Unit 9.2

Your Legal and Ethical Responsibilities

James Arthur

INTRODUCTION

What are the general legal and ethical challenges that will face you in your future teaching career? How can you as a new teacher be ethical and legal when you may not know with any certainty what it really means to be ethical and legal? These are questions that you need to address, but at the same time recognise that ethical dilemmas, by their very nature are not clear-cut. They can present themselves in schools as shapeless and difficult to grasp conundrums in response to which your immediate reaction is to ask a practical question – what should I do? You will need to consider and take note of the Teaching Standards, the General Teaching Council for England’s Code of Professional Values and Practices and other education documents, such as the aims of the National Curriculum and the Statement of Values of the National Forum on Education and the Community. You will also need to understand that there is a value and legal framework against which ethical judgements are made in education. Teachers are not and neither should they be value neutral in their conduct. When you tell a pupil to stop shouting you are showing that you value the right over the wrong, the good over the bad. Teaching the difference between right and wrong is what teachers do much of the time despite the fact that society often blames teachers for failing to do exactly this. It is expected that you will be trustworthy in the sense that you will not misuse sensitive information provided to you about children and parents, that you will keep confidences and will respect all you have dealings with. Teaching is an ethical profession, it presupposes that something of value is to be taught and it is concerned with improving people – in other words personal formation.

This would appear to suggest that the teacher must require a ‘good character’ if they are to shape the character of the young. Indeed, on this view it is possible to argue that they should have better
motives than ordinary people. Teachers share the moral obligations of any ordinary person, but ordinary people, however decent, do not have any specific moral or legal obligations of public service. This obligation to educate the young is not only morally good, but a morally better motive than simply teaching in order to earn a wage. However, this does not make a teacher a better person and a teacher may fail to live up to these ethical obligations. It is of course possible that many teachers do not enter teaching primarily from a motive of service to others. Carr (1993: 195) makes a very interesting point when he compares a doctor with a teacher. He suggests that a doctor may be dishonest and spiteful as a person, but that none of this may matter to a parent seeking his expertise to treat their child successfully. In contrast, a teacher who is competent and has the best teaching skills available in the subject they teach but is known to be privately a liar may well cause the parent to have grave reservations about placing their child in his care.

**OBJECTIVES**

At the end of this unit you should:

- understand the content of the General Teaching Council for England’s Code of Professional Values and Practices;
- understand some of your legal and ethical responsibilities as a teacher;
- understand the difference and importance between statutory and non-statutory frameworks for teachers;
- understand the implications of being *in loco parentis*;
- have an understanding of the complexity of ethical decision-making in education.

**ETHICS AND MORALITY IN THE CONTEXT OF TEACHING**

Morality is about rules, principles and ideals which have the potential to guide the choices of our actions and which provide a basis for justifying or evaluating what we do. Ethics refers to the moral standards which apply to teaching as a profession. The term ethics therefore refers to the characteristic values of teachers. It attempts to describe the way in which their values are expressed through the practice of their role. In this sense the study and practice of professional ethics deals with practical questions about teaching and learning. The value of professional ethics is in the fact that teachers study the ethical principles and practices of the teaching profession in order to discover how belonging to that profession entails discovering what are the proper ways to act. The range of issues in teaching with ethical implications is immense. Ethics, for the teacher, involves both attitude and action. The former relates to the teacher’s inner character or attitude as an ethical person: what one ought to become. Ethics for teachers will seek to motivate and guide them to become the best they can be as human beings. It should challenge teachers to be responsible and accountable for achieving certain attitudes and behaviours so as to achieve this ideal. The latter aspect of ethics for teachers is characterised by behaviour based on professional values and principles that enable teachers to evaluate and to amend their actions when they fall short of these values. How the teacher acts calls for choices to be made and this means being aware of the ethical dimensions of teaching and learning.

