



Teaching
Regulation
Agency

Mr Howard Lay: Professional conduct panel outcome

**Panel decision and reasons on behalf of the
Secretary of State for Education**

October 2021

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Professional conduct panel decision and recommendations, and decision on behalf of the Secretary of State

Teacher:	Mr Howard Lay
TRA reference:	17230
Date of determination:	15 October 2021
Former employer:	Samuel Ward Academy Trust, Haverhill, Suffolk.

Introduction

A professional conduct panel (“the panel”) of the Teaching Regulation Agency (“the TRA”) convened on 4 to 8 October 2021 and 11 to 15 October 2021 at Cheylesmore House, 5 Quinton Road, Coventry, CV1 2WT, to consider the cases of Mr Howard Lay in a joint hearing together with Mr Andrew Prestoe and Mrs Pat Stalker.

The panel members were Mr Maurice McBride (lay panellist – in the chair), Ms Fiona Tankard (teacher panellist) and Mr John Armstrong (lay panellist).

The legal adviser to the panel was Mr Graham Miles of Blake Morgan LLP solicitors.

The presenting officer for the TRA was Miss Lucy Coulson of Counsel, instructed by Browne Jacobson LLP solicitors.

Mr Howard Lay was present and was represented by Mr Jonathan Storey of Counsel, instructed by Mr Colin Henderson.

Mr Andrew Prestoe was present on 4, 7 and 15 October 2021 only, but was represented throughout by Mr Tim Glover, Solicitor of the Association of School and College Leaders.

Ms Pat Stalker was present on 4 to 8, and 11 and 12 October 2021 and was represented by Mr Andrew Faux of Counsel instructed by Mr Faisal Sameja on 4 to 8 October 2021 and by Mr Sameja alone on 11 to 15 October 2021

The hearing was recorded and took place in public, save that the panel agreed to hear evidence relating to [REDACTED] in private.

Allegations

The panel considered the allegations set out in each notice of proceedings dated 6 August 2021.

Mr Howard Lay

It was alleged that Mr Howard Lay was guilty of unacceptable professional conduct and/or conduct that may bring the profession into disrepute, in that whilst an Executive Head Teacher and subsequently CEO at Samuel Ward Academy Trust ['the School'] until December 2016, he:

1. Submitted or allowed or caused others to submit data in connection with the school's annual census in 2015 and 2016 that he knew or should have known to be incomplete and/or which failed to give a true picture of the school's performance.
2. Caused, allowed and/or failed to report exam malpractice after he became aware of it in connection with pupils' assessed work from 2012 - 2016, specifically in relation to:
 - a. the identifying and over-assisting pupils, either by himself or others, in relation to pupils' English coursework in the academic year 2011 - 2012;
 - b. the inflation of grades entered for controlled assessments in the modern foreign language subject of French in the academic year 2015 – 2016;
 - c. science coursework completed in the academic year 2015 – 2016.
3. The facts as may be found proven at allegations 1 and 2 above amount to dishonesty and/or a lack of integrity.

Mr Lay made a partial admission to allegation 1 in that he accepted that he should have known that the School's census data submission was incomplete. Mr Lay did not admit the other allegations or that his conduct amounted to unacceptable professional conduct or conduct that may bring the profession into disrepute.

Preliminary applications

Applications to admit additional documents

An application was made by the presenting officer to submit a revised opening note to correct an inaccuracy in the note previously circulated. There was no objection by the parties and the panel agreed to admit the revised document, whilst noting that it did not constitute evidence.

Mr Storey applied to admit additional documents, namely reports from Mr Lay's GP dated 16 September 2021 and 22 September 2021 and a statement of Individual A dated 31 August 2021. There was no objection by the other parties to the admission of these documents and the panel agreed to admit them. They were added to section 5 of the bundle as pages 205 to 211.

Mr Glover applied to admit additional documents, namely exhibits to the statement of Mr Prestoe, a further witness statement of Mr Prestoe, and his signed statement of agreed facts. There was no objection by the parties to the admission of these documents and the panel agreed to admit them. They were added to section 6 of the bundle as pages 58 to 96.

Mr Faux applied to admit additional documents, namely the response to Notice of Proceedings and a signed copy of the statement of agreed facts of Mrs Stalker. There was no objection by the other parties to the admission of these documents and the panel agreed to admit them. They were added to section 7 of the bundle as pages 291 to 299.

Application for evidence to be given by video link

The panel considered applications for some of the witnesses to give evidence by video link, rather than appear in person. Miss Coulson made an application in relation to Witness B and Witness D. Mr Glover made an application in relation to Witness F. Mr Storey made an application in relation to Witness H, Witness I, Witness G and Witness J. There was no objection by any party to any of these applications. The panel agreed that, in the current circumstance and given the agreement of the parties, each named witness be permitted to give evidence by video link.

