

THE TEACHING AGENCY

Decision of a Professional Conduct Panel and the Secretary of State

Teacher: Ms Annette Sale
Teacher ref no: 0214711
Teacher date of birth: 30/12/1948
TA Case ref no: 007296
Date of Determination: 31 January 2013
Former Employer: Phoenix Centre, Surrey

A. Introduction

A Professional Conduct Panel ('the Panel') of the Teaching Agency convened on 28, 29 and 30 January 2013 at 53-55 Butts Road, Earlsdon Park, Coventry, CV1 3BH to consider the case of Ms Annette Sale.

The Panel members were:

- Kathy Thomson (Teacher Panellist – in the Chair);
- Aamer Naeem (Lay Panellist); and
- Mick Levens (Teacher Panellist).

The Legal Adviser to the Panel was Christopher Alder of Blake Laphorn Solicitors.

The Presenting Officer for the Teaching Agency was Sarah Knight of Bevan Britten LLP, Solicitors.

Ms Sale was not present and was not represented.

The hearing took place in public and was recorded.

B. Preliminary Issues

At the outset of the hearing, the Presenting Officer provided evidence to confirm that the Notice of Proceedings had been posted to Ms Sale's last known address and applied for the hearing to proceed in Ms Sale's absence.

Before the Panel considered its decision, the Legal Adviser declared the following advice:

The Panel should consider Regulation 19 of the Disciplinary (England) Regulations 2012 ('the Regulations) and paragraphs 4.10 and 4.26 of the Disciplinary Procedures for the regulation of the teaching profession ('the Disciplinary Procedures').

A Teacher has a right to be present at a hearing, but can waive the right to attend.

The Panel's discretion to proceed in the absence of a teacher should be exercised with the utmost care and caution. In exercising that discretion the Committee must have regard to the interests of justice. Fairness to others, including witnesses and the Agency, can also be taken into account. The Panel may take into account the interests of any witnesses and the Agency which seeks to conduct the process expeditiously and within a reasonable time of the date of the alleged events.

The Panel should refer to the guidance provided by the case of *R v Jones (2002)* *2ALLER* and *Tait v Royal College of Veterinary Surgeons (2003) UKPC34*.

Should it hear the case in the absence of a teacher, the Panel must ensure that the hearing is as fair as the circumstances permit. It must take reasonable steps both during the giving of evidence and in the summing up to expose weaknesses in the Agency's case and to make such points on behalf of the Teacher as the evidence permits.

The Panel announced its decision and reasons for that decision as follows:

"Having reviewed the Notice of Proceedings of 16 November 2012 and having heard representations from the Agency we conclude that the Notice has been served appropriately and in accordance with the Teacher's Disciplinary Regulations and Disciplinary Procedures.

We have considered very carefully whether to proceed in Ms Sale's absence today. In this regard, we have considered each guideline set out in the case of Jones.

Ms Sale has not corresponded with the Agency nor the General Teaching Council, although it is clear from an email from her representatives Partners Employment Lawyers that she knew that the GTC had commenced an investigation in December 2010. Ms Sale has not responded to the Notice of Proceedings.

We have carefully considered the steps which have been taken to contact Ms Sale which has included the instruction of enquiry agents to seek to locate her. Following the clarification this morning by the Presenting Officer of the additional enquiries which have been made to her former representatives and the NAHT, we are satisfied that reasonable steps have been taken to establish contact with Ms Sale and to establish current contact details for her.

We are satisfied that the Notice has been sent to the last known postal address for Ms Sale. We note that Ms Sale has not requested that correspondence should be sent to her by email or other means. Ms Sale has not engaged with the Agency or GTCE and she has not provided either with any different address from that which is set out on the Notice. We believe that it is a reasonable expectation for teachers to notify the Agency of any change in their circumstances, should they knowingly be subject to investigation.

We have carefully considered the nature of the case, the allegations and the evidence which is available to us. We have noted that witnesses are available to attend the hearing who can provide direct evidence. We have also noted that the case and evidence to be presented by the Agency is the same, or largely the same, as that considered as part of the investigation at the Unit. We have also noted that there is detailed evidence in the bundle regarding Ms Sale's evidence, information and representations.

