

<b>To</b>	<b>Executive</b> [Professional committee]	<b>HX20/004</b>
	<b>Te Huarahi</b>	<b>Strategic Plan Ref: Advocacy &amp; Professional</b>
		<b>13 February 2020</b>
<b>From</b>	<b>Fran Renton, Advisory Officer</b>	

### **Recommendations:**

1. That the report be received.
2. That PPTA advocate that:
  - a. The Teaching Council improves its advice on mandatory reporting of possible serious misconduct so that advice reflects the high threshold set in the Education Act; and that the Teaching Council is proactive in releasing and promoting this advice.
  - b. The Teaching Council improve its triaging so that it quickly identifies and progresses cases and ensures that cases referred for assessment are more than minor or reflect the high threshold set for possible serious misconduct in the Education Act.
  - c. The current impairment process be removed and a discrete health process be established.
  - d. The Teaching Council improves the way that cases can be progressed through conduct processes on an agreed basis.
  - e. The reintroduction of the power of the Conduct Assessment Committee (CAC) to make determinations on issues of serious misconduct.

## **Options to improve Teaching Council Conduct processes**

Last year the executive considered a paper on the dysfunctional Teaching Council conduct processes (HX19/089).

The following paper sets out some suggestions for improvements to Teaching Council conduct processes and the rationale for these; it has been greatly informed by contributions from the PPTA Field Officers, who are confronted daily with the inadequacies of the current system.

### **Recap - reasons to change the current processes**

At present there is renewed focus on the role of the Teaching Council, given the proposed fee increase. It is evident that the conduct and competency processes are swallowing up an increasing amount of funding, when the proportion of teachers that a subject to these processes is extremely low - in 2018-2019 conduct and competency cases represented 0.75% of all registered teachers.

Conduct processes are a small part of a whole system that operates to ensure a safe learning environment for students and high professional standards. However, because cases which come in front of the Disciplinary Tribunal are the most extreme, and tend to be of media interest, then the role of conduct processes can be overstated.

We need an approach to conduct issues that is targeted, efficient and balanced – the process should recognise that the vast majority of teachers are working at a high level and that the vast majority of conduct issues can be resolved by schools.

What we have instead is a process that casts a wide net, is unwieldy, slow, and overly punitive and is eating up more and more resources of PPTA, of schools and of the Teaching Council.

### **The underlying problems**

Underlying operational problems that we believe are creating the issues include:

1. Unclear or incorrect guidance being given to the sector about what triggers a mandatory report.
2. The Teaching Council not efficiently identifying cases at triage.
3. Barriers to being able to progress some case's quickly.
4. Too many low level cases being escalated to the Disciplinary Tribunal.

### **Discussion and recommendations**

#### **Issue: Unclear or incorrect guidance is being given to the sector about what triggers a mandatory report for possible serious misconduct.**

The requirements in the Education Act for mandatory reporting of possible serious misconduct technically set a high threshold. Before a report is made an employer should conduct an investigation into an issue or allegation. The employer should get far enough into the investigation to form a reasonable view as to whether conduct has occurred that meets reporting requirements. At this point they should then immediately make the report.

Not all principals are clear however about the requirements. In our opinion the New Zealand School Trustees Association are at times giving advice to report earlier than required. Private employment advisers are also making their own interpretations about when reporting should happen. The Teaching Council advice is limited to repeating the wording in the Act, which is clearly not sufficient guidance for the sector. In addition to this the reporting requirements have changed and the Teaching Council has taken a case against a principal for not reporting, even though the primary responsibility for reporting lay with the board. This climate of change, coupled with unclear or poor advice and punitive action has led to mandatory reports being made prematurely and unnecessarily.

If guidance on what triggered a mandatory report was improved to meet the actual threshold that the law sets and fewer were put forward this would reduce both PPTA and Teaching Council costs and stress on those that are reported on unnecessarily.

We would primarily need agreement from the Teaching Council that there is a problem and that the direction and communication from them needs to improve on this point. The recent advice the Teaching Council gave on appraisal is a good model. As with changes to appraisal processes there will likely be schools that are already reporting correctly, others that are grateful for the clarification and immediately adopt it and some who take longer to do so, it is an area that will need constant reinforcement to embed change.