Application for part of the hearing to be in private

Mr Storey made an application on behalf of Mr Lay for evidence relating to [REDACTED] to be heard in private. There was no objection by the presenting officer or the other parties. The panel agreed that, whilst the hearing would take place in public, the hearing would go into private session should it be necessary to hear oral evidence referring to [REDACTED].

Application to act as a witness supporter

Mr Storey made an application that Mr Lay's wife be permitted to act as a witness supporter for Mr Lay. Specifically, the application was for Mrs Lay to be able to sit next to Mr Lay during the hearing and, if required, when giving evidence, in order to provide emotional support and practical assistance in navigating the bundle. There was no objection by any of the other parties. The panel agreed that Mrs Lay be permitted to act as a witness supporter in the manner outlined in Mr Storey's application.

Application in relation to the scope of the evidence

In her opening note, Miss Coulson indicated her intention to explore with all three teachers the alleged culture and history of cheating/pressure in the School. The panel considered an application by Mr Faux on behalf of Mrs Stalker, and by Mr Glover on behalf of Mr Prestoe, regarding the scope of the pleaded allegations. Mr Faux and Mr Glover submitted that the allegations were very specific as to the time period and conduct alleged, that the TRA should be held to that narrow case as pleaded, and that it would be unfair to allow a broad exploration of issues. Mr Faux and Mr Glover also referred to parts of the evidence which they submitted should be excluded. Mr Storey's position, on behalf of Mr Lay, was to agree with the applications of Mr Faux and Mr Glover in principle, but not make any specific submissions about evidence to be excluded.

After hearing the submissions, receiving legal advice and retiring to consider the matter, the chair announced the decision of the panel, as follows:

'The panel considered an application by Mr Faux on behalf of Mrs Stalker, and Mr Glover on behalf of Mr Prestoe, regarding the scope of the pleaded allegations. Mr Faux and Mrs Stalker also referred to parts of the evidence that they say the panel should exclude which they submit goes beyond the scope of the allegations pleaded against Mrs Stalker and Mr Prestoe. Mr Storey's position on behalf of Mr Lay was to agree with the applications of Mr Faux and Mr Glover in principle, but not make any specific submissions about evidence to be excluded.

On behalf of the TRA, Miss Coulson submitted that evidence about the alleged culture of cheating and pressure within the school was relevant to the issue of culpability and was consistent with an investigative approach. The panel concluded that evidence concerning the alleged culture of examination malpractice and pressure felt by staff to participate in this alleged practice was of potential relevance to any assessment of culpability in relation to the pleaded allegations. The panel was clear that it would be wrong to make any findings of fact relating to alleged conduct beyond that specifically pleaded.

The panel took into consideration the submissions made by Mr Faux and Mr Glover about evidence that they said should be excluded from the bundle. Given the potential relevance of some of that evidence to establishing the wider culture of the leadership within the school, the panel determined that it would not exclude the evidence from the bundle at this stage, but would exercise extreme caution when making any factual determination against any individual teacher.'

Summary of evidence

Documents

In advance of the hearing, the panel received a bundle of documents which included:

Section 1: Case Management Hearing decisions and anonymised pupil list – pages 2 to 13

Section 2: Notices of hearing and response – pages 15 to 23

Section 3: Teaching Regulation Agency witness statements – pages 25 to 118

Section 4: Teaching Regulation Agency documents – pages 120 to 542

Section 5: Mr Howard Lay documents – pages 2 to 211

Section 6: Mr Andrew Prestoe documents – pages 2 to 96

Section 7: Ms Pat Stalker documents – pages 2 to 300

The panel members confirmed that they had read all of the documents within the bundle in advance of the hearing and the additional documents that the panel decided to admit.

On Day 6 of the hearing, Mr Sameja made an application to admit an additional document consisting of a record of telephone calls between Mrs Stalker and her union representative dated 7 February 2021. This had been referred to in Mrs Stalker's oral evidence on Day 5 of the hearing. There was no objection by any of the parties and the panel agreed that this document should be added to section 7 of the bundle as page 301.

On Day 10 of the hearing, Mr Sameja made an application to admit an additional document consisting of a YouGov report entitled, 'Exploring the issue of off-rolling' dated 9 May 2019. There was no objection by any of the parties and the panel agreed that this document should be admitted.

Witnesses

The panel heard oral evidence from:

- Witness A, [REDACTED];
- Witness B, [REDACTED], (by video link);
- Witness C, [REDACTED];
- Witness D, [REDACTED]; (by video link);
- Witness E, [REDACTED];
- Mr Andrew Prestoe;
- Witness F, [REDACTED] (by video link);

- Mrs Pat Stalker;
- Mr Howard Lay;
- Witness G, [REDACTED] (by audio link);
- Witness H, [REDACTED] (by video link);
- Witness I, [REDACTED] (by video link);
- Witness J, [REDACTED] (by video link).

