



A landmark step

First Fitness to Teach case comes before the High Court

On 16 May 2017, the first Fitness to Teach ("**FtT**") case came before the High Court. The details of the case, brought by the Teaching Council (the "**Council**") cannot be reported as it involves an application for suspension pending an investigation. An application for suspension of registration can be made by the Council where it is satisfied that it is in the public interest to do so. The Teaching Council Acts 2001-2015 (the "**TCA**") state that such FtT applications are to be heard otherwise than in public.

After hearing the application, the High Court can make such an order as it considers appropriate. The order must also include a direction as to whether the teacher should continue to be remunerated.¹ Once the High Court makes a decision, the Council is required to inform the teacher, the Minister for Education and Skills and the employer of the decision.

The relevant sections of the TCA were commenced on 25 July 2016. The long delay in commencing these sections was partially because legislation on vetting needed to be amended and commenced before FtT processes could become operational. Therefore, the sections only commenced once the Vetting Act² was amended³ and commenced on 29 April 2016.⁴

Fitness to Teach

The FtT framework mirrors processes adopted by other professional bodies such as the Medical Council. Both parties in a FtT process are entitled to present their cases and the Teaching Council Disciplinary Committee is empowered to enforce the attendance of witnesses and compel the production of documents. Hearings are generally to be held in public, however, there are exceptions such as applications for suspension of registration, mentioned above.

1 A decision that a teacher should continue to be remunerated can be subject to such terms and time period as the Court deems appropriate.

2 The National Vetting Bureau (Children and Vulnerable Persons) Act 2012-2016 (the "**Vetting Act**").

3 The Vetting Act was substantially amended by the Criminal Justice (Spent Convictions and Certain Disclosures) Act 2016.

4 The Vetting Act put Garda vetting on a statutory basis for the first time and puts a statutory requirement on schools to vet all newly recruited staff and volunteers. This requirement has since been extended to existing staff under S.I. 223/2016.

Under the TCA, any person including a member of the public, an employer or a teacher can make a complaint to the Investigating Committee of the Council about a registered teacher. Complaints can be made under a number of different headings:

- Failure to comply with education legislation⁵ or any regulations, rules or orders made thereunder
- Professional misconduct
- Poor professional performance
- Erroneous registration
- Medical unfitness
- Conviction of an indictable offence, and
- Failure to comply with a request made by the Council after a complaint has been considered.

In general, only matters which occurred after the FtT sections of the Act came into force can be the subject of a complaint. However, where the conduct complained about would have constituted a criminal offence at the time that it occurred, and is of such a nature as to reasonably give rise to a real concern that the teacher may harm or contribute to harm or potential harm, to any child or vulnerable person, the complaint can be investigated.

Comment

The commencement of the FtT provisions are part of a growing move to increase transparency and accountability in schools and the teaching profession. The Ombudsman for Children indicated that almost half of the complaints received by his offices relate to education and that FtT hearings needed to be introduced urgently to improve accountability in schools. This move is also reflected in recent legislative developments including the Education (Amendment) Bill 2015 which proposes an Ombudsman for Education and the Parent and Student Charter Bill 2016 which, if enacted, will require schools to operate a parent and school charter.

⁵ The Teaching Council Acts 2001-2015, the Education Act, 1998, the Education (Welfare) Act 2000, the Education for Persons with Special Educational Needs Act 2004, the Education and Training Boards Act 2013.

Practical Implications

The first High Court hearing on FtT is a landmark step for the teaching profession and demonstrates that the Council intends to utilise the powers granted to it under the TCA.

FtT investigations and hearings may result in considerable consequences for teachers, as they may be removed from the register of teachers. However, these processes are not intended to replace the procedures that schools already have in place to deal with issues of professional misconduct and incompetence, which will continue to be dealt with first at school level. In general, school procedures need to be exhausted before any inquiry by the Council can commence.

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