We recognise the responsibility on this Panel to make such points and to test evidence as might be appropriate on Ms Sale's behalf. We will consider her evidence, representations and assertions very carefully. Given these factors we are satisfied that we can ensure that Ms Sale will receive a fair hearing.

We do not feel that it is necessary to delay consideration of the hearing and therefore we have decided that it is in the public interest to continue with the hearing today. "

C. Summary of Evidence

Documents

In advance of the hearing, the Panel received a bundle of documents, comprising:

Section 1	Anonymised Pupil List	pages 1-2
Section 2	Notice of Proceedings and Teacher's Response	pages 3 - 9
Section 3	Teaching Agency Witness Statements	pages 11 - 86
Section 4	Teaching Agency documents	pages 88 – 780
Section 5	Teacher's Documents	pages (none)

Additional Documents

At the outset, Ms Knight requested that a number of documents be admitted in evidence – a number of those were submitted which supported the Teacher's position.

Having taken advice from the Legal Adviser, the Panel was satisfied that the documents were relevant to the issues that it was called upon to decide and that it would be assisted by their admission.

The additional documents were added to Section 3 of the papers as pages 780–811.

Brief Summary

Please note that this is intended to be a summary – it does not reflect the complete evidence given.

The Panel carefully considered the submissions of the Presenting Officer in opening and closing submissions.

The Presenting Officer called Witness A, Assistant Local Education Officer. The Panel took her statement, found at pages 11-16 of the hearing bundle, as read.

In response to questions from the Presenting Officer and, subsequently, the Panel, Witness A provided more detail of her investigation and the decisions which were taken about the selection of witnesses. She gave greater detail regarding the local authority preliminary investigation and subsequent investigation following recommendations made by Individual B. Witness A gave further evidence regarding how witness statements were prepared and how minutes of the interviews were sent to the witnesses for confirmation. She was able to provide further information regarding the amendments to the meeting minutes as required by Individual X. Witness A was also able to provide the Panel with greater detail in relation to her review of the pupil intervention records and pupil log book entries. She confirmed that she had spoken with Pupil A regarding his time at the Centre.

Witness A gave evidence about the detail of the statements made by the various teaching and non teaching staff at the Centre. She accepted that there appeared to be division between the staff - with non teaching staff being happy with the management of the Centre and, broadly speaking, teaching staff being concerned about its management. Pupil intervention and/or incidents regarding pupil restraints could be recorded in the pupil log books and she confirmed that it was a teacher's responsibility to complete the record of intervention.

The Presenting Officer called Witness C, Administrative Officer at the Centre, to give evidence. The Panel took her statement, found at pages 22-27 of the hearing bundle, as read.

In response to questions from the Presenting Officer and, subsequently, the Panel, Witness C provided additional detail regarding her responsibilities as the Centre's Administrative Officer. Witness C was able to provide further detail in relation to the culture at the Centre. She was an eye witness to the use of the Time Out Room and was able to describe the room in detail. She gave additional evidence to the Panel regarding her concerns about the use of the Time Out Room and her discussions with Individual D and Individual E who were teaching staff. She gave additional detail regarding the physical movement of Pupil A when he was forcibly moved from the taxi into the Centre.

Witness C described how, from January 2009, she kept a log of the pupil interventions and cross referred these with the formal records. The formal records often lacked detail about the physical restraints.

Witness C also gave additional detail about her conversation with Ms Sale who, she recalled, asked her to remove a personnel file for Individual F, a supply teacher who was MAPA trained.

Witness C gave further detail regarding Ms Sale's management of the Centre. She confirmed that Ms Sale had no teaching commitment. She agreed that the Centre was not adequately staffed. She did not know what steps Ms Sale had taken to bring concerns to the attention of the local authority.

The Presenting Officer had intended to call Individual G, Assistant Director for Young People, to give evidence. However, the Presenting officer was not able to call Individual G on 29 January. He had not attended the hearing on Monday 28 January and could not be contacted the following day. The Panel decided to proceed without his evidence.

The Presenting Officer called Witness H, Senior Social Worker, to give evidence. The Panel took her statement, found at pages 52-63 of the bundle, as read.