Decision and reasons

The panel has carefully considered this case and reached decisions in relation to each teacher.

These allegations arise out of events that took place at the Samuel Ward Academy ('the School'), which was previously known as Samuel Ward Upper School. It converted to academy status in the academic year 2010-11, later becoming an integral part of the Samuel Ward Academy Trust ('the Trust'). In 2018 it was renamed the Unity Schools Partnership.

Mr Howard Lay was the head teacher of the School from 2000 until 2012. He became the Executive Head Teacher in 2012 and CEO of the Trust in 2013.

Mr Andrew Prestoe was a deputy head teacher of the School between 2010 and 2013, when he became Head of School. In 2016, he left to take the headship of another school within the Trust.

Mrs Pat Stalker was an assistant head teacher of the School between 2010 and 2016.

The School had been rated by Ofsted as outstanding in 2008 and again in 2012.

It is relevant to these proceedings that as CEO of the Trust, Mr Lay kept in close contact with the senior leadership of the School, including maintaining an office at the School.

In 2018, an internal investigation took place following a number of concerns raised by members of staff about examination malpractice in respect of coursework. The investigation confirmed a number of instances of exam malpractice and resulted in the exposure of the practice of 'off-rolling' at a senior level within the School. Also, during this investigation, some instances of safeguarding concerns were identified in relation to Mr Prestoe.

The panel was aware that the general term 'off-rolling' can be interpreted in different ways. For the purposes of these proceedings, off-rolling at the School was defined by the

panel as the deliberate removal of some Year 11 pupils' names from the School's SIMS system immediately prior to the January census. The names of the removed pupils were re-entered onto the School roll very shortly after the census date. The purpose of this exercise was to ensure that a small percentage of pupils unlikely to achieve five GCSEs graded A to C were not included in the School's results data, thereby misrepresenting the School's GCSE performance.

In considering this case, the panel has been very conscious that the allegations against each of the teachers refer to specified periods of time. The panel has been presented with evidence of events pre-dating those periods of time. The panel was invited by the presenting officer to consider that wider evidence of the culture within the School as being of potential relevance to the pleaded allegations. The panel understood that it would be wrong to make any findings of fact relating to alleged conduct beyond that specifically pleaded in the allegations. However, the panel considered that it was important to understand the background culture and practices within the School in order to make findings on culpability.

The panel accepted the legal advice provided.

The panel heard evidence from a number of former teachers and a current teacher at the School called by the TRA. On behalf of the teachers, the panel also heard evidence from the three teachers who are the subjects of these proceedings together with a number of former teachers of the School, a former School Improvement Partner and a head teacher of another school at which one of the teachers has been working.

Findings of fact

Mr Howard Lay

It was alleged that you are guilty of unacceptable professional conduct and/or conduct that may bring the profession into disrepute, in that whilst an Executive Head Teacher and subsequently CEO at Samuel Ward Academy Trust until December 2016, you:

- 1. Submitted or allowed or caused others to submit data in connection with the school's annual census in 2015 and 2016 that you knew or should have known to be incomplete and/or which failed to give a true picture of the school's performance.**

Mr Lay made a partial admission to this allegation in that he accepted that he should have known that the School's census data submission was incomplete.

Mrs Stalker gave evidence that she was actively involved in the discussion and selection of pupils to remove from the roll in 2015 and 2016. She said that she attended a meeting to discuss this in 2015. Everyone in the meeting understood the off-rolling process and

nobody required an explanation of how or why this was to be done. She said she had first become aware of the process of off-rolling in late 2010. Although she said that she was not involved herself in off-rolling in earlier academic years, she had engaged in discussions about the behaviour and likely attainment of pupils. Mrs Stalker said that she had not personally removed any pupils' names from the register and that she did not know how to do this. However, she admitted that she was asked to sit with the [REDACTED], Individual B, as pupils' names were removed.

Mrs Stalker also said that she was asked by Mr Lay to support Individual D, [REDACTED] when it joined the Trust. On one of her visits to [REDACTED], she said Mr Lay asked her to ask Individual D to off-roll some pupils. She said that she refused to do so as she felt that this was a 'step too far'. The panel was also provided with an account of Individual D's interview as part of the School's investigation. Individual D said that, in a weekly progress meeting in 2015, there was a discussion about three pupils and that Mr Lay said, *'Just take them off the roll and put them back on later'*. Individual D said, *'The three students were removed from the census data and re-entered the following day as instructed by the Executive Principal'*.

Mr Lay recalled a conversation with Individual D about removing from the roll the names of two pupils who were at a Pupil Referral Unit (PRU) and said this believed this to be a legitimate practice. He stated that he told Individual D to speak to Mrs Stalker and he told Mrs Stalker to expect a phone call from Individual D, as Individual D was not familiar with the process.

