

Target risk – where we would like the risk to be once all controls are in place and actions are complete.

[illegible]

STRATEGIC RISK	RISK ELEMENTS DESCRIPTION	RISK OWNER	OVERALL GROSS SEVERITY	RISK CONTROLS	OVERALL NET SEVERITY	RISK MOVEMENT SINCE LAST REPORT	SUMMARY UPDATE
1. CHILD AND PUBLIC PROTECTION	Actual or perceived failure to adequately protect learners, children, the public, witnesses and/or registrants or act in the public interest through the Fitness to Teach process. Insufficient levels of public protection due to the system for Fitness to Teach referrals not being fully used or understood by employers. Employer processes leading to inadequate case management prior to GTC Scotland involvement. Stakeholder expectation that GTC Scotland's role extends to management of employer processes.			1.1 Robust Fitness to Teach Rules and processes in place 1.2 Lodging of petitions with the Court of Session to compel information sharing given established difficulties with accessing information 1.3 Reporting of issues related to information sharing to Scottish Government 1.4 Regular liaison with other regulators monitoring employer referral volume 1.5 Rigorous monitoring of regulatory case statistics 1.6 Liaison between GTCS and employers regarding FtT responsibilities 1.7 Panel Member briefing and support			Officers have engaged in Scottish Government arranged events to raise information sharing issues and impact. A judgement is awaited from the Court of Session in relation to our request for Police Scotland to pay GTCS legal expenses. Planning is in progress to ensure a return to safe physical hearings where these have been deemed to be appropriate. Careful analysis of fitness to teach casework is being maintained and additional resource has been recruited to the regulation team to manage the impact on cases as a result of CV19. September 2021 communication with independent schools has highlighted FtT responsibilities.

Strategic Risks Summary

STRATEGIC RISK	RISK ELEMENTS DESCRIPTION	RISK OWNER	OVERALL GROSS SEVERITY	RISK CONTROLS	OVERALL NET SEVERITY	RISK MOVEMENT SINCE LAST REPORT	SUMMARY UPDATE
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Strategic Risks Summary

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CHILD AND PUBLIC PROTECTION	Actual or perceived failure to adequately protect learners, the public, witnesses and/or registrants or act in the public interest through the Fitness to Teach investigation and adjudication processes. Insufficient levels of public protection due to the system for Fitness to Teach referrals not being fully used or understood by employers. Employer processes leading to inadequate case management prior to GTC Scotland involvement. Stakeholder expectation that GTC Scotland's role extends to management of employer processes.					Officers have engaged in Scottish Government arranged events to raise information sharing issues and impact. Planning is in progress to ensure a return to safe physical hearings where these have been deemed to be appropriate. Careful analysis of fitness to teach casework is being maintained and additional resource has been recruited to the regulation team to manage the impact on cases as a result of CV19.

Target risk – where we would like the risk to be once all controls are in place and actions are complete.

SR 1 – CHILD AND PUBLIC PROTECTION						
RISK SUMMARY	CAUSE & EFFECT	INHERENT RISK	RISK CONTROLS	SUMMARY UPDATES	RESIDUAL RISK	FURTHER ACTION REQUIRED
Risk [REDACTED] Child and Public Protection [REDACTED] [REDACTED] [REDACTED] Risk Owner [REDACTED] [REDACTED]	Cause 1. [REDACTED] 2. [REDACTED] 3. [REDACTED] Effect 1. [REDACTED] 2. [REDACTED] 3. [REDACTED]	I = 4 L = 5 23	1. Robust Fitness to Teach Rules and processes in place. 2. In liaison with Scottish Government, Disclosure Scotland and criminal justice agencies, to enhance information flow and clarify child protection and safeguarding roles and responsibilities. 3. Liaison with other Regulators monitoring referral volume. 4. Rigorous monitoring of regulatory case statistics and case reviews. 5. Liaison between GTCS and employers regarding FtT responsibilities. 6. [REDACTED] 7. [REDACTED]	Scottish Parliament Citizen Participation and Petition Committee is considering petition on handling of concerns about teachers in child protection context. GTCS submitted response. [REDACTED] [REDACTED] [REDACTED] Fitness to Teach Stakeholder events in place – next diarised in Nov 2023. [REDACTED]	I = 4 L = 4 21	Status: Treat Caseload recovery/FTT Improvement Action Plan to continue progress. Regulatory Investigations employee and Fitness to Teach Panel member recruitment to be completed. Target Date: [REDACTED]