As you will discover, the teacher is not simply one whose contribution is limited to the teaching of a series of subjects and topics in the classroom. The demonstration of ethical conduct goes beyond the demonstration of your classroom competence. By concentrating on practical teaching skills and methods – the mechanics of teaching – it is possible to produce a teacher who is able to manage a class and instruct pupils. However, ethical teachers are aware of the larger social setting, have the flexibility to
anticipate change, to adapt their methods to new demands, and when necessary to challenge the requirements laid upon them. Good teachers sense the importance of acquiring a wider perspective on human values. You need to be encouraged to develop a commitment to professional values that you are able to demonstrate through your personal example.

To gain qualified teacher status (QTS) you first need to demonstrate that you have met the Standards published by the government. The new Standards have an opening section on professional values and Denis Hayes has already addressed these standards in Unit 1.2. I will only comment here that Halstead and Taylor (2000: 177) recognise that two assumptions lie behind the Standards in professional values for teachers. First, that teachers see it as their role to influence the development of their pupils’ values. Second, that pupils’ values are ‘influenced, consciously or otherwise by the example set by their teachers in their relationships, attitudes and teaching styles’. The very purpose of schools is to make a difference to the lives of pupils and so the moral and ethical dimensions of teaching provide the core value context in which teachers are located. You will be a role model, and it follows that when, in the classroom, you exhibit values or personal characteristics which are held to be at variance with what it is educationally desirable for pupils to acquire, then there will be cause for concern.

Teachers are still a major influence on pupils and the values they form. These values are reflected in what teachers choose to permit or encourage in the classroom – the way a teacher insists on accuracy in the work of pupils, or responds to their interests, conveys values which are clearly being introduced to those pupils. Teachers also represent the school’s philosophy to the pupil and the larger public. A teacher cannot be entirely neutral, for pupils need the example of those who are not indifferent. They need teachers who are full of enthusiasms and commitments in their teaching. All the time teachers are teaching they are under examination by their pupils. Their characters are analysed; their fairness is examined; their inconsistencies are probed. Teaching is clearly a test of character for a student teacher. The teacher is a model of what it is to be a human being for pupils and no amount of competence in the class will compensate if the teacher is not an appropriate model.

Much has been written in the area of values in teaching and Wilson (1993: 113) speaks of moral dispositions when he says:

Moral qualities are directly relevant to any kind of classroom practice: care for the pupil, enthusiasm for the subject, conscientiousness, determination, willingness to co-operate with colleagues and a host of others. Nobody, at least on reflection, really believes that effective teaching – let alone effective education – can be reduced to a set of skills; it requires certain dispositions of character. The attempt to avoid the question of what these dispositions are by emphasising pseudo-practical terms like ‘competences’ or ‘professional’ must fail.

The argument here is that teachers must provide support for classroom learning which goes beyond the mere mechanics of teaching. Elsewhere, Eraut (1994) argues that teachers have a moral commitment to serve the interests of their pupils by reflecting on their wellbeing and their progress and deciding how best these can be fostered. By doing this they contribute to the moral shaping of their pupils. As Sockett (1993: 14) observes: ‘many teachers have a moral vision, a moral sense, and a moral motive however mixed up they may be in any individual’. Goodlad (1990) goes further, commenting that we need to address a fundamental void in the preparation of teachers:

Teaching is fundamentally a moral enterprise in which adults ask and require children to change in directions chosen by the adults. Understanding teaching in this light confronts a teacher with potentially unsettling questions: By what authority do I push for change in the lives of these children? At what costs to their freedom and autonomy? Where does my responsibility for these young lives begin and end? How should I deal with true moral
dilemmas in which it is simply not possible to realise two goals or avoid two evils? How much pain and discomfort am I willing to endure on behalf of my student teachers? How are my own character flaws affecting the lives of others?

**ETHICAL PRINCIPLES**

**Task 9.2.1 Ethical principles**

Read the following principles and write down an example of how you might demonstrate these principles in the classroom or in school in any one week. You do not need to cover all of them, simply the ones that appear to you as relevant and appear in the week.