The panel was invited to consider the possibility that Mrs Stalker and Individual D had misunderstood the nature of Mr Lay's instructions about off-rolling. The panel did not have the benefit of oral evidence from Individual D and was unable to test his recollection of events in the light of Mr Lay's evidence. The panel accepted Mrs Stalker's evidence that she was uncomfortable at being asked to involve herself in that practice, but, in conclusion, could not be satisfied that Mr Lay was proposing illegitimate off-rolling on that occasion.

Mr Prestoe's evidence was that he instructed others to remove pupils' names from the roll in 2015 and 2016. He asserted that Mr Lay was fully aware of the process and that Mr Lay had discussed this with him in 2014-2015 in relation to data that Mr Lay needed to present to the Regional Schools Commissioner.

With regard to the extent, if any, of Mr Lay's personal involvement in the practice of off-rolling, the panel found itself in some difficulty. It was not provided with any evidence in the form of SIMS data or examinations results in order to understand the exact number of Year 11 students who were removed from the roll in January 2015 or 2016 prior to the census and immediately returned thereafter, or the impact that this had on the school's reported results figures in either year. Without the evidence and admissions of Mrs

Stalker and Mr Prestoe, there was very limited direct evidence that the practice had taken place at all.

The panel noted the submissions on behalf of Mr Lay that the TRA's witnesses were only able to offer supposition that, as Trust CEO and previous head teacher of the School, he 'must have known'. Mr Lay's representative also pointed out that all the evidence of those who did speak directly to Mr Lay's personal involvement, for example Individual B, was in the form of untested hearsay and neither the panel nor the teachers' representatives had the opportunity to cross-examine those witnesses. The panel also took careful account of the legal advice it was given about the degree of reliance it could safely place on the evidence of co-defendants.

Mrs Stalker's evidence was that Mr Lay 'knew about the denominator' (the denominator being the number of children on roll for census purposes). The panel noted the marked reluctance of Mrs Stalker to give any further direct or detailed evidence about Mr Lay's involvement in off-rolling at the School in either 2015 or 2016. The panel was unable to properly determine whether she did not give such evidence because she did not have any, or because of her personal loyalty to Mr Lay.

The panel was also concerned that the weight of Mr Prestoe's evidence about Mr Lay's knowledge of, and involvement in, off-rolling had increased over time. In his initial interviews with the original investigator, he had fully admitted his own involvement in the practice of off-rolling, but had said little or nothing about the involvement of Mr Lay. In his second statement to these proceedings, submitted more recently in response to Mr Lay's first statement, he included more detailed evidence against Mr Lay. Again, the panel had to carefully consider the degree of reliance it could properly place on the evidence of a co-accused who might have their own interest to serve.

The panel also noted the development in the witness evidence of Witness B, who made very little mention of Mr Lay (with regard to off-rolling) in her initial statement as part of the school investigation in 2018. Her evidence to these proceedings was that she was quite certain Mr Lay had been involved.

Taking all the available evidence into account, the panel had no doubt of the extent and reach of the practice of off-rolling at Samuel Ward School, and that it commenced during the course of Mr Lay's tenure as head teacher. However, the panel found itself unable to conclude that Mr Lay was the architect of this practice. Even taking into account his extensive absences from the School, it was highly implausible that he had no knowledge about it from the time it first began. The panel would have benefited from hearing from the acting head teacher, who many witnesses asserted had been a key figure in the instigation and continuation of off-rolling. The panel could not understand how or why the School's senior leadership team would have participated in this practice without Mr Lay's

knowledge or consent, but this remained a supposition unsupported by any tangible or reliable evidence.

The panel had sight of a large number of witness statements attesting to Mr Lay's personal honesty and openness, and heard from character witnesses who gave eloquent testimony on this subject. This evidence supported Mr Lay's account of himself as a visionary leader who placed a great deal of trust in other people and did not 'do detail' and could therefore have been unaware of what was going on underneath his nose. In Mr Lay's own admission, he ought to have suspected from a conversation with Mr Prestoe in 2014 that something was amiss with the census data.

Mr Lay said in his witness statement for this hearing:

'In 2014 or 2015, I recall Andy suddenly said we should not be taking some pupils off census anymore. I simply replied, "Don't do it then". His disclosure was troubling and I should have taken what he said far more seriously and investigated exactly what he was talking about. Andy talked about it in such a normal way that, with hindsight, I now think he assumed I had known about off-rolling and how it worked for a while. Andy had been an Assistant Head since 2006 and deputy since 2010 and may think he was following a practice created by Individual E and approved by me. If it had been going on for some time, maybe he genuinely thinks I initiated it, but this is absolutely not the case. Individual E never mentioned off-rolling to me.

