



Llywodraeth Cymru  
Welsh Government

PUBLICATION

# Amendment to the Education Workforce Council's fitness to practise committee constitution: integrated impact assessment

An assessment of proposed amendment to the Education Workforce Council's fitness to practise committee constitution.

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# Section 1. what action is the welsh government considering and why?

We are consulting on our proposal to amend the way the Education Workforce Council's fitness to practise committees are constituted.

## Background to fitness to practise

Fitness to practise means having the skills, knowledge, competence, and character to practise in a profession.

Fitness to practise is also the process used by statutory professional regulators to deal with cases referred to them. The Education Workforce Council (EWC) is responsible for this regulatory work in relation to the education workforce in Wales.

The EWC considers referrals made to it relating to a practitioner's unacceptable professional conduct, serious professional incompetence and/or conviction of a relevant criminal offence. The EWC also has responsibility for considering any applicant's suitability for registration and admission to the Register of Education Practitioners. In addition, they are the appeals body if an Appropriate Body decides that a Newly Qualified Teacher (NQT) has failed to complete their statutory induction period satisfactorily and the NQT wishes to appeal that decision.

## Discipline

Most referrals for fitness to practise proceedings come from employers who have a statutory responsibility to make referrals to the EWC where they dismiss a member of staff or they leave in circumstances where they may otherwise

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have been dismissed. This involves allegations of unacceptable professional conduct, serious professional incompetence and/or a conviction of a relevant offence.

## **Suitability for registration**

Prospective registrants are asked to answer a number of questions relating to their previous history when completing the declaration section of the application form to register with the EWC. If someone answers 'yes' to any question in their declaration, their suitability for admission to the Register of Education Practitioners will be assessed by EWC officers. If the declaration is more serious, an independent suitability committee will be convened to consider the application.

## **Induction appeals**

If an employer decides a Newly Qualified Teacher (NQT) has failed to meet the Practising Teacher Standards during their induction period, the NQT can appeal to the EWC against that decision. In these situations, alongside the required lay member, the EWC would only ever include school teacher practitioners on an induction appeals panel.

The EWC's fitness to practise casework is therefore vitally important in maintaining the professional standards of the education workforce in Wales.

## **The current situation**

Section 26 of the Education Workforce Council (Main Functions) (Wales) Regulations 2015 ("the 2015 Regulations") refers to the membership and procedure of committees in relation to the EWC's fitness to practise casework.

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Specifically, each committee must include one registered person from the same registrant category as the person facing proceedings before the EWC.

Further to recent amendments to the categories of registration, as contained in the Education Workforce Council (Additional Categories of Registration) (Wales) Order 2023 which came into force in May 2023, there are now 11 separate categories of registration, and potentially more in the future:

- maintained school teacher
- further education teacher
- independent school teacher
- independent special post-16 institution teacher
- work-based learning practitioner
- youth worker
- maintained school learning support worker
- further education support worker
- independent school learning support worker
- independent special post-16 institution learning support worker
- youth support worker

## The issue

Under the current requirements in Section 26 of the 2015 Regulations, the EWC often experiences challenges in sourcing panel members. This can cause delays for hearings, and therefore present increased risks to the wellbeing of those involved in the process.

With a larger number of categories, the EWC will need to recruit practitioners from potentially very small pools of registrants to consider cases received in relation to registrants in those categories only. Where the registrant groups are particularly small, there is more likelihood of familiarity with one another which could lead to conflicts of interest. Therefore, it will be challenging for the EWC to

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recruit fitness to practise committee members for the new groups under the current regulations.

In addition, it is commonplace for persons facing fitness to practise proceedings to be registered in more than one category. With more categories, finding suitable persons for a committee is likely to be even more administratively difficult.

Further, registrants are entitled to request that their hearing is conducted through the medium of Welsh. Unfortunately, the number of available panel members who are able to work through the medium of Welsh is limited in some sectors.

Finally, the committee roles are voluntary and must be supported by line managers and employers to facilitate release time from their usual job. School learning support staff and those in further education particularly find it hard to get release time. This means the number available to work as panel members is very low.

## The proposal

We are proposing a change to the regulations governing the investigating committee and fitness to practise committee constitution, which will mean the EWC will have more flexibility to recruit from a wider pool of practitioners. The principles of fairness and transparency would remain and no person facing fitness to practise proceedings would be disadvantaged by the amendment.

Instead of a committee requiring ‘a registered person from the same category of registration as the registered person who is the subject of the disciplinary proceedings’, it would instead require a person who is registered and employed in any of the registration categories.