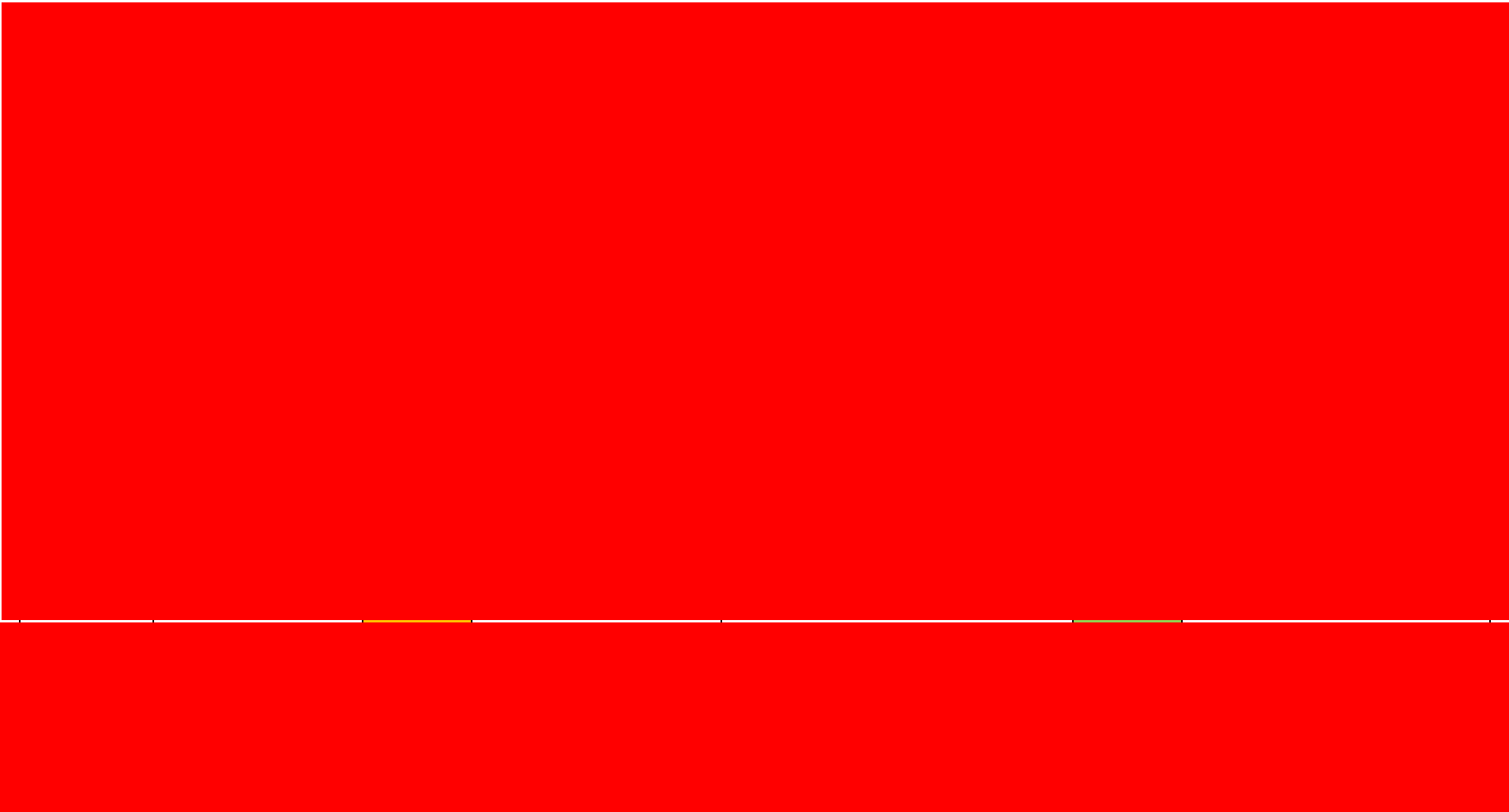
Strategic Risks Summary

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[illegible]