Teachers ‘must’:

- have intellectual integrity;
- have vocational integrity;
- show moral courage;
- exercise altruism;
- exercise impartiality;
- exercise human insight;
- assume the responsibility of influence;
- exercise humility;
- exercise collegiality;
- exercise partnership;
- exercise vigilance with regard to professional responsibilities and aspirations.

This list clearly demonstrates the ethical nature and obligations of teaching. Ethical issues are at the heart of teaching and are concerned with the way teaching is practised, organised, managed and planned. It is also inherently political because of the contested nature of teaching within the context of a state-sponsored education system.

**THE CODE OF PROFESSIONAL VALUES AND PRACTICES**

The introduction of the General Teaching Council for England’s (GTC(E)) new *Code of Professional Values and Practices* (2002) makes clear that the role of the teacher is ‘vital, unique and far reaching’. It states that: ‘This Code sets out the beliefs, values, and attitudes that make up teacher professionalism’. It is recognised that many who are attracted to the profession have a ‘strong sense of vocation’. The introduction concludes by stating that the teaching profession works within the framework of the law and within the framework of equal opportunities for all ‘respecting individuals regardless of gender, marital status, religion, colour, race, ethnicity, class, sexual orientation, disability and age’. Unlike the teaching Standards, the GTC(E) Code does not as yet have notes of guidance in the areas covered in the Code, but the GTC(E) are developing such notes and student teachers need to make themselves aware of them. The actual Code consists of six sections and describe the professional values that
underpin the practice of teaching in English schools. The Code encourages productive partnerships with parents, governors, professionals and between teachers themselves. In relation to pupils the Code seeks high expectations on the part of teachers and expects them to demonstrate the characteristics they are trying to inspire in pupils, such as tolerance, honesty, fairness, patience, and concern for others. The Code makes reference to helping to raise standards of achievement of pupils and in many respects is exactly like the Standards for teaching issued by the government.

The GTC(E) says they are produced as a source of encouragement for teachers and we have reprinted them below:

**General Teaching Council for England**  
**Code of Professional Values and Practices**

**Young People as Pupils**  
Teachers have insight into the learning needs of young people. They use professional judgement to meet those needs and to choose the best ways of motivating pupils to achieve success. They use assessment to inform and guide their work.

Teachers have high expectations for all pupils, helping them progress regardless of their personal circumstances and different needs and backgrounds. They work to make sure that pupils develop intellectually and personally, and to safeguard pupils’ general health, safety and well-being. Teachers demonstrate the characteristics they are trying to inspire in pupils, including a spirit of intellectual enquiry, tolerance, honesty, fairness, patience, a genuine concern for other people and an appreciation of different backgrounds.

**Teaching Colleagues**  
Teachers support their colleagues in achieving the highest professional standards. They are fully committed to sharing their own expertise and insights in the interests of the people they teach and are always open to learning from the effective practice of their colleagues. Teachers respect the rights of other people to equal opportunities and to dignity at work. They respect confidentiality where appropriate.

**Other Professionals, Governors and Interested People**  
Teachers recognise that the well-being and development of pupils often depend on working in partnership with different professionals, the school governing body, support staff and other interested people within and beyond the school. They respect the skills, expertise and contributions of these colleagues and partners and are concerned to build productive working relationships with them in the interests of pupils.

**Parents and Carers**  
Teachers respond sensitively to the differences in pupils’ home backgrounds and circumstances and recognise the importance of working in partnership with parents and carers to understand and support their children’s learning. They endeavour to communicate effectively and promote co-operation between the home and the school for the benefit of young people.

**The School in Context**  
Teachers support the place of the school in the community and appreciate the importance of their own professional status in society. They recognise that professionalism involves using judgement over appropriate standards of personal behaviour.


Learning and Development

Teachers entering the teaching profession in England have been trained to a professional standard that has prepared them for the rigours and realities of the classroom. They understand that maintaining and developing their skills, knowledge and expertise is vital to achieving success. They take responsibility for their own continuing professional development, through the opportunities available to them, to make sure that pupils receive the best and most relevant education. Teachers continually reflect on their own practice, improve their skills and deepen their knowledge. They want to adapt their teaching appropriately to take account of new findings, ideas and technologies.