In response to questions from the Presenting Officer and, subsequently, the Panel, Witness H provided a detailed summary of her experience and professional qualifications. She was able to assist the Panel by providing direct eye witness evidence of the layout of the Centre, its atmosphere and culture. She described the professional relationship she had with the Centre and the, "1 to1" meetings she had with Ms Sale. She gave her opinion about the inappropriate use of the Time Out Room and inappropriate pupil management.

Witness H gave additional evidence to the Panel about her discussions with members of staff and of the concerns which were brought to her attention about the management of pupil behaviour at the Centre. She provided additional detail about her views of attempting different therapeutic / behavioural management approaches to the vulnerable pupils in the Centre. Witness H explained how she had raised concerns with Ms Sale, specifically regarding Pupils F and A. Ms Sale had explained her view of the management of Pupil A. She had subsequently telephoned Witness H during a period of her (Witness H's) leave during which she explained that the pupil's behaviour had improved. She explained to Witness H that this showed that her approach to his behaviour was successful.

Witness H described the line management structure as it related to her role and how she had raised her concerns about the management of pupils at the Centre to the attention of others at CAMHS.

Witness H was able to provide additional detail to the Panel regarding the requirement to keep records of pupil interventions – and how she had been concerned about the lack of detail of physical interventions. She explained how, in her view, Ms Sale had never attempted to mistreat pupils and that the position at the Centre was very challenging. Ms Sale was clearly responding to a very

stressful situation at the Centre and this may have affected her management. She was not aware of any conspiracy to undermine Ms Sale, but had felt, herself, to be excluded by a number of the staff. She was concerned that Ms Sale's approach in running the centre had led to her crossing a line again and again.

The Presenting Officer called Witness I, Head of Inclusion for Surrey County Council, to give evidence. The panel took her statement, found at pages 28-44 of the hearing bundle, as read.

In response to questions from the Presenting Officer and, subsequently, the Panel, Witness I gave additional detail regarding the County Council investigation into the Centre and her presentation of the case before the Employment Tribunal. She provided additional detail, specifically, in respect of her discussion with Ms Sale during interview, during which Ms Sale appeared to accept a number of the concerns raised by the County Council.

When referred to specific emails, Witness I explained that Ms Sale had not properly brought her concerns about inappropriate pupil placement to the attention of her superiors – her opinion was that she had not emailed the correct people. She did not concede that Ms Sale, in emailing her line manager Individual B, had followed the correct route to raise concerns.

Witness I was unable to confirm whether there had been 18 pupils at the Centre. She did not believe that, in any event, this represented an excessive number of pupils for the Centre. She conceded that a number of the pupils had been at the Centre for a longer period than "the Council would have liked" and accepted that this was regrettable. However, she went on to explain that the Phoenix Centre was not the only Pupil Referral Unit in the Surrey County Council area and that requesting authority for the movement of pupils had, "a reality script" around it.

Witness I described the role of Heads of Pupil Referral Units, and how they have a relatively autonomous role akin to that of a Headteacher. Witness I gave additional evidence regarding her concerns about the recruitment of Individual F and the lack of a CRB check. She confirmed that advice given to the Council had been that the actions at the Centre were illegal. She confirmed that no criminal prosecution had been undertaken. She also provided further information which confirmed that no disciplinary action had been taken against any member of staff at the Centre, other than Ms Sale. She confirmed that she had not been a witness to the events at the Centre.

D. Decision and Reasons

"We have now carefully considered the case before us and have reached a decision.

We confirm that we have read all the documents provided in the bundle in advance of the hearing, the additional documents provided at the start of the hearing and we have carefully considered all of the evidence presented to us during the hearing.