I should have acted on this but, to be honest, I was pretty embarrassed that I was running a Trust and did not understand what was going on. So I turned a blind eye, convincing myself that the practice had ended and thus no action needed taking. I was so busy with other tasks I did not have the energy to really think about it or deal with it. I fully accept this is to my shame and I am truly sorry for this cowardly and negligent decision. It meant the practice may have continued but I was also very reluctant to question Andy too much – he wanted autonomy and was very resistant to micro-management. I also felt underqualified on IT and rules around roll changes. (I have never been good at technical detail). I know these excuses do not begin to justify my inaction'.

The panel also took into account the consistent evidence before it that there were tensions between Mr Lay and Mr Prestoe during Mr Prestoe's tenure of headship. The Panel noted evidence of the existence of a distinct lack of clarity about accountability between the roles of Mr Prestoe as Head of School and Mr Lay as Executive Head Teacher or Trust CEO.

The panel was satisfied that, by 2014, Mr Lay had sufficient information and knowledge that off-rolling was taking place and that he should, at the very least, have investigated this further. However, to use his own words, he *'turned a blind eye'*. The panel was satisfied by the evidence of Mrs Stalker and Mr Prestoe that off-rolling took place in 2015 and 2016. If Mr Lay had taken appropriate action in 2014, it is unlikely that this practice

would have continued. The panel was, therefore, satisfied that Mr Lay had allowed others to submit data in connection with the School's annual census in 2015 and 2016 that he should have known to be incomplete or which failed to give a true picture of the School's performance.

Accordingly, the panel found allegation 1 proved.

2. Caused, allowed and/or failed to report exam malpractice after you became aware of it in connection with pupils' assessed work from 2012 - 2016, specifically in relation to:

a. the identifying and over-assisting pupils, either by yourself or others, in relation to pupils' English coursework in the academic year 2011 - 2012;

Mr Lay denied this allegation.

Witness B provided a witness statement in which she said that she had witnessed Mr Lay helping a group of pupils with their GCSE English coursework that year. Witness B said that Mr Lay took them into his office and helped them with that work. In her oral evidence, Witness B acknowledged that she had not been in the room with Mr Lay and the pupils concerned and she could not give evidence about what had taken place in the room. Witness B said that, when the pupils came out of Mr Lay's room, they were saying that Mr Lay had told them that would all get A*s.

As part of the School's investigation, [REDACTED], Individual F was interviewed. Individual F referred to an occasion when Mr Lay had volunteered to take students into his office. She said that when she subsequently marked the work, she found that certain parts appeared very similar in each pupil's work. Individual F said in her interview that she did not know if this was because the students were doing it all together or because Mr Lay was doing it inappropriately.

In his evidence, Mr Lay referred to an occasion in the summer of 2012, when [REDACTED]. He said that he learned that three or four pupils had not completed some GCSE coursework due to an oversight by their class teacher. Mr Lay said that he had simply given the pupils concerned a structure to consider when carrying out the coursework. He said that, as the outline structure was the same for all of the pupils, this might explain why there were some similarities in their work.

The panel was not satisfied that the evidence before it established that there had been any over-assistance by Mr Lay with the pupils' English coursework in 2011-2012.

Accordingly, the panel found allegation 2a not proved.

b. the inflation of grades entered for controlled assessments in the modern foreign language subject of French in the academic year 2015 – 2016;

Witness B gave evidence that, in April 2016, it emerged that the class of Witness C, [REDACTED], had not completed the 60% controlled assessment. Furthermore, those who had completed the work had attained very poor marks of around 0-5 out of 30. Witness B said that, when Mr Prestoe became aware of this, he called her and Individual G to a meeting and told Witness B to 'fix it'. She said that Mr Prestoe told her to do whatever she could do to achieve better grades. Witness B said that she decided to carry out a legitimate unrecorded assessment task with the pupils. She said that she then used the mark sheet on SIMS to note down the marks for the unrecorded task, but these were not to be sent to the exam board. When SIMS was examined later, the marks for the recorded tasks had been inexplicably altered.

The panel also heard evidence from Witness C, whom the panel regarded as an honest witness who did her best to assist. Witness C said that, in May 2016, she emailed Individual H, [REDACTED], with the French GCSE speaking assessment marks that she had awarded. She subsequently saw Witness B and Individual H going through these marks. Witness B told her that she would be seeing some of the pupils that day to re-do their assessments. Witness C said that she was unhappy about this as she believed that the marks that she had submitted were a true reflection of their performance.

Witness C said that she later checked SIMS and realised that some of the marks she entered had been inflated. She subsequently met with Mr Prestoe, who reassured her that the inflated grades would not be submitted to the exam board. She said that, despite this reassurance, she believed that the inflated grades had already been sent to AQA. However, the evidence presented did not clearly establish that inflated grades had been submitted to AQA. Witness C referred to an email which she believed was from AQA asking for moderation materials based on the submitted marks. This email was not provided to the panel. The panel was presented with the results of the AQA's subsequent investigation. This had not concluded that any incorrect marks had been submitted. For his part, Mr Prestoe stated that he instructed Individual G and the Exams Officer to remove the allegedly inflated grades and, therefore, in his view no exam malpractice had actually taken place. He accepted that he should have reported Witness C's concerns to the exam board at the time.

