial consideration, which we note as unusual. A five-year rule usually only applies at the point of receipt. The inclusion of the rule at later stages allows GTCS to close cases on the basis (in part) of elapsed time since receipt, which of itself should not usually be a factor in decision-making on how a case is concluded.
- 7.23 The previous point notwithstanding, we also note that the rule as currently worded by GTCS does not make sense. We do not understand the wording ‘It relates to events that occurred five years or more before the date of the most recent event (or events) referred to’. A five-year rule usually relates to five years or more having elapsed between the most recent events and the point of referral.
- 7.24 As we note at Table 4 in relation to Rule Paragraph 2.1.1(b), it is now the policy of the UK Government, that the five-year rule should not apply in health and care professional regulation. We recommend that GTCS reviews its use of this rule, and that it gives serious consideration to removing it.

### **Appropriateness of referrals**

- 7.25 A key efficiency in professional regulation is to get concerns to the right place as soon as possible – be that the regulator or elsewhere. This minimises the potential harm from unmanaged risk and enables resolution and effective management of that risk to be achieved with the minimum of unnecessary delay. It reduces resource use on processes triaging matters that would be better dealt with elsewhere. Regulators and their stakeholders should work collaboratively to help people with concerns to inform the most appropriate organisation as quickly and easily as possible. As we recognised at paragraph 4.2 however, it is an ongoing challenge for regulators to strike the right balance at these points in the process, given the competing risks which they are navigating.
- 7.26 Having reviewed the cases closed at the initial stage in our case file audit, and the information provided for potential referrers on GTCS’ website, we think that there are ways in which the explanations provided could be improved with relatively minimal work. This would have the potential to reduce the number of referrals that are closed as irrelevant, frivolous or vexatious at the initial consideration stage (including those which have been referred too soon as per the threshold policy), which is a large proportion of those received at the initial stage that have come from members of the public.
- 7.27 This we recognise is from a good starting point, as we have seen through our performance review that ‘GTCS provides clear guidance on its website regarding how referrals can be made, with separate guidance tailored to employers / former employers and members of the public’. The comments that follow focus instead on how the reader is guided on whether to refer, looking in particular at the website page ‘What is Fitness to Teach?’<sup>12</sup>, as this would often be the first

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<sup>12</sup> [Fitness to Teach](#)

port of call for those coming to the website looking for guidance on when to refer.

### **Detailed comments on ‘What is Fitness to Teach?’**

- 7.28 The video provides a straightforwardly expressed overview of the process from end to end. However the surrounding text and information could be made clearer, with a view to providing more focused and accessible guidance to someone coming here to work out if the matter that is concerning them should be referred. At present, the surrounding text combines wider contextual information, principles which guide the Fitness to Teach process, partial explanations of the process and the purpose of the process, and information about other GTCS functions. We think this would be more effective guidance if written in a more user-friendly and practical way. So for example, the page might benefit from a clear opening statement of what the Fitness to Teach process is for.
- 7.29 We would suggest that the wider contextual information provided in the four opening paragraphs would better used elsewhere, for example on the About Us page. This information combines elements of Standards, Fitness to Teach, and Registration which may distract or confuse the reader concerned with whether to refer a potential FtT matter.
- 7.30 We would suggest that the explanation of the abstract concept of fitness to teach, as opposed to the Fitness to Teach process, might be better explained elsewhere. Attempting at this point to distinguish between the process and the abstract concept is probably too complex and distracting. We suggest that the content under the heading ‘Being fit to teach’ may also be confusing and suggest that this content is used elsewhere. Here, we would suggest instead a Plain English explanation of:
- what the process does and does not look at
  - the difference between conduct and competence, with examples of both
  - the stages of the process, supported by a simple flowchart (for example, as given at Figure 1)
  - how to make a referral to the process linking to the relevant page
  - and that then, there is a link through to the content provided on the page ‘Fitness to Teach: the process’, with further information on the different stages and decision points.
- 7.31 We suggest that there should also be information provided here on the other bodies involved in protection and safeguarding, and some guidance on their role, to support people to take their concern to the right place the first time.
- 7.32 We suggest that the content under the heading ‘Fitness to Teach investigations’ is not helpful here, as it combines partial explanation of the process, statements of the wider purpose of the process, principles that govern the process, and a reference to how it relates to other bodies. Therefore it does not logically follow from the title ‘Fitness to Teach investigations’. This is particularly important if

this is the first information that a reader with a concern is looking to for guidance on whether or not to refer. If GTCS considers it important to include this content, it might be better presented under a title such as ‘Principles and wider purpose of the process’.