We have considered the following allegation that:

Ms Sale was guilty of unacceptable professional conduct in that whilst employed at the Phoenix Centre ("the Centre"), Redhill, Surrey, between April 2004 and 17 February 2010 she:

1. inappropriately used a room (referred to as the "Time Out Room") at the Centre, including leaving children locked in the Time Out Room, leaving children unattended by an adult in the Time Out Room and leaving children in the Time Out Room for lengthy periods of time;
2. failed to adequately monitor or record incidents involving the physical restraint of pupils;
3. advocated the use of physical force to transfer, a 9 year old pupil (Pupil A) into the Centre on a number of occasions between September 2008 and October 2008;
4. failed to take account of Child Protection concerns reported by members of staff;
5. employed Individual F as a Supply Teacher in November 2008 without having undertaken the Safer Staffing checks which include applying for a Surrey Criminal Records Bureau check;
6. instructed Witness C, Administration Assistant, to remove Individual F's file from the school's records on or around 26 March 2009.

Summary

Ms Sale had been a teacher since 1968. She has considerable experience working with children with emotional and social difficulties and special educational needs, both in the UK and Australia. She was appointed as a teacher at the Pupil Referral Unit, called the Phoenix Centre in April 2002 and was promoted to Head of the Centre in September 2004. The Centre was a short stay primary school with places for 16 pupils who had been permanently excluded from mainstream schooling or who were at risk of permanent exclusion because of their challenging behaviour. The Centre has a staffing complement of 3.6 teaching posts, 3 teaching assistants and 2 part-time business support assistants. Ms Sale was responsible for the day to day operation and management of the Centre.

On 12 March 2009, an Education Officer with Surrey County Council, was informed that a member of the Child and Adolescent Mental Health Service ("CAMHS") had raised concerns about practices at the Centre. On 24 March 2009, Witness A, Assistant Local Education Officer, received a "whistleblowing" call from a member of the Centre's employed staff expressing concerns about a number of practices at the Centre. It was alleged that a room in the Centre was being used inappropriately and that children were being detained in the room unsupervised for long periods of time.

An investigation was led by the LEA in a number of stages. The investigation involved the interviewing of staff, one pupil and the review of pupil records. Following the second stage of the investigation, Witness A and an Education Officer prepared an initial report. This report identified the fact that concerns had been raised by a number of staff about the use of physical restraint of pupils; the use of a room designated a "Time Out" room, the engagement of Individual F and failure to undertake sufficient safeguarding checks prior to his employment. There was an

apparent even division of staff with a number of them being highly supportive of the management of the Centre and Ms Sale, whilst others raised concerns.

A key concern which was investigated related to pupils with significant behavioural challenges being routinely be left alone and unsupervised in the Centre's Time Out room. It was suggested that these pupils would often be physically transferred into the room, often for significant periods of time. It was also suggested that the restraints of pupils were not adequately recorded or monitored.

Following further investigation, Ms Sale was suspended and ultimately dismissed. Throughout the investigation and employment disciplinary procedures she maintained that the door of the time out room was not locked and that pupils were supervised if they were in the room. She maintained that the Centre was having to look after increasingly violent and challenging children and that a total of 18 children were placed at the Centre, when its capacity was assessed as being only able to take only 16 pupils. She maintained that the Centre was understaffed and that, despite requesting support and raising her concerns with Surrey County Council, no steps were taken to address this understaffing or to transfer pupils. Ms Sale maintained that Individual F had been appropriately employed and that because he had been employed as a teacher elsewhere with the County, he had received a CRB check.

The Centre had been inspected by Ofsted in March 2009 and had received a "Good" rating - with outstanding leadership and child protection provision. Ms Sale raised concerns about the independence of the "whistleblower" and believed that there had been a conspiracy amongst certain staff against her. She maintained that despite a lack of support from the local authority she had started to manage change within the Centre at the point when she was suspended.

Findings

We have carefully considered all of the evidence in this case. Our findings are as follows

Particular 1

We have considered all of the relevant evidence, which has included the oral evidence of Witness A and Witness C, Administration Assistant. We considered the evidence contained in the bundle and Ms Sale's evidence as set out in the hearing bundle.

We found Witness A to be a credible witness but she was unable to provide direct evidence of the events. We found Witness C be a credible witness who was able to give us clear evidence of the culture at the Centre.