			FTT referrals. Follow up communication issued.		
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SR 1 – CHILD AND PUBLIC PROTECTION						
RISK SUMMARY	CAUSE & EFFECT	INHERENT RISK	RISK CONTROLS	SUMMARY UPDATES	RESIDUAL RISK	FURTHER ACTION REQUIRED
Risk [REDACTED] Child and Public Protection [REDACTED] [REDACTED] [REDACTED] Risk Owner [REDACTED] [REDACTED]	Cause 1. [REDACTED] [REDACTED] 2. [REDACTED] [REDACTED] 3. [REDACTED] [REDACTED] [REDACTED] Effect 1. [REDACTED] [REDACTED] [REDACTED] [REDACTED] 2. [REDACTED] [REDACTED] 3. [REDACTED]	[REDACTED]	1. Robust Fitness to Teach Rules and processes in place. 2. In liaison with Scottish Government, Disclosure Scotland and criminal justice agencies, to enhance information flow and clarify child protection and safeguarding roles and responsibilities. 3. Liaison with other Regulators monitoring referral volume. 4. Rigorous monitoring of regulatory case statistics and case reviews. 5. Liaison between GTCS and employers regarding FtT responsibilities. 6. [REDACTED] 7. [REDACTED]	Scottish Parliament Citizen Participation and Petition Committee is considering petition on handling of concerns about teachers in child protection context. GTCS to submit response. [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] Fitness to Teach Stakeholder events in place – next diarised in Aug 2023 – focus on communication and seeking help/support. Communication made with all local authorities in November 2022 re FTT referrals. Only 4 responses received. Follow up communication to be issued.	I = 4 L = 4 16	Status: [REDACTED] [REDACTED] [REDACTED] Follow-up letter to be issued to local authorities re FTT referrals Petitions Committee submission to be lodged Caseload recovery/FTT Improvement Action Plan to continue progress Target Date: [REDACTED]



**Fitness to Teach - Information Sharing and Child Protection Roles/Procedure
Professional Regulatory Assurance Committee – 6 December 2022**

Session:	Private Session
Action required:	For discussion
Author:	[REDACTED]
Purpose:	<p>To alert the Committee to the context surrounding our fitness to teach process, including ongoing information sharing concerns and misunderstanding/assumptions being made about roles in child protection.</p> <p>To assure the Committee on the steps being taken to mitigate these risks.</p> <p>To provide Committee with a fuller picture and explanation of where we are in this context to inform consideration of the Risk Management item.</p>
Recommendation:	None
Link to Strategic Plan:	Strategic Outcome 1: Upholding public trust and confidence in teaching professionals
Equality Impact or Data Impact Assessment required:	No
Considered by Committee(s):	None
Annexes:	Appendix 1 – Extracts of Key Information Shared Externally

1 Executive Summary

- 1.1 This paper provides background and details regarding ongoing information sharing difficulties within the GTC Scotland fitness to teach process as well as an identified misunderstanding about our role in child protection procedures. The paper also sets out steps being taken to address these issues in order to minimise risk in this area of work.

2 Background / Introduction

- 2.1 As has been reported in previous Committee papers, GTC Scotland has experienced persistent issues over a number of years with information sharing, particularly in respect of criminal justice agencies (Police Scotland; the Crown Office and Procurator Fiscal Service (COPFS); Scottish Courts and Tribunals Service (SCTS)) but there are also increasing issues and concerns emerging for us in relation to Disclosure Scotland.
- 2.2 In addition, GTC Scotland has received a number of Freedom of Information (FOI) requests questioning our procedures and processes when we are made aware of concerns of a child protection nature. A recent Petition to the Scottish Parliament has asked for an independent inquiry and national whistleblowing officer to investigate concerns about the alleged mishandling of child safeguarding enquiries by public bodies. The Petition refers to concerns that allegations about child protection, child

abuse, safeguarding and children's rights have been mishandled by public bodies, including GTC Scotland. This activity continues to attract media interest and attention.

- 2.3 From both of these areas, it is apparent that GTC Scotland's role in relation to child protection concerns is materially misunderstood externally.