The Code is primarily a discussion document and the GTC(E) hope that it will have practical uses within schools. It is not a Code of Conduct and the GTC(E) make clear that ‘This Code of Professional Values and Practice is therefore not a set of Standards against which teachers will be judged under the GTC(E)’s disciplinary powers nor is it appropriate for employers to use this Code in their own disciplinary procedures’. In order to analyse the Code it is useful to use the methodology of Friedman and Phillips (2003) since they developed five levels to reflect the degree of compulsion or coercion attached to a particular statement in a code as follows:

- **Level 1** signifies the highest degree of compulsion. It is the base level with an additional time perspective, e.g. shall at all times, must always.
- **Level 2** is the base level, e.g. shall, must, duty of care requires.
- **Level 3** is a mid-point between Levels 2 and 4, or Level 4 with an additional time perspective, e.g. should, ought, endeavour at all times.
- **Level 4** is language that implies advice rather than compulsion and stresses the use of professional judgement as the advised action is clearly not applicable to every circumstance, e.g. strive, it is preferable, shall endeavour.
- **Level 5** applies to those statements that are presented as almost a statement of fact with minimal compulsion, e.g. asked, a member recognises.

By examining the GTC(E)’s Code in terms of this structure it can be seen that it is written in language that requires the minimum of compulsion with the statements presented almost as fact: ‘They are’, ‘Teachers recognise’, ‘They understand’, ‘Teachers support’, ‘Teachers demonstrate’ and so on. There are no base level descriptions such as ‘shall’, ‘must’, or even ‘should’ or ‘ought’ in the Code. The Code has clearly been written as advice and encouragement to teachers, but how useful is it to you seeking concrete answers to what you should do? How can you put the Code into practice? The professional Standards use the same language as the Code and are very similar in content. The Code is not prioritised and is intended more as an aspirational document for teaching. As a result it is open to more than one interpretation. If the Code were written in a more exacting way then it would need to describe the context in which the words were used because of the complexity of the many situations in which teachers find themselves. The Code is not a set of rules – rather, it offers you the opportunity to reflect on what it means to be ethical in teaching. The Code does, however, speak about some obligations – the obligations that you owe to pupils, parents, local community, to your colleagues and to society.
TEACHERS IN LOCO PARENTIS

The principle of *in loco parentis* was first outlined in the case of *Fitzgerald v Northcote* in 1865. It states that when a parent places his child with a teacher he delegates to him all his own authority, so far as it is necessary for the welfare of the child. More recently *in loco parentis* has developed to mean the teacher acting as a prudent parent. Teachers have therefore been judged in the courts on the standard of the prudent parent. Section 2(9) of The Children Act 1989 states that: ‘A person who has parental responsibility for a child may not surrender or transfer any part of that responsibility to another but may arrange for some or all of it to be met by one or more persons acting on his behalf’. In light of this, schools need to establish before a child is admitted to a school the answer to the question: ‘who has parental responsibility for this child?’. This is essential due to the increasing prevalence of less traditional parenting structures in society and the use of the term ‘parents’ in this unit refers to home carers and guardians as well as natural parents.

In regard to the position of the teacher Section 3(5) of the Act states:

A person who –
(a) does not have parental responsibility for a particular child, but
(b) has care of the child – may (subject to the provisions of the Act) do what is reasonable in all the circumstances of the care for the purpose of safeguarding or promoting the child’s welfare.

Clearly the teacher owes a statutory duty of care towards the child in his or her class but some have questioned the usefulness of the principle of *in loco parentis*, especially as a teacher may well be responsible for over thirty children at one time. Teachers who deliver a National Curriculum and are judged fit for teaching according to national standards of competence may also be seen as servants of the State as opposed to being viewed as standing in for the parent.