We also considered the oral evidence of Witness H, now a senior social worker. She had been employed by Surrey County Council CAMHS, being seconded one day per week at the Centre. She confirmed that she had witnessed incidents at the Centre which included children being physically moved by Ms Sale and other staff into the Time Out Room. Her evidence was that on occasions the door to the room

was left open, on occasions it was closed because the child had pushed it closed and on other occasions it was closed by Ms Sale or other staff. By the nature of the keypad system on the door, once the door was closed it became locked and could not be opened from the inside. She stated that the use of the room in this manner was a routine, almost daily, occurrence.

Witness C provided detail in her evidence regarding the use of the room and the culture of the Centre, and provided detail of her log of interventions from January 2009.

Witness H raised concerns about the Time Out room and gave credible opinion regarding why such use was inappropriate. We found Witness H to be a reliable and credible witness who was able to provide direct eye witness testimony. Importantly, the evidence which she gave was consistent with the evidence of a number of the individuals who, whilst not present during this hearing, provided statements as part of the local authority investigation.

We have carefully considered Ms Sale's evidence, which has been presented in her representations to the County Council's investigative and employment disciplinary process as well as the minutes to the investigative interviews. We considered the evidence of Witness I, Head of Inclusion at the Council, who led the Council's case before the Employment Tribunal. Witness I asked direct questions of Ms Sale and was able to give us evidence of what she (Ms Sale) had said. We are satisfied that there is no dispute as to the existence of the Time Out room at the Centre or that it was used. Ms Sale's evidence suggested that she wished that she had not to use the room, but that it was necessary to use it. It was noted in the judgment of the Employment Tribunal that Ms Sale had not denied the use of the room.

We are clear on the evidence that Ms Sale did not intend to mistreat pupils and that, given the size of the Centre, a pupil within the room was within earshot of teaching and other staff. However, the evidence of Witness H, which is corroborated by the recollection of a number of staff interviewed by the County Council, identifies a concern for the safety of pupils who were, frequently, not being supervised for lengthy periods of time in a locked room. The use of a Time Out room may have been appropriate, but only exceptionally and within carefully governed procedures and under the supervision of trained staff. The evidence in this case suggests that the use of the room in the Centre was not a carefully thought through behaviour intervention programme.

There is some conflict within the evidence as to the appropriateness of the use of the room in the manner alleged and we have carefully considered the evidence. Having considered the evidence of Witness H in oral testimony to be compelling and her corroboration of the evidence of Witness C and a number of members of staff who were interviewed as part of the Council investigation, we are satisfied that there is sufficient evidence to prove each element of this particular.

Particular 2

We have considered all of the relevant evidence. We have carefully considered the evidence of Ms Sale contained within the bundle.

We have considered the evidence of Witness C who explained the process by which records of physical intervention were kept. She kept a record of physical interventions and use of the room from January 2009. She explained how she reviewed her log of interventions as against what should have been the formal records, but there were very few formal records of interventions.

We have also considered the evidence of Witness A who described the need to keep individual pupil daily log books. She explained that these may also be used to contain a record of physical interventions. She was able to produce just two records of physical intervention dated 25 and 26 September 2008.

Witness H was also able to provide direct evidence to us regarding her understanding of the use of the records for physical restraint. She also gave clear evidence about the frequency of physical interventions on pupils. She recalled that the children's log books which she reviewed did not appear to contain sufficient detail of particular interventions or incidents – at least one of which she had witnessed directly.

We note that the responsibility for keeping a record of each physical intervention rested with the responsible teacher. It was, however, Ms Sale's responsibility as Head of the Centre to monitor incidents and ensure the accurate and adequate recording of incidents that involved the physical intervention on pupils. In part, this monitoring would have been undertaken through the formal Pupil Intervention Record or even log records. However, we have also noted from the evidence of Witness C and Witness H that Ms Sale was involved in a number of the interventions. The culture and size of the Centre as described to us leads us to conclude that Ms Sale was aware of the nature and number of interventions.

Given the apparent frequency of the interventions – which we accept based on the evidence of Witness H - we conclude that identifying records of just two physical interventions show that there was inadequate recording. This lack of recording also shows that Ms Sale did not ensure that the recording of interventions was reviewed. Record keeping is a critical aspect of Ms Sale's responsibility as Head of the Centre, especially on occasions when she was absent. It was essential to her management of the Centre to have had adequate records. Without such records we are satisfied it would not have been possible for her to have adequately monitored incidents involving physical restraint of pupils.