### **Explanation of the process and key concepts**

- 7.33 Given that Fitness to Teach is a process which depends on the application of categories and abstract concepts it is crucial to optimal efficiency that these are explained as clearly as possible from the outset. With this in mind we have looked very closely at the threshold policy.
- 7.34 As in other examples of GTCS guidance, the threshold policy gives detailed information on how decisions are made. However, we think that the policy is written in a way which is unnecessarily complex and at some points potentially confusing, and which does not optimally support the reader to understand the key concepts that will be applied throughout the process as quickly as they might.
- 7.35 An example is the way that impairment is referred to in this policy. It is not clear from the outset that impairment is a central concept in the process and crucial to the decisions that will be made. It is used several times before this becomes clear. A definition is given that ‘a teacher’s fitness to teach is impaired where the individual’s conduct falls short of the standards expected’. However it is not entirely clear why some examples of matters that will not usually be taken forward do not meet the definition of impairment that has been given. Impairment is discussed as both finding and test.
- 7.36 We recommend that GTCS considers redrafting this policy and that in doing so it:
- provides a clear definition of the key concepts of the FtT process including impairment; fitness to teach; unfitness to teach; relevant conduct; conduct; competence. To include explaining that these are key concepts and how therefore they will be applied
  - makes the policy simple and chronological, based around a flowchart as at Figure 1
  - begins the policy with a referral and explains the tests that will be applied to it, rather than crossing over into guidance on whether to refer
  - explains clearly the difference between the stages and points of the process, the activities and tests that will happen at different stages and points, and the potential outcomes.

### **Length of time**

- 7.37 We have observed that some cases take a very long time to conclude. We recognise that in some cases, this is due to GTCS having to wait for information from other bodies – we discuss at 4.20 how clearer agreement between the parties could support greater transparency and expectation management about

the effects of waiting for critical information from others. We recognise the efforts that GTCS has gone to in recent times to improve this situation.

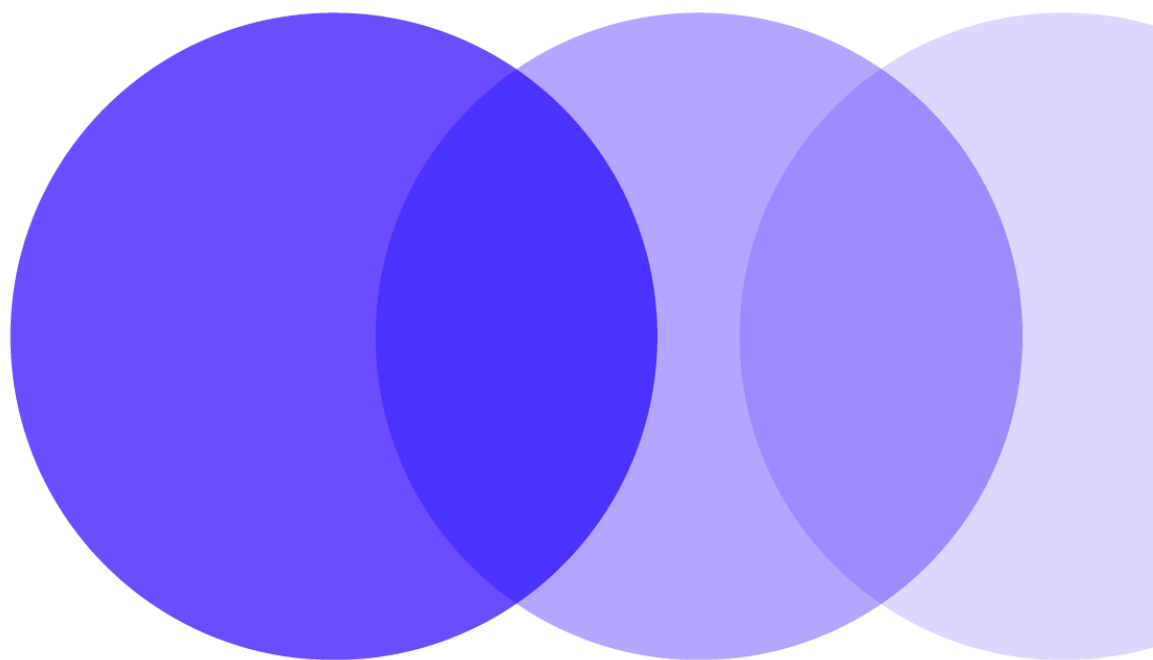
- 7.38 However we also heard from stakeholders that in their view it took too long for Fitness to Teach cases to conclude. GTCS' average end to end times are longer than we would see in the health and care sector. While we acknowledge the impact of external factors, we are also aware of the risks of protracted processes of this kind in professional regulation. We also note that we saw in our case file audit instances where there were periods of time where there was no recorded reason for inactivity.
- 7.39 We discuss two particular areas that could contribute to improvements in this respect.