3 Discussion

- 3.1 Our role in public safety and the resultant need for information sharing with GTC Scotland was recognised by the Court of Session last year – see [Decision](#). The decision related to proceedings taken against Police Scotland following their refusal to share evidence gathered during criminal investigations for the purposes of allowing GTC Scotland to effectively investigate fitness to teach concerns. For a number of months following that decision, there was no change in the approach taken by Police Scotland. Over the past 6 months or so, Police Scotland have started to share evidence more readily, however, there remain areas in which we have concerns and these were outlined in a comprehensive document to Police Scotland in October 2022. We will continue to have an open dialogue with Police Scotland and press for improvements in these areas. We also continue to raise issues with COPFS and SCTS and are working towards Data Sharing Agreements with them.

- 3.2 On a wider scale, discussions have taken place with the Child Protection Unit (CPU) of Scottish Government regarding roles and responsibilities in child protection/safeguarding in education and the CPU have initiated a wider forum to discuss the issues. The most recent meeting took place on 14 November at which a number of key stakeholders attended: Police Scotland; Education Scotland; Disclosure Scotland; the Scottish Social Services Council; and the Care Inspectorate. The need for clarification regarding roles and responsibilities around child protection matters was discussed and recognised.

This is a positive step towards mapping out the flow of information within and between organisations and which should also help clarify and address inaccurate assumptions and misunderstanding of roles. This work may also assist in supporting the development of a framework for Data Sharing Agreements between all those involved and we will continue to call for that.

- 3.3 In addition to the work outlined above, we are finalising an internal Child Protection Operational Policy and Procedure, which will set out how we identify a child protection concern; how we deal with such concerns and how and where we record information.
- 3.4 GTC Scotland has also been asked to propose amendments to the Scottish Government's National Child Protection Guidance. We have proposed amendments to set out the role of GTC Scotland and signpost the requirement to make referrals to us (and share information with us). We will continue to call for consideration to be given to framing national guidance that specifically relates to keeping children safe in education and that helps ensure greater system coherence. We will also continue to question why the guidance generally is non-statutory and whether there are sufficient checks and balances in place to ensure it is adhered to.
- 3.5 A significant cross-cutting theme that has emerged throughout is that we need to enhance our work with stakeholders and build stronger networks that help share and support what our role is, why our fitness to teach process matters and the challenges that we have been experiencing. Our fitness to teach work does not exist in isolation – it relies on others sharing information and playing their part. We have written to all local authority Directors of Education and presented at the ADES Personnel Network. We have established ongoing meetings with Education Scotland with a specific focus on our respective child protection related roles and this has led to GTC Scotland becoming part of the national Safeguarding in Education network. We have also established a liaison with Disclosure Scotland and are meeting with their counterparts in England (the Disclosure and Barring Service) to gain a comparative perspective on how information sharing has been embedded in England.
- 3.5 We have extracted and attached some key information that we have cascaded over recent weeks through this work and set it out as an Appendix for reference.

4 Implications

4.1 Risk Implications

There remains a risk in our ability to carry out our statutory function to investigate fitness to teach concerns due to the information sharing difficulties we experience. There is also a reputational risk to GTC Scotland where our role and responsibilities are not understood externally. It is considered that the steps outlined above will help us work towards minimising these risks.

4.2 Legal Implications

As noted above, the difficulties faced with information sharing have had an impact on our ability to carry out our statutory function to investigate fitness to teach concerns. The Court of Session decision in October 2022 legally recognised our role in public safety and the resultant need for information sharing with GTC Scotland. The further work being carried out regarding the flow of information help us work towards addressing this issue.

4.3 Resource Implications

The information sharing difficulties faced within the fitness to teach process along with misunderstandings regarding roles and responsibilities have taken up considerable time and continue to do so in relation to correspondence in individual cases, high level discussions with stakeholders and FOI requests. The work to map out processes and information flow between organisations will also take time but should result in a marked improvement overall.

4.4 Equality & Inclusion Implications

None identified.

4.5 Sustainability Implications

None identified.

4.6 Stakeholder engagement

As outlined above, we continue to work with key stakeholders to improve the understanding of our role and the need for information sharing.


November 2022

Appendix 1 – Extracts of Key Information Shared Externally

We have cascaded key information externally over recent weeks regarding our role and responsibilities, which is set out below.