We carefully considered the evidence of Witness A who investigated the number and nature of records into the physical interventions. There is a clear lack of appropriate records to show the detail and number of the physical interventions which, as we have found proven, were taking place routinely in the Centre.

On the basis of the evidence we have heard from Witness H, Witness C and Witness A, our review of the records which have been presented, and having considered the context of the interventions and Centre, we find this particular proven.

Particular 3

We have carefully considered the evidence which is relevant to this particular.

This has included the evidence which Witness A and Witness C gave in oral testimony and through their written statements. Witness A described her investigation and she produced two records which showed physical intervention with Pupil A, who clearly had challenging behaviour. We have also considered the note of the interview with Pupil A and the letter from his mother. The evidence indicates that the pupil's mother agreed to the approach taken to transferring him into the Centre.

The evidence of Witness C was clear. She recalled that she had seen staff carrying Pupil A forcibly from a taxi and transferring him physically into the Centre. Pupil A makes reference to this. On this issue, we found Witness C's eye witness testimony to be credible and compelling.

We have carefully considered Ms Sale's evidence which is presented in the form of her representations to the County Council's investigation and to the employment tribunal.

We have considered the physical intervention record for this pupil dated 26 September 2008 which appears to show one occasion when he was transferred in this way. We have noted that the record has been signed by Ms Sale. It is therefore clear from this record that Ms Sale was aware that there had been physical transfer of the pupil into the Centre – albeit that the record shows that this happened on just one occasion.

We have also carefully considered the evidence of Witness H. She was able to recall conversations with Ms Sale about the physical transfer of this pupil into the Centre. She was able to recall an additional strategy which she had recommended to help this pupil. Following this, Witness H recalled a conversation which she had had with Ms Sale whilst she (Witness H) was on a period of leave. Within that conversation, Ms Sale indicated that Pupil A's behaviour had calmed. Ms Sale suggested that this had been a result of the nature of the intervention at the Centre which, in part, included physically transferring him into the Centre.

We have given weight to Witness H's evidence. Although Witness H did not directly witness the pupil being transferred, she is able to provide the context of hers and Ms Sale's understanding of what was happening to this pupil. We are satisfied that it is proven that Ms Sale was aware of the physical transfer of this pupil and, during her conversations with Witness H, was an advocate of the strategy. We are also satisfied that in knowing of, and continuing to allow, the physical transfer to continue, Ms Sale behaved in a way which shows that advocated and supported the strategy.

We are therefore satisfied that there is sufficient evidence for this particular to be proven.

We have considered all of the relevant evidence, which includes Witness C's oral evidence. Witness C recalled that she had raised a child protection concern with Ms Sale and that she (Ms Sale) did not take account of this or report it.

Whilst we do not doubt Witness C version of events she was unable to recall the detail of the incident – for example who it involved, what happened, what was said or any specific information. Given the lack of clear recollection we are unable to give weight to this element of evidence.

Witness H provided evidence of conversations which she had had with members of staff during which they raised child protection concerns. She recalls advising staff to speak to Ms Sale directly. However, she was unable to give evidence as to whether the concerns were brought to Ms Sale's attention directly.

On the basis of the evidence presented, we are not satisfied that it is sufficient to prove the allegation. Accordingly, we do not find this particular proven.

Particular 5

We have considered all of the evidence relevant to this particular.

We considered the oral evidence of Witness C and the evidence which Ms Sale presented to the County Council's investigatory process. Witness C was aware that Individual F was employed as an agency supply teacher and recalls speaking to Ms Sale about his employment. It is not disputed that Individual F was employed at the Centre.

Witness C also referred to her discussion with Ms Sale regarding Individual F's employment and was able to confirm that no CRB check had been undertaken for him.

We also considered the evidence of Witness A and Witness I, both of whom led elements of the Council's investigation. Witness I was clear that it was Ms Sale's responsibility to ensure that the Safer Staffing checks should have been undertaken and that these included applying for a Surrey Criminal Records Bureau check for Individual F. This responsibility remained, irrespective of whether an individual had been an agency teacher and irrespective of whether he had undergone a Surrey CRB check at a different primary school.

