

Submission on the draft guidelines for registered teachers about the use of social media





Introduction

The Irish National Teachers' Organisation (INTO) is the largest teachers' organisation in Ireland representing the trade union and professional interests of 48,000 members in the Republic of Ireland and Northern Ireland. We welcome the opportunity to make a submission on the Teaching Council's 'Draft Guidelines for Registered Teachers about the Use of Social Media'.

In order to make a submission on the draft guidelines, INTO undertook a review of relevant legislation, caselaw and the Code of Professional Conduct for Teachers. As a comparative, we analysed guidance issued on social media use by other professional regulators in Ireland, including the Media Council and the Nursing and Midwifery Board.

The INTO considered in particular the views of our members in advance of making this submission. While members recognised that the draft guidelines contain elements of "common sense" advice, significant concerns were raised with respect to the effect and application of the draft guidelines on the profession. The substantive concerns are set out below.

Fundamental rights – the right to privacy and the freedom of expression

While concerns with respect to the public's confidence and perception of the profession is referenced in the draft guidelines, there is no explicit consideration referenced regarding the fundamental rights of registered teachers.

In Ireland, the right to privacy has been recognised as an unenumerated right flowing from Article 40.3 of Bunreacht na hÉireann. Further, Article 8 of the European Convention on Human Rights guarantees the right to respect for personal and family life, stating that:

"Everyone has the right to respect for his private and family life, his home and his correspondence."

Article 40.6.1 of Bunreacht na hÉireann establishes the right of freely expressing one's convictions and opinions. In addition, Article 10 of the European Convention on Human



Rights confirms the right of freedom of expression, including the right to “impart information and ideas without interference by public authority”.

While the draft guidance states that “[u]sing social media can blur the boundary between your private and professional life”, the INTO on behalf of its members submits to the Teaching Council that the right to privacy and freedom of expression of registered teachers should be recognised and respected in the formulation of any guidelines on the use of social media.

In the INTO’s experience, our members are committed to the highest standards of professionalism in discharging their duties in schools and other educational settings. With respect to the use of social media, teachers throughout Ireland promote best practices amongst pupils, seek to counter cyber-bullying and assist with other challenges that pupils may encounter online. When the school day comes to an end and all duties have been dutifully discharged, teachers may choose to engage their freedom of expression by way of social media and/or electronic communication in a private capacity. In circumstances where teachers maintain separate personal and professional use of social media, teachers’ right to privacy and freedom of expression should be upheld. The guidelines fail to provide any assurance to teachers in this regard.

Legal effect of the guidelines

The draft guidelines state that, upon approval by the Teaching Council, they are intended to be read in conjunction with section 3 of the Teaching Council’s Code of Professional Conduct. On that basis and further to section 42(1)(d) of the Teaching Council Acts 2001-2015, a registered teacher who fails to adhere to the approved guidelines may be subject to a fitness to teach inquiry.

Section 3 of the Code of Professional Conduct (2nd Edition, 2016) identifies specific standards of professional conduct which are expected of registered teachers. Section 3 of the Code states:

“Teachers should:

- 3.1 uphold the reputation and standing of the profession



- 3.2 take all reasonable steps in relation to the care of pupils/students under their supervision, so as to ensure their safety and welfare
- 3.3 work within the framework of relevant legislation and regulations
- 3.4 comply with agreed national and school policies, procedures and guidelines which aim to promote pupil/student education and welfare and child protection
- 3.5 report, where appropriate, incidents or matters which impact on pupil/student welfare
- 3.6 communicate effectively with pupils/students, colleagues, parents, school management and others in the school community in a manner that is professional, collaborative and supportive, and based on trust and respect
- 3.7 ensure that any communication with pupils/ students, colleagues, parents, school management and others is appropriate, including communication via electronic media, such as e-mail, texting and social networking sites
- 3.8 ensure that they do not knowingly access, download or otherwise have in their possession while engaged in school activities, inappropriate materials/images in electronic or other format
- 3.9 ensure that they do not knowingly access, download or otherwise have in their possession, illicit materials/images in electronic or other format
- 3.10 ensure that they do not practise while under the influence of any substance which impairs their fitness to teach.”

While the draft guidelines relate to the use of social media, the term “social media” is not contained in the Teaching Council Acts 2001-2015 or the Code of Professional Conduct. It is noted that section 3.7 of the Code refers to “electronic media, such as e-mail, texting and social networking sites”. In contrast, the draft guidelines define “social media” as:



“web-based applications that enable users to create and exchange content. It includes blogs and micro-blogs, professional and personal forum sites for sharing images and videos, and networking sites”.

On the basis of the terminology and definition provided, the draft guidelines introduce new standards for registered teachers above and beyond the expectations set out in the Teaching Council Acts or the Code of Professional Conduct. While it is within the remit of the Teaching Council to establish, publish, review and maintain codes of professional conduct for teachers in line with Section 7(2)(b) of the Teaching Council Acts 2001-2015, it is submitted that the introduction of new fitness to teach standards in the form of a guidance document is not appropriate. The legitimacy of augmenting the Code of Professional Conduct by virtue of any guideline document may be the subject of subsequent challenge(s).