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This could be a person from the same registration category, or it could be someone from the same sector or relative seniority who would have a good understanding of the nature of the role and type of setting. This is similar to the approach taken by Social Care Wales when considering their fitness to practise panels.

It is the case now that the EWC decides on whether a person's experience and understanding make them a suitable appointee as a registered member. Whilst not an express statutory requirement, the EWC does in any event consider that matter when making such appointments.

All fitness to practise panel members are appointed through an in-depth recruitment process where their behaviours and skills are assessed. Those successfully appointed have a structured induction programme, mentoring and compulsory attendance at annual training. All panel members commit to acting impartially and with integrity.

Allowing the EWC to have greater flexibility in appointing Committee panel members in this way will allow proceedings to take place without delay.

Should the proposal to amend the 2015 Regulations be taken forward, the EWC will also consult on its Disciplinary procedures and rules to ensure they fully reflect the new legislative requirements.

We think these changes are needed to future-proof the regulatory function of the EWC. This increased flexibility in relation to the registered person member of the Committees will allow proper regulation of all registrant categories to continue, regardless of how many registrant categories there are now or those added in the future.

## Long term

We believe that this change will 'future proof' the fitness to practise case work, in terms of their committee constitution, so that if more registrant groups are mandated in future the issue with recruiting panel members from a limited pool will be mitigated.

## Prevention

The EWC's fitness to practise casework is a vital part of ensuring the people working with children and young people in education and youth work settings are suitable and capable of doing so. Through robust procedures and ensuring committees are fully staffed and constituted fairly, this will ensure prevention of harm to learners through unfit practitioners.

## Integration

On the basis that ensuring proper fitness to practise proceedings can continue, improved safeguarding of children and young people directly contributing to objectives such as education reform, protecting vulnerable people and eliminating inequality.

## Collaboration

The EWC made us aware of this issue during the consultation on Education Workforce Council (Additional Categories of Registration) (Wales) Order 2023. We are grateful to the EWC as our partner in developing this proposal to ensure proceedings remain fair and robust.

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## Involvement

An eight-week consultation was launched on 11 September, and will conclude on 1 December. In order to gain the views of as many practitioners, registrants and potential registrants as possible, the consultation has been widely publicised.

The consultation has also been brought to the attention of education unions who will clearly have an interest in ensuring the fitness to practise proceedings remain fair under the new proposed arrangements.

## Costs and Savings

There are potential cost savings resulting from this proposal. The EWC has had to postpone hearings / meetings when a panel member has withdrawn at short notice in the past and when they have been unable to source an alternative member from the same registrant category. Widening the pool of members is likely to result in fewer postponed hearings and meetings and therefore a reduced overheads cost for making new arrangements and meeting cancellation fees.

## Mechanism

An amendment to the Education Workforce Council (Main Functions) (Wales) Regulations 2015 is required to realise this proposal. Without the legislative change, the EWC would have difficulties in meeting the legislative requirements for members of their committees.

Whilst the EWC will naturally continue to act in accordance with the public law principle of fairness, the change to regulations will continue to provide

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confidence in the system.

## **Section 8. conclusion**

### **8.1 How have people most likely to be affected by the proposal been involved in developing it?**

The consultation running from 11 September to 1 December 2023 has been widely publicised so that practitioners, registrants and potential registrants are able to comment on the proposals and be assured that their concerns will be listened to.

In addition, the Welsh Government will ensure the education unions are able to discuss any concerns they may have.

The EWC is the expert in these matters, and as it is responsible for fitness to practise, has therefore been our key partner in developing this proposal.

### **8.2 What are the most significant impacts, positive and negative?**

The group most affected by this proposal is registrants. We believe that amending the requirements for fitness to practise committees as laid out above will have a positive or neutral impact. This is because the principles of fairness and transparency would remain under the new arrangements.

The EWC will continue to conduct proceedings in a professional and honest way so that, when issues occur, the public can remain confident in the fitness and suitability of the education workforce in Wales.

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### **8.3 In light of the impacts identified, how will the proposal maximise contribution to our well-being objectives and the seven well-being goals?**

The purpose behind this proposal to amend the fitness to practise committee constitution, is to maintain the integrity of the system. Therefore, practitioners will have the confidence of the public because they can demonstrate they have the skills, knowledge and character to safely and effectively carry out the duties required of their profession.

### **8.4 How will the impact of the proposal be monitored and evaluated as it progresses and when it concludes?**

The Welsh Government works closely with the EWC and will continue to monitor the impacts of this proposal should it be taken forward.

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