We carefully considered the evidence of Ms Sale and the detail of the discussion she had with Witness I. This is recorded in the investigatory minutes, but also Witness I was able to give oral evidence to us in respect of the CRB process to be undertaken.

On the basis of the available evidence, we find this particular proven.

Particular 6

We have considered all of the evidence which is relevant to this allegation.

We considered the oral testimony of Witness C and she was able to give us clear evidence of her conversation with Ms Sale during which Ms Sale instructed her to remove Individual F's file from school records in advance of an Ofsted inspection to

be undertaken by Ofsted. Witness H corroborated Witness C's account by confirming that they had discussed the issue.

We have considered the evidence which Ms Sale has presented as part of her response to the County Council's investigation.

We found Witness C's evidence on this point to be credible and we have given weight to it. We have found this particular proven.

Finding as to Unacceptable Professional Conduct

We have carefully considered whether the facts we have found proven amount to unacceptable professional conduct.

We have considered the current Teachers' Standards. For completeness we have also considered the former GTCE Code of Conduct and Practice for Registered Teachers. We are clear that it is a consistent professional and public expectation that teachers are responsible for setting an expectation that they must uphold public trust in the profession and are responsible for maintaining the highest standards of ethics and behaviour.

We are clear that it has been a consistent expectation of the profession and public that teachers must set high expectations to inspire, motivate and challenge pupils. It was Ms Sale's responsibility to establish a safe and stimulating environment for pupils rooted in mutual respect. In using and allowing the Time Out room at the Centre to be used in the manner she did; allowing physical restraint to continue without adequate monitoring or recording; advocating the use of physical force to transfer a pupil; employing a teacher without following established safeguarding proceedings; and requesting the removal of personnel information shows, in our decision, that she failed to uphold such responsibilities or expectations.

We believe that Ms Sale's actions were not undertaken with any malicious intent and it is clear that she was working in a highly challenging environment with pupils who were exhibiting extreme and violent behaviour. We do not believe that she intended to cause any harm and she had expressed an intention to change the approach at the Centre to the use of the Time Out room. It is clear that she had not updated her practice to reflect current behaviour strategies and, despite having concerns, she did not stop use of the room. We are satisfied that she failed to manage behaviour effectively to ensure a safe learning environment for children. Significantly, her actions have shown a disregard for the fundamental need to safeguard pupils' safety and well-being and represent a serious departure from the professional conduct elements which affected the wellbeing of pupils.

Given the findings we have made, we are satisfied that Ms Sale's behaviour has fallen significantly and seriously short of the standard of conduct expected of a teacher and is behaviour which involves a breach of the standards of propriety expected of the profession.

In all of the circumstances, the Panel is satisfied that Ms Sale's conduct fell significantly short of the standard expected of the profession and amounts to 'unacceptable professional conduct'.

Panel's Recommendation to the Secretary of State

We have considered this case very carefully and have considered the mitigation and evidence presented by Ms Sale. We have considered the evidence and representations which Ms Sale has made through her representations and evidence set out within the bundle. We have considered all of her mitigation thoroughly.

Ms Sale was a highly experienced, highly trained teaching professional. She has had a long career and has not been subject to any other complaints.

At the time of the incidents, Ms Sale was seeking to manage a complex educational environment which sought to cater for very vulnerable pupils who were exhibiting violent behavioural challenges. We also noted that a number of the pupils had been within the Centre for an excessive period and that she had sought help from the County Council.

It was clearly a highly stressful environment at the Centre and she maintained that it was understaffed and that she lacked support of the County Council. In our view, Ms Sale struggled to maintain the leadership of the Centre. It was her responsibility, given her senior position, to ensure the integrity of the child protection provision above all else. She had sought support but, although this was not forthcoming, she made a significant error of judgment in using the Time Out room as a default pupil behaviour management tool. We believe that Ms Sale knew that the use of the room in the manner alleged was inappropriate given that she instructed staff not to use it during the Ofsted inspection.

We are clear that Ms Sale had no intention of harming pupils and that she