**ACTION:** PPTA advocate for the Teaching Council to improve its advice on mandatory reporting of possible serious misconduct so that advice reflects the high threshold set in the Education Act; and that the Teaching Council be proactive in releasing and promoting this advice.

**Issue: The Teaching Council is not efficiently identifying and dealing with cases at triage.**

Currently the Teaching Council may refer any report or complaint that it receives to the CAC - but this doesn't mean that it has to, it has the option to refer back to a school, or to take no further action.

For example if a school has made a report to the council of possible serious misconduct and it has been clear that there has been no or limited investigation then this should be picked up at triage and referred back to the school. There are also cases reported that don't meet the threshold for reporting serious misconduct as they are not serious enough – these should be dismissed with no further action. There are reports made where a teacher has resigned where it is clear that the issue is a minor issue and there is no benefit in this being taken further.

On the other end of the spectrum some cases have conduct which has very clearly not been disputed and has been thoroughly investigated already. These cases should be identified and moved on quickly.

**ACTION:** PPTA advocate for the Teaching Council to improve its triaging so that it quickly identifies and progresses cases and ensures that cases referred for assessment are more than minor or reflect the high threshold for serious misconduct set in the Education Act.

**Issue: There are barriers to the Teaching Council being able to progress some cases quickly.**

### **Health cases**

Currently the Teaching Council has an impairment process; however this can only be accessed via referral from the CAC, the Competence assessor or the Disciplinary Tribunal, which means that one of these bodies needs to assess the case first and if that's the CAC then there is an investigation as well. After the referral an impairment assessment is done by the impairment committee and the results go back to the referring body for consideration. The circular nature of this means that in practice it is used very little, with most PPTA represented teachers using their own health professionals' reports to provide to the CAC, competence assessor or the DT. It also means that currently teachers are subject to disciplinary procedures and outcomes where the actual issue is a health one.

Teachers should be able to directly access a health process if the cause of the report or complaint is a health issue. This should be a discrete process with panels able to make recommendations, rather than having to refer the case to another part of the Teaching Council for a decision. Decisions on outcomes would be more informed by people with specialist health knowledge; it removes the punitive aspect of the current process and would align with the nursing and medical council processes.

**ACTION:** PPTA advocates for removal of the current impairment process and the establishment of a discrete health process for conduct and competency cases.

### **Cases where there is agreement**

In some cases there is no dispute between the teacher and the school about what has occurred and the school's investigation is thorough and complete. A police investigation or trial may also have occurred with the resulting file or judgement available. Often in these cases the teacher has been supported by a PPTA field officer or other representative to give a clear and full account of what happened and their insight into it.

There is however no flexibility in the Teaching Council processes to identify these cases and to allow these cases to progress quickly. They go through a full Teaching Council investigation, a CAC hearing and outcome and then sometimes a Disciplinary Tribunal hearing.

There needs to be a way to speed up these cases through the system by agreement, so that teachers, schools and communities are not being subjected to repeated unnecessary processes.

**ACTION:** PPTA advocates for the improvement on the way that cases can be progressed through conduct processes on an agreed basis.

### **Issue: Too many low level cases are being escalated to the Disciplinary Tribunal.**

Prior to July 2015 the CAC had the discretion to deal with matters of serious misconduct themselves. This meant that the more minor end of serious misconduct, especially offending by teachers with no prior record, good insight and support of the school would usually be dealt with by the CAC.

On 1 July 2015 this changed so that the CAC **must** refer to the Disciplinary Tribunal any matter that the CAC considers **may possibly constitute** serious misconduct. This was a dramatic shift, leading to a tripling of cases going to the Disciplinary Tribunal.

Cases on the lower end of the serious misconduct spectrum are not being dealt with any differently by the Disciplinary Tribunal than they were by the CAC. Usually outcomes for these cases at the Disciplinary Tribunal include censures, annotation of register, and sometimes conditions - these are all powers of the CAC. The main difference is that the Disciplinary Tribunal decisions are public. We think the extraordinary extra cost, delay and stress for teachers is not warranted when balanced against the public interest of a published decision, not for issues that are at the minor end of serious misconduct.

There has been new case law established by the DT in relation to changes around thresholds for physical contact, now that this is in place it gives the CAC extremely good guidance on this issue.

**ACTION:** PPTA advocates for the reintroduction of the power of the CAC to make determinations on issues of serious misconduct.