The teacher of infant-aged children, for example, will be expected to demonstrate the way they utilise their teaching abilities and skills to create a sense of security in the class. They will protect the children in their care and promote qualities of self-esteem and confidence. They will show the children that they are valued and loved. In this situation, they inevitably share in parental responsibility and might be said to be truly acting *in loco parentis*. Home visiting by infant teachers is also common and leads to greater contact with parents and the sharing of information. Every teacher has a duty of care to their pupils and must supervise the pupils and care for their health and safety. In summary, the Children Act defines parents as all those who have ‘parental responsibility’ for a child whether or not they are a natural parent. You as a new teacher will need to remember that you will be expected to ‘do what is reasonable in all the circumstances of the care for the purpose of safeguarding or promoting the child’s welfare’ – you have a duty of care. Consequently, you need to take reasonable steps to avoid exposing the child to any dangers that are reasonably foreseeable. This is your main legal responsibility. Because
you hold a position of trust and confidence with respect to children, high standards of conduct are expected of you at all times.

The Sexual Offences Act (2000) makes it a criminal offence if a teacher begins a relationship of a sexual nature with a child under the age of 18. The offence can carry a custodial sentence and will inevitably place the teacher on List 99 of the DfES which holds the names of all those people who have been prohibited from working with children and young people. New teachers should be aware of any child protection policies the school has but in particular new teachers should be aware of Circular 10/95 of the DfES on Protecting Children from Abuse which provides detailed guidance about physical contact with children and students. There are two paragraphs from this Circular that are worth quoting in full here:

It is unnecessary and unrealistic to suggest that teachers should touch pupils only in emergencies. Particularly with younger pupils, touching them is inevitable and can give welcome reassurance to the child. However, teachers must bear in mind that even perfectly innocent actions can sometimes be misconstrued. Children may find being touched uncomfortable or distressing for a variety of reasons. It is important for teachers to be sensitive to a child’s reaction to physical contact and to act appropriately. It is also important not to touch pupils, however casually, in ways or in parts of the body that might be considered indecent.

Employers and senior staff have a responsibility to ensure that professional behaviour applies to relationships between staff and pupils or students, that all staff are clear about what constitutes appropriate behaviour and professional boundaries, and that those boundaries are maintained with the sensitive support and supervision required. That is important in all schools, but residential institutions need to be particularly mindful of this responsibility as do individuals in circumstances where there is one to one contact with pupils, for example, in the teaching of music or extra curricular activities.

All teachers therefore have a duty to treat children appropriately in this regard and to ensure that when they are unsure of any aspect of their own teaching conditions with children, they seek advice from an appropriate colleague.

THE ‘STATUTORY’ AND THE ‘NON-STATUTORY’

‘Statutory’ means: of or pertaining to statute, that is, ‘a written law passed by a properly constituted authority, e.g. an Act of Parliament’ (Nelson Contemporary English Dictionary). The strictly statutory frameworks are:

- ‘Orders’ issued by the Secretary of State for Education under powers granted by legislation;
- GTC(E) Professional Code of Practice, backed by legislation;
- Contracts of Employment: subject to the general law of such contracts.

Legislation passed by Parliament includes Acts which are not exclusively confined to education. Very importantly, it includes general legislation such as the Disability Discrimination Act 1995 and the 1976 Race Relations Act and its Amendment in 2000. The latter imposed a new general duty on public authorities ‘to make the promotion of race equality central to all their functions’. Both the ‘Orders’ issued by the Secretary of State for Education and the General Teaching Council for England’s (GTC(E)) Code of Professional Values and Practice for Teachers (2002), have statutory status with the force of ‘enabling’
Acts of Parliament behind them. The GTC(E) has powers conferred by legislation which include granting and removing an individual teacher’s licence to teach in maintained schools in England. ‘Orders’ are issued which cover many detailed aspects of education policy. The most important set of principles governing teachers’ statutory responsibilities and working time is contained in the School Teachers’ Pay and Conditions Act, which is supported by an annual Teachers’ Pay and Conditions of Service document. Teachers’ individual contracts of employment set out, usually in detailed job specifications, the particular responsibilities attached to their appointments, and are subject to general contract and employment law. As a result of government policy, a wide range of day-to-day routine responsibilities formerly carried out by teachers is being passed to support staff. Some of the most important are: chasing absences, producing standard letters, collating pupil reports, administering and invigilating examinations, ordering supplies and equipment, minuting meetings and collecting money.