Although the panel could not be satisfied by the evidence presented that the incorrect grades had in fact been sent to AQA, the panel noted that inflated grades were included on SIMS for both recorded and unrecorded elements of the controlled assessments. Whilst Witness B agreed that she had entered new, improved grades for the unrecorded work, she denied entering inflated grades for recorded work. The panel was disappointed that it had never been established who was responsible for entering the inflated grades onto SIMS. The panel was satisfied that this constituted exam malpractice even though those grades were not the final grades received by AQA.

The Irregularities and Appeals Committee of the AQA determined by way of a letter dated 4 February 2019 to suspend Mr Prestoe's involvement in AQA's examinations until after

the 2020 examination session as a result of his having committed exam maladministration in relation to the Summer 2016 GCSE French Controlled Assessment.

Mr Prestoe said that he spoke to Mr Lay at the time and informed him that the original marks for the students' coursework had been submitted as these marks were not questioned. However, it was not clear from Mr Prestoe's evidence that Mr Lay had been informed of the changed marks for recorded and unrecorded controlled assessments on SIMS. In his oral evidence, Mr Prestoe said that he did not give Mr Lay all of the details.

Mr Lay said that, although he was made aware by Mr Prestoe in 2016 of general departmental issues in MFL, he was not informed about this particular matter.

Based on the evidence presented, the panel could not be satisfied that Mr Lay had caused, allowed or failed to report the exam malpractice in MFL in 2016.

The panel found allegation 2b not proved.

c. science coursework completed in the academic year 2015 – 2016.

Mr Lay denied this allegation.

In her evidence, Mrs Stalker accepted that on 4 May 2016, she was guilty of examination malpractice for which the examination board, AQA, imposed a suspension on her involvement in AQA's examinations.

In her oral evidence, Mrs Stalker asserted that she was not aware of a culture of cheating in the School and that she had never encouraged anyone to cheat or cheated herself prior to 4 May 2016. She said that her '*heart took over her head*' and asserted her motivation in not following the guidelines was the pupils' interests rather than the School's.

The panel was not provided with any evidence that Mr Lay had caused or allowed the over-assistance in the Science coursework on 4 May 2016 or that he had become aware of it and failed to report it.

The panel found allegation 2c not proved.

Having found particulars 2a, b and c not proved, the whole of allegation 2 was not proved.

3. The facts as may be found proven at allegations 1 and 2 above amount to dishonesty and/or a lack of integrity.

As to his conduct in allegation 1, the panel was satisfied that by 2014, Mr Lay had sufficient information and knowledge that off-rolling was taking place and that he should,

at the very least, have investigated this further. The panel was not satisfied that his conduct would be regarded as dishonest by the standards of ordinary decent people.

As to the allegation of a lack of integrity, the panel noted that integrity connotes adherence to the ethical standards of a profession. It involves more than mere honesty. The panel also recognised that the duty of integrity does not require professional people to be paragons of virtue.

It was incumbent on Mr Lay, as a teaching professional, let alone as an experienced head teacher and a CEO of the Trust, to immediately investigate and take appropriate action. By his own admission, he *'turned a blind eye'* and did nothing, thus tacitly condoning the unethical and pernicious practice of off-rolling pupils and enabling it to continue.

The panel was satisfied that his failure to act was a breach of the ethical standards of the teaching profession and that he, therefore, lacked integrity.

Findings as to unacceptable professional conduct and/or conduct that may bring the profession into disrepute

Having found allegations 1 and 3 proved, the panel went on to consider whether the facts of those proven allegations amounted to unacceptable professional conduct and/or conduct that may bring the profession into disrepute.

In doing so, the panel had regard to the document Teacher Misconduct: The Prohibition of Teachers, which is referred to as 'the Advice'.

The panel was satisfied that the conduct of Mr Lay, in relation to the facts found proved, involved breaches of the Teachers' Standards. The panel considered that, by reference to Part 2, Mr Lay was in breach of the following standards:

- Teachers uphold public trust in the profession and maintain high standards of ethics and behaviour, within and outside school.
- Teachers must have proper and professional regard for the ethos, policies and practices of the school in which they teach...
- Teachers must have an understanding of, and always act within, the statutory frameworks which set out their professional duties and responsibilities.

The panel also considered whether Mr Lay's conduct displayed behaviours associated with any of the offences listed on pages 10 and 11 of the Advice. The panel found that none of these offences was relevant.