“Electronic communication and social media”

The title of the draft guidelines refers exclusively to use of social media; however, the contents of section 2 of the draft guidelines appear to further expand its application. Section 2 relates to electronic communication and social media, identifying various software applications, email, websites, SMS and messaging platforms. The meaning provided by the Teaching Council for electronic communication is beyond the definition it provides for social media within section 1. Further, sections 3, 4, 5, and 6 appear primarily to relate to social media rather than electronic communication.

As acknowledged above, section 3.7 of the Code of Professional Conduct (2nd Edition, 2016) does refer to communication by e-mail, texting and social networking sites with “pupils/ students, colleagues, parents, school management and others”. Unlike section 3.7 of the Code, section 2 of the draft guidelines does not identify the recipients of communication from registered teachers or any other context that the Teaching Council is proposing to regulate. Central to fair and transparent professional regulation is clarity on the standards expected of registrants and, therefore, it is incumbent on the Teaching Council to clarify this matter.

Guidelines v instructions

Section 1 advises that “[t]his document is aimed at providing guidelines for teachers who use social media, identifying potential dangers, offering guidance about how to avoid them...”. Notwithstanding this, the draft guidelines, in particular section 5, sets out



directives for teachers in relation to what actions they should and should not take. We submit that the document is excessively prescriptive in nature and exceeds the stated aims of the draft guidelines. As referenced above, it appears that the Teaching Council is seeking to augment the standards currently contained in the Code of Professional Conduct (2nd edition, 2016) through the introduction of the draft guidelines.

The INTO recognises the value in (i) providing education, highlighting best practices and supporting teachers in relation to use of social media, and; (ii) providing guidelines in relation to the standards set out in the Code of Professional Conduct. Unfortunately, it appears that the draft guidelines seek to accomplish both objectives in one document, which we submit is inappropriate.

The objective of providing education and highlighting best practices on the use of social media is of significant importance in light of increasing social media activity and the ever-advancing technology in this area. In this regard, ongoing advice and training for teachers would be welcomed by the INTO to support (a) teachers seeking to support pupils' use of social media, (b) teachers' individual use of social media, and (c) schools responding to inappropriate and abusive use of social media where pupils and/or teachers have been targeted. This list of required supports is non-exhaustive in nature. The appropriate body to provide advice and training on social media use should have the requisite knowledge, skills and expertise.

While the Teaching Council's intentions may be to offer helpful educational information and/or advice to teachers on the use of social media, to include this in a document that will be read in conjunction with section 3 of the Code of Professional Conduct for Teachers is highly inappropriate.

The objective of providing guidelines in relation to the standards set out in the Code of Professional Conduct is a distinct piece of work to providing education, advice and support. The Teaching Council is best placed to clarify the interpretation of the standards expected of registered teachers having regard to its remit of fitness to teach in accordance with Part V of the Teaching Council Acts 2001–2015.

Unfortunately, the current draft guidelines fail to articulate the threshold of alleged conduct that would constitute a prima facie complaint against a teacher. Further, the draft guidelines do not address issues of proportionality in terms of how the Investigating Committee and/or the Disciplinary Committee may consider complaints.



The draft guidelines, for example, require that teachers:

- Never exchange private phone numbers, personal email addresses or photographs of a personal nature with students (section 5),
- and;
- Use strong passwords and change them regularly (section 6).

Having regard to the above examples contained in the document, the draft guidelines provide no instructive advice to teachers in terms of any distinction of seriousness of the directives from the Teaching Council, nor the spectrum of consequences of any alleged breach of any element of the document.

Overall, the draft guidelines fail to offer any insight in relation to the handling of the Teaching Council's Investigating and Disciplinary Committees of complaints about teachers' use of social media.

In terms of the application of the draft guidelines, there is no indication of the date of commencement of the document. The INTO submits that the draft guidelines, following approval, should not have retrospective effect on registered teacher. In addition, the Teaching Council should afford management bodies and boards of management an appropriate timeline to consider the implications of any approved guidelines, which may involve ratifying and/or updating policies at a local level. Further, the draft guidelines should include a review date in order to afford relevant stakeholders an opportunity to provide feedback on the operation of the guidelines.

Conclusion

The INTO's submission on the 'Draft Guidelines for Registered Teachers about the Use of Social Media' is focused on the substantive concerns of our members. We are seeking that the Teaching Council reviews the draft guidelines in light of the concerns raised to ensure that:



1. The guidelines shall respect the fundamental rights of teachers and, in particular, the right of privacy and freedom of expression,
2. The guidelines shall not introduce new standards and/or augment the Teaching Council Acts 2001-2015 and the Code of Professional Conduct (2nd edition, 2016), and;
3. The guidelines shall provide clarification on the effect and application of the Teaching Council Acts 2001-2015 and the Code of Professional Conduct (2nd edition, 2016), in particular, with respect to the standard expected of teachers communicating via electronic media in the context of fitness to teach.