Response to the Sunday Times Newspaper dated 17 November 2022

We highlighted that, like many other organisations, we are in the process of recovering our casework from the adverse impact of the Covid-19 pandemic as well as a number of other challenging factors over recent years, including that the education system in Scotland has, rightly, been focused on its Covid response and recovery. Our fitness to teach process relies on the cooperation and participation of others in order to take place effectively, not just for investigations and the gathering of evidence but also to enable hearings to be scheduled and take place.

We highlighted our role by saying that:

'Our Fitness to Teach process is independent from any other processes including employer, police and criminal court processes. We carry out our own investigations. We can't rely on findings made by others, with some limited exceptions, for example criminal convictions.'

'Some cases are quick and straightforward to investigate and others take longer because they are more complex and involve more allegations or witnesses, or they encounter more complexity as they go through our process. For example, if police and/or employer investigations are being carried out, we must be cautious in how we approach our investigation and we often need these processes to conclude before we can move the case forward. These processes can, in some circumstances, take years. The health of those involved is also a factor that we commonly see – it is challenging to move a case forward when an individual (whether the teacher concerned or a witness) is not well enough to participate.'

Response to the Sunday Times Newspaper dated 25 November 2022

We set out that our role is as the teaching profession's independent registration and regulation body:

'Our role is to register and regulate teachers and college lecturers in Scotland. We do this by keeping a public register and setting and regulating the standards for entering and remaining in the teaching profession. There is no such thing as a license to teach in Scotland.'

'GTC Scotland is similar in form and function to bodies such as the General Medical Council and Nursing and Midwifery Council. We do not employ the teachers who teach in schools and do not regulate the employers of teachers. Our role is to manage future risk that a teacher or college lecturer may pose (it is employers and the police who manage a current, live risk).'

In relation to our role in child protection we said:

'GTC Scotland does not have a statutory duty or remit to carry out child protection investigations. The statutory duty for investigating child protection concerns sits with local authorities....., health and social care partnerships and Police Scotland. We would refer you to the [Scottish Government National Guidance for Child Protection](#) for further information on the responsibilities of these agencies.'

'GTC Scotland does, as with any person or body, have a duty to act on child protection concerns which come to our attention, in order to safeguard and protect those who may be at risk. We do this by sharing relevant information that meets child protection criteria with the responsible authorities, most commonly in the education context in Scotland, this is local authorities who are also by far the biggest teacher employer. Occasionally we have made a referral to Police Scotland where this has been appropriate but the circumstances that we have experienced to date have rarely required that. This is because referrals are generally made to us some time after events alleged have taken place – they are not a current child protection issue.'

'So, where any child protection concern is raised with us through our fitness to teach process, we share this information with the relevant local authority. We have only very occasionally shared information with Police Scotland in this context because the circumstances have not required it to be done more often.'

To be clear, our responsibility to act on child protection concerns by sharing information with local authorities and Police Scotland is not the same as a responsibility requiring us to carry out a fitness to teach investigation. Unless a teacher has been barred from working with children under Disclosure Scotland's Protecting Vulnerable Groups Scheme, GTC Scotland must follow the procedure set out in our Fitness to Teach Rules in the context of any fitness to teach case. To do otherwise would be unlawful and breach human rights. We have explained why cases over recent years have been taking longer in our original response.

The role of [Disclosure Scotland](#) and the Protecting Vulnerable Groups Scheme in the public protection context is important to consider in this context.'

In relation to calls for improvements to the system, we said:

'Since before 2017 we have been raising concerns about how information generally flows across the bodies and agencies that play a part in the public protection landscape in Scotland and about understanding of respective roles. We have taken legal action against Police Scotland and we have participated in the Scottish Child Abuse Inquiry to raise concerns. We have raised specific concerns with and about local authorities following published inquiry findings.

In the consultation on the reform of Education Scotland and the replacement of the Scottish Qualifications Authority and through our participation in the Scottish Child Abuse Inquiry, we have stressed the need to ensure that regulation of the entire education system is clearly understood, and functions across agencies are aligned.