The panel was satisfied that the conduct of Mr Lay amounted to misconduct of a serious nature which fell significantly short of the standards expected of the profession.

Accordingly, the panel was satisfied that Mr Lay was guilty of unacceptable professional conduct.

As to conduct that may bring the profession into disrepute, the panel took into account the way the teaching profession is viewed by others and considered the influence that teachers may have on pupils, parents and others in the community. The panel also took account of the uniquely influential role that teachers can hold in pupils' lives and the fact that pupils must be able to view teachers as role models in the way that they behave.

The findings of misconduct are serious, and the conduct displayed would be likely to have a negative impact on the individual's status as a teacher, potentially damaging the public perception.

The panel therefore found that Mr Lay's actions constituted conduct that may bring the profession into disrepute.

Panel's recommendation to the Secretary of State

Given the panel's findings in respect of unacceptable professional conduct and conduct that may bring the profession into disrepute, it was necessary for the panel to go on to consider whether it would be appropriate to recommend the imposition of a prohibition order by the Secretary of State.

In considering whether to recommend to the Secretary of State that a prohibition order should be made, the panel had to consider whether it would be an appropriate and proportionate measure, and whether it would be in the public interest to do so. Prohibition orders should not be given in order to be punitive, or to show that blame has been apportioned, although they are likely to have punitive effect.

The panel had regard to the particular public interest considerations set out in the Advice and, having done so, found a number of them to be relevant in this case, namely: the maintenance of public confidence in the profession, declaring and upholding proper standards of conduct, and the interest of retaining the teacher in the profession.

In the light of the panel's findings against Mr Lay, which involved a finding of a lack of integrity, the panel considered that public confidence in the profession could be seriously weakened if conduct such as that found proved were not treated with the utmost seriousness when regulating the conduct of the profession.

The panel was of the view that a strong public interest consideration in declaring proper standards of conduct in the profession was also present as the conduct found against Mr Lay was outside that which could reasonably be tolerated.

The panel decided that there was a strong public interest consideration in retaining Mr Lay in the profession, since no doubt had been cast upon his abilities as an educator and he is able to make a valuable contribution to the profession.

In view of the clear public interest considerations that were present, the panel considered carefully whether or not it would be proportionate to impose a prohibition order, taking into account the effect that this would have on Mr Lay.

In carrying out the balancing exercise, the panel had regard to the public interest considerations both in favour of, and against, prohibition as well as the interests of Mr Lay. The panel took further account of the Advice, which suggests that a prohibition order may be appropriate if certain behaviours of a teacher have been proved. In the list of such behaviours, those that were relevant in this case were:

- serious departure from the personal and professional conduct elements of the Teachers' Standards;

It was clear to the panel that the practice of off-rolling that occurred in this case was wholly unacceptable and tarnished the professional reputation that Mr Lay had established over the years of his headship and beyond. Part of that reputation was founded on the outstanding ratings that the School had achieved and had maintained. The panel believed that a school's continued outstanding status ought to be based on accurate and honest attainment data. Off-rolling as practised by the school in this case called into question the overall validity of the School's reputation.

The panel recognised that, as CEO of the Trust, Mr Lay influenced the leadership of the School and ought to have used that influence to ensure the integrity of the School's reported data

Even though some of the behaviour found proved in this case indicated that a prohibition order would be appropriate, the panel went on to consider the mitigating factors. Mitigating factors may indicate that a prohibition order would not be appropriate or proportionate.

Mr Lay had a previously good record, as evidence by the many and varied testimonials on his behalf by a wide range of education professionals, some of whom gave oral evidence to the panel.

Witness J, [REDACTED], described Mr Lay as, *'one of the finest heads I ever worked with'*. Witness J referred to Mr Lay's *'total commitment to the students and their progress'* and *'his understanding of the whole child and how to motivate young people'* and *'his ability to design whole school systems which put this into practice'*.

The panel received evidence of Mr Lay's outstanding contributions to teaching over many years as a head teacher and educational leader in Suffolk and neighbouring local

authority areas. He was viewed as a visionary and inspirational leader by his colleagues at all levels in schools and the wider education arena. He and those providing evidence on his behalf gave the panel significant insight into how he had made a positive impact on the communities served by his schools.

At the time of the proved shortfall in Mr Lay's professional conduct, the panel heard evidence that Mr Lay had competing demands on his time within the Trust. These demands may have contributed to his failures and negligence in his oversight of the integrity of the reporting systems within the School.

It was submitted on behalf of Mr Lay that the misconduct that has been found proved in his case occurred in as long as seven years ago and he was referred to the TRA in May 2018. The case was first listed for hearing in July 2019. In accordance with the judgment in *Selvarajan v GMC* [2008] EWHC 182, the panel accepted that the longer the threat of prohibition order is hanging over a teacher's head the more severe such a sanction will be. Although this was not a decisive consideration, it was a factor that the panel took into account when assessing proportionality.