### **Process design changes**

- 7.40 We have made a series of recommendations in this section which might have an effect on the length of time to conclusion. In summary, we believe that the measures that we have recommended for further exploration and development would have a positive effect on length of time under the process as it is currently designed.
- 7.41 However, it may be that significant improvement to length of time would be achieved only through changes to process design. We have identified two potential development areas for further investigation, as have been identified at Table 4. We do not intend to go into significant further detail here as these suggestions would require substantial work to establish a business case and impact assessment. However we think there would be potential to have a significant beneficial impact on matters of concern to GTCS and its stakeholders.
- 7.42 The first of these would be to introduce initial inquiries at the initial consideration stage. While this would potentially extend the initial consideration stage, it would be expected to reduce the number of cases that proceeded to an investigation inappropriately, and reduce the number of cases that were closed inappropriately prior to investigation. See also Table 6 in relation to Rule 2.1.1(a). This could have an effect on overall length of time of the wider caseload though freeing resources that would otherwise go to inappropriate investigations.
- 7.43 The second of the two proposals we would propose for further exploration would be to remove the panel consideration stage, with case examiners working in pairs making decisions at the end of the investigation. See also Table 4 in relation to Rule 2.3.
- 7.44 These are established approaches within professional regulation and would have the potential to have a significant impact on timeliness of case progression and other dimensions of efficiency.

### **Issues relating to staff capacity to support the process**

- 7.45 This is a small team in a relatively small organisation, which creates challenges to sustainability and resilience; the performance of small organisations is more vulnerable to external and internal turbulence than larger ones.
- 7.46 Stakeholder feedback included that there is delay to the progress of investigations due to the fact that the Regulatory Investigations Officer role encompasses both managing investigations and supporting hearings when they occur. The argument put forward was that when a member of staff turned their attention to supporting a hearing, the investigations for which they were responsible would be inactive for that period.
- 7.47 Therefore it was proposed to us that the work to support hearings might become a role separated out from managing investigations. We are sympathetic to the logic of that argument. However, having discussed this with GTCS, we understand that that there is insufficient workload to create sustainable roles dedicated to hearings support, and their view is that to try and split the role would be detrimental to case progression as a whole, within the staffing resources available.
- 7.48 We think that the introduction of a CMS, as discussed above, would support staff in covering both sides of the role. A CMS would support staff through the FtT process more proactively and straightforwardly than is currently the case, and would therefore reduce the burden on staff of navigating the current arrangements and covering both sides of the role. It would also make it easier for staff to temporarily cover for each other during periods when a hearing was being supported.
- 7.49 We also think that the proposed changes to consolidate and simplify process and guidance documentation would also have a positive effect in this regard.
- 7.50 We believe nevertheless that GTCS should explore the possibility of securing additional staff resources, with a particular focus on improvement initiatives of the kind we have discussed and addressing avoidable causes of delay. We recommend that this would include looking at the benefit of both permanent and fixed-term/flexible resource, for greatest flexibility in order to be able to (i) introduce additional resource during the development and implementation phases of improvement work and (ii) withdraw resource as improvements are realised and longer-term causes of delay are addressed. We are aware that GTCS is already securing flexible additional resource from a law firm (for managing investigations) so to that extent this is an established way of working, and that other resources have recently been secured.



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