Effective public protection requires each part of the system to play its part. We believe greater consideration is needed as to how systemic failure is identified and how events are managed where there is a systemic failure. We have also asked where responsibilities sit for effective system regulation in ensuring the employers of teachers (who are largely local authorities) act as good employers, including assuring that appropriate processes are in place and used for the management of teacher concerns.

GTC Scotland welcomes engagement with our partners to achieve improvements in these areas.'

In relation to our approach to Fitness to Teach casework, we said:

'The GTC Scotland approach to fitness to teach casework is that it is targeted only where action is needed and proportionate – requirements that are set out in law. As a result, not all referrals we receive are investigated by us. Effective regulatory practice is that action should first be taken locally, as close to an issue as possible. We advise any potential referrers that any concerns about a teacher should be raised with the employer. Employers have the powers to manage any child protection concern effectively. Should there be no employer, we would investigate such a referral.'

We have reflected relevant parts of the information provided in this response on our website in order to strengthen communication with all stakeholders.

Employer Letter – November 2022

At the end of November 2022, we sent letters to each local authority employer to outline key information regarding our fitness to teach function and to make certain requests of them.

We outlined that we had identified that a barrier in our fitness to teach work is a lack of understanding of GTC Scotland's role and so we set this out in the letter and asked employers for support in addressing that misunderstanding.

We explained the following:

'Our fitness to teach process exists to maintain trust in teachers and teaching, to ensure that our registered teachers and college lecturers have and retain the skills and knowledge and character to teach learners safely and effectively. The fitness to teach process is how the teaching profession's standards are upheld. GTC Scotland is required by law to carry out this function.

The fitness to teach process is protective – it is about looking forward to assess and manage the current and future risk that an individual teacher presents to teaching and the system as a whole.

Our fitness to teach process is entirely independent. GTC Scotland's fitness to teach process applies the civil standard of proof – the balance of probabilities – and civil rules of evidence in considering whether allegations are proved or not. There is no requirement for corroboration in our proceedings. GTC Scotland cannot rely legally on findings made by others, with some limited exceptions (for example criminal convictions). This means our process is very different from any criminal and employer process that might have been followed in a case – it has a distinct purpose and focus. We can and do take forward cases that do not meet the higher standard of proof (beyond reasonable doubt) and evidential requirements that apply to criminal proceedings. This is an important public safeguard. Our role in public safety in this way was recognised by the Court of Session last year – see [Decision](#).

Our fitness to teach process relies on referrals being made to us and information being shared with us to enable effective investigations and lines of inquiry to be pursued. GTC Scotland investigates referrals that meet the threshold for fitness to teach investigation which is defined in policy – a level of seriousness is required so that we are proportionate and targeted in what we do (a legal requirement).

We have a team of eight Regulation Officers who investigate cases. Our Regulation Officers are experienced investigative specialists and generally come from a legal or criminal justice related career background. We also appoint external solicitors (Presenting Officers) to present the cases that reach the hearing stage. Our fitness to teach process must meet human rights law requirements - the right to a fair trial (Article 6 of the ECHR).

If a teacher or college lecturer is removed from or refused entry to GTC Scotland's register, they cannot be legally employed as a teacher or college lecturer in any educational establishment in Scotland. Removal or refusal also has implications for employment as a teacher in other countries within the UK. Where GTC Scotland removes or refuses registration through its fitness to teach process, there is a right of appeal to the Court of Session.'

We also asked for cooperation and information sharing within the process. In that respect, we explained the following:

'We rely significantly on employers cooperating in our fitness to teach process and sharing information with us to enable us to take forward our fitness to teach function effectively. As noted earlier, we cannot legally rely on the findings made by employers or their case outcomes – we have to carry out our own independent process.

Not sharing information with us where there is an ongoing police investigation or sending investigation documentation that is incomplete or redacted prevents us from progressing cases and can lead to us not being able to identify the lines of inquiry to take forward in a case so we can investigate effectively. It can also prevent us from taking immediate action to restrict the teacher's registration, in the interests of public protection, in cases where the teacher presents a high risk.