The panel recognised that, in his written statement, Mr Lay said, *'I fully accept this is to my shame and I am truly sorry for this cowardly and negligent decision.'* The panel accepted that, in stating this, Mr Lay demonstrated insight into his professional failings and remorse.

The panel considered whether it would be proportionate to conclude this case with no recommendation of prohibition, considering whether the publication of the findings made by the panel would be sufficient.

The panel was of the view that, applying the standard of the ordinary intelligent citizen, the recommendation of no prohibition order would be both a proportionate and an appropriate response. Having considered the mitigating factors that were present, as outlined above, the panel determined that a recommendation for a prohibition order would not be appropriate in this case. The panel considered that the publication of the adverse findings it had made was sufficient to send an appropriate message to the teacher as to the standards of behaviour that are not acceptable, and the publication would meet the public interest requirement of declaring proper standards of the profession.

Decision and reasons on behalf of the Secretary of State

I have given very careful consideration to this case and to the recommendation of the panel in respect of sanction.

In considering this case, I have also given very careful attention to the Advice that the Secretary of State has published concerning the prohibition of teachers.

In this case, the panel has found some of the allegations proven and found that those proven facts amount to unacceptable professional conduct and conduct that may bring the profession into disrepute. In this case, the panel has found some of the allegations not proven, and did not find dishonesty but did find lack of integrity. I have therefore put those matters entirely from my mind.

The panel has recommended that the findings of unacceptable professional conduct and conduct likely to bring the profession into disrepute should be published and that such an action is proportionate and in the public interest.

In particular, the panel has found that Mr Lay is in breach of the following standards:

- Teachers uphold public trust in the profession and maintain high standards of ethics and behaviour, within and outside school.
- Teachers must have proper and professional regard for the ethos, policies and practices of the school in which they teach...
- Teachers must have an understanding of, and always act within, the statutory frameworks which set out their professional duties and responsibilities.

I have to determine whether the imposition of a prohibition order is proportionate and in the public interest. In considering that for this case, I have considered the overall aim of a prohibition order which is to protect pupils and to maintain public confidence in the profession. I have considered the extent to which a prohibition order in this case would achieve that aim taking into account the impact that it will have on the individual teacher. I have also asked myself, whether a less intrusive measure, such as the published finding of unacceptable professional conduct and conduct that may bring the profession into disrepute, would itself be sufficient to achieve the overall aim. I have to consider whether the consequences of such a publication are themselves sufficient. I have considered therefore whether or not prohibiting Mr Lay, and the impact that will have on him, is proportionate and in the public interest.

In this case, I have considered the extent to which a prohibition order would protect children. The panel has observed, "that the practice of off-rolling that occurred in this case was wholly unacceptable and tarnished the professional reputation that Mr Lay had established over the years of his headship and beyond." A prohibition order would therefore prevent such a risk from being present in the future.

I have also taken into account the panel's comments on insight and remorse, which the panel sets out as follows, "Mr Lay demonstrated insight into his professional failings and remorse." I have therefore given this element considerable weight in reaching my overall decision.

I have gone on to consider the extent to which a prohibition order would maintain public confidence in the profession. The panel observe, "The findings of misconduct are

serious, and the conduct displayed would be likely to have a negative impact on the individual's status as a teacher, potentially damaging the public perception."

I have had to consider that the public has a high expectation of professional standards of all teachers and that the public might regard a failure to impose a prohibition order as a failure to uphold those high standards. In weighing these considerations, I have had to consider the matter from the point of view of an "ordinary intelligent and well-informed citizen."

I have considered whether the publication of a finding of unacceptable professional conduct, in the absence of a prohibition order, can itself be regarded by such a person as being a proportionate response to the misconduct that has been found proven in this case.

I have also considered the impact of a prohibition order on Mr Lay himself. The panel comment that it had, "received evidence of Mr Lay's outstanding contributions to teaching over many years as a head teacher and educational leader in Suffolk and neighbouring local authority areas. He was viewed as a visionary and inspirational leader by his colleagues at all levels in schools and the wider education arena. He and those providing evidence on his behalf gave the panel significant insight into how he had made a positive impact on the communities served by his schools."

A prohibition order would prevent Mr Lay from teaching and would also clearly deprive the public of his contribution to the profession for the period that it is in force.

In this case, I have placed considerable weight on the panel's comments concerning the contribution made by Mr Lay to the teaching profession.

Taking all that into account I agree with the panel, "that the publication of the adverse findings it had made was sufficient to send an appropriate message to the teacher as to the standards of behaviour that are not acceptable, and the publication would meet the public interest requirement of declaring proper standards of the profession."



Decision maker: Alan Meyrick

Date: 20 October 2021

This decision is taken by the decision maker named above on behalf of the Secretary of State.