Teachers’ professional responsibilities are framed by all of these statutory instruments, but they are also framed by other factors which have varying kinds of status, including no statutory status. Among the most important non-statutory frameworks are:

- Head teachers’ discretionary authority;
- ‘Guidance’ issued by various statutory bodies;
- School policies;
- Professional custom and practice.

The status of head teachers’ authority is an interesting case. Head teachers of maintained schools are bound by the national Pay and Conditions regulations, but the discretionary authority which they have is considerable, and can be instrumental in determining teachers’ specific responsibilities. Teachers’ job descriptions, for example, typically include clauses like, ‘and such other duties and responsibilities as the head teacher may require’. Insofar as a job description is usually an adjunct to a contract of employment, this kind of clause has statutory status supported by employment law.

Moving to the domain of what is more clearly non-statutory, the most important is ‘Guidance’ issued by the Department for Education and Skills, OfSTED, or other agencies such as the Teacher Training Agency. But even the status of this can be somewhat uncertain. DfES guidance documents are usually marked, ‘Status: Recommended’, but at least one document on inclusive schooling is called, somewhat oddly, ‘Statutory Guidance’. In practice, ‘Guidance’ contains recommendations which can often have substantial influence on schools, and on individual teachers’ work. Most of the National Strategy policy, for example, is driven by non-statutory ‘Guidance’, and the operational detail of school inspections also resides in handbooks of guidance issued by OfSTED. Few schools, however, ever regard OfSTED guidance as in any sense ‘optional’!

Another class of instruments which have a significant bearing on your professional responsibilities are school policies. Schools are statutorily required to have formal institutional policies on many aspects of their governance and internal arrangements. Formally speaking, these are written; and they are ‘passed’

### Task 9.2.3
Statutory and non-statutory guidance

Both statutory and non-statutory frameworks inform teachers’ professional responsibilities. Collect all the school policies into a folder and decide which elements of them are statutory and which are non-statutory guidance. Which ones or elements will guide your conduct in the classroom, school and local community?
by a properly constituted body – the Governing Body of a school – which itself has formal legal standing supported by parliamentary Acts. By virtue of this, and the fact that most policy statements are responses to statutory regulations, they have considerable ‘legal’ force. However, such formal policy statements are entirely dependent on how the policies they describe or define are actually put into practice, which leaves considerable scope for marked variations both between schools and even within an individual school for ‘operational slippage’. In secondary schools, for example, responsibility for certain things is devolved to subject departments or year divisions. An example might be a school’s policy for marking pupils’ work. Much depends on the consistency with which that kind of policy is managed in different departments. Finally, there is the whole issue of professional expectations which derive from custom and practice: unwritten, not normally the product of systematic formulation, but, nevertheless, powerful determinants of professional responsibilities, protocols, and conduct generally.

SUMMARY

The above simply introduces you to some of the main ethical and legal responsibilities you have as a teacher. It will be important for you to follow some of these up in detail or at least be able to identify the source of information if you need to follow them up in specific situations. The further reading below will help you in this.

ANNOTATED FURTHER READING

Arthur, J., Davison, J. and Lewis, M. (2005) Professional Values and Practice, Routledge: London. This textbook provides an introduction to a teacher’s ethical and general legal responsibilities and part of which has been the basis for this unit.

University of Bristol Graduate School of Education Guide to the Law (up-dated annually). This document is available from Bristol University and contains a comprehensive and excellent survey of the law pertaining to teachers.

REFERENCES