Our investigation is independent so we must gather evidence and pursue the lines of inquiry that we believe are necessary in the particular case. Whilst we understand that there are sometimes concerns about us interviewing current or former pupil witnesses and providing contact details to enable us to do so, this can be critical evidence in a case. There are legal reasons why, for our process, we cannot generally rely on a statement taken for the purposes of another process. We will only ever seek to interview a pupil or former pupil where we consider this absolutely necessary. Please support us in making these arrangements and talk to us about how you think we might best support the young person concerned.

We understand that data sharing is a complex landscape and we appreciate the issues that you face in this context. To assist, we have attached a note to explain the legal basis on which information can and must be shared with us by law to enable us to carry out our fitness to teach function.....If there are any further steps that you wish us to take in this context to assist, please do let us know.

Our fitness process also relies on teachers participating in it at various stages as Fitness to Teach Panel members making decisions in cases and sitting on hearings, as well as witnesses. We are experiencing issues and barriers in progressing cases because teachers and other school staff are not released by their employers to participate as Fitness to Teach Panel members or as witnesses, or are failing to respond to our communication. We understand the resource challenges currently faced within the system but we are seeking understanding that the impact on our fitness to teach process is significant

– we cannot progress cases, and it delays our work significantly, when the people core to the process are unable or unwilling to participate.'

We asked employers to provide us with updates regarding progress with their investigation process, comprehensive and unredacted information/documentation and to assist us with speaking to witnesses, both staff and pupils. We also asked that they support the release of teachers and staff to participate in our fitness to teach process, whether as Fitness to Teach Panel members or witnesses.

As an appendix, we outlined the legal basis on which employers should share information with us:

'GTC Scotland is required by law to carry out our fitness to teach function.

GTC Scotland has a statutory duty, under the Public Services Reform (General Teaching Council for Scotland) Order 2011 (the Order), to investigate the fitness to teach of individuals registered with us. The relevant parts of the Order are set out for reference further below.

To investigate fitness to teach cases effectively we need to gather all available evidence and speak to all relevant witnesses. We must carry out our own independent investigation in this way - we cannot legally rely on an employer's findings.

Guidance for appropriate information sharing is enshrined in the UK General Data Protection Regulations (GDPR), the Data Protection Act 2018 and human rights legislation, however, these are NOT a barrier to the sharing of information when it applies to the safety and wellbeing of a person, or a group of people at risk of harm.

GTC Scotland's fitness to teach function operates in the field of public interest and safety. A properly regulated teaching profession is necessary to keep the public, including children, some of whom are vulnerable, safe, and to protect the rights and freedoms of children as well as others. To meet our responsibility to regulate the teaching profession effectively, we need to be provided with the best available information.

GTC Scotland is a public authority for the purposes of the Data Protection Act 2018 and the UK GDPR. GTC Scotland's fitness to teach function is a task carried out in the public interest and in the exercise of official authority vested in us in terms of section 7(1) and (2) of the Data Protection Act 2018 and Part 7 paragraph 66 of the Freedom of Information (Scotland) Act 2002.

GTC Scotland has information governance processes and frameworks which bring together all the requirements, standards and best practice that apply to the handling of information. This makes sure the information we hold is accurate and dealt with legally, securely and efficiently. We have a variety of data sharing agreements in place to support the sharing of information and ensure the protection of people's interests. We also abide by the Information Commissioner's Code of Practice on Data Sharing.

The sharing of information regarding actual or potential protection concerns in our fitness to teach work is imperative, in order to ensure public safety and protection. Consent and confidentiality are NOT a barrier to sharing information where it is otherwise lawful and necessary to do so in the public interest, such as in these circumstances.

The sharing (processing) of information by any current or former GTC Scotland registered teacher employer with GTC Scotland is:

- necessary so that we can carry out a function conferred on us by law under the 2011 Order; and*
- in the substantial public interest and necessary for carrying out functions designed to protect members of the public against dishonesty, malpractice, or other seriously improper conduct by, or the unfitness or incompetence of, any teacher.*

When any teacher employer comes into the possession of information which, in the interests of public safety, should be considered by a professional or regulatory body, such as GTC Scotland, then that information should be passed to GTC Scotland. The public interest of protecting public safety and maintaining the reputation of the teaching profession in Scotland permits and requires disclosure of information in this way.

The legal position in this context and GTC Scotland's role in public safety has been confirmed by the Court of Session – see [Decision](#).'