

## Guideline for the Consideration of Criminal History

### 1. Purpose

This document is intended to provide information for teachers, employers and members of the public about the types of criminal offences which are most likely to give rise to a question about whether a person is fit and proper to become, or remain, a registered teacher, or whether conditions should be imposed on a person's registration. It gives general guidance only. The Teacher registration Board (TRBWA) may form an opinion different from those indicated here, if the circumstances require it.

### 2. Background

In order for a person to be registered the Board must be satisfied that person is a fit and proper person.

Section 24 of the *Teacher Registration Act 2012* (the Act) details what matters the Board is to have regard to in determining whether a person is fit and proper to be registered, including among other things, the criminal history of the person.

For a registered teacher, s45 details action to be taken by the Board on receiving a notification or criminal record check.

Section 5 of the Act states the paramount consideration when performing any function in relation to the Act as being the best interests of children.

All applicants to the TRBWA are required to consent to a criminal record check. This is a requirement for the making of an application for registration.

The Board may at any time give written notice to a registered teacher requesting that the teacher provide written consent for the Board to obtain a criminal record check in respect of the teacher. Failure to provide consent may lead to cancellation of a teacher's registration.

A criminal record check is undertaken in respect of all applicants for registration to the TRBWA. The information received is assessed by the TRBWA and taken into account in determining whether a person is a fit and proper person.

Where a person has been convicted of criminal offences, the issue of fitness and propriety will be considered by the TRBWA and a decision will be made based on the nature of the offending.

### 3. Relationship between offending and fitness

Not all offending will render a person unfit to be a teacher. The TRBWA is likely to be most concerned about an offence that suggests that:

- a person might pose a risk to the safety of children
- a person cannot be regarded as able to provide proper moral guidance to children for whom they may be responsible
- an impairment as referred to in s48 of the Act may be present.

If a criminal history gives rise to a "question of fitness", the TRBWA will undertake a fuller assessment, including, where necessary, obtaining any relevant information from the person concerned, in order to decide whether the person is fit or not.

#### 4. Employer standards

To be a “fit and proper” person is a statutory pre-requisite to being registered. However, not all registered teachers will necessarily be suitable for employment in all schools and in all positions. Employers are entitled to set their own standards for their schools or for particular positions, and may take criminal history into account, where appropriate, even if the person is registered.

#### 5. Sexual offences against children

Offences of this type are not within the scope of this document. They are specifically dealt with in s27 of the Act, and in the *Working with Children (Criminal Record Checking) Act 2004*.

#### 6. Particular offences

The information below deals with some types of offences which have arisen for consideration. It deals only with categories of offences. In every case where the category of offence gives rise to concern, the TRBWA will also consider the circumstances of the offence and of the person involved. As individual circumstances vary greatly, no attempt is made in this document to deal with them.

Even where it is indicated that a particular type of offence is not likely to give rise to a question of fitness, it may do so in a particular case. For example, the circumstances of the offence may be unusually serious (e.g. committed at a school, or in view of students); or a pattern of repeated offending, even if the offences are minor, may reveal a level of disregard for the law and for community standards which renders a person unfit.

The guidance below, apart from the 5th point, relates only to single offences which are not repeated.

- “Disorderly” offences, involving inappropriate or offensive conduct such as swearing, street urination, or minor property damage, will generally not give rise to a fitness question.
- Offences of dishonesty (e.g. theft, fraud, forgery) cover a wide range of seriousness. Generally, the type of offence which results in a Community Based Order or higher penalty, may give rise to a fitness question.
- Simple drug possession is unlikely to give rise to a fitness question. However, possession of a more addictive drug, such as heroin, may indicate an impairment and may lead to an inquiry. Most offences of selling or supplying a drug will give rise to a question of fitness.
- A single traffic offence will not generally give rise to a question of fitness, although offences of dangerous or reckless driving may do so. Offences involving driving while affected by alcohol or drugs may give rise to a question of impairment.
- A small number of traffic infringements will not give rise to a question of fitness. However, repeated offending, as noted earlier, can reach a point where a question of fitness arises.
- Offences of violence or threatened violence include assaults, stalking, robbery, arson, and sexual offences against adults. Almost all such offences will give rise to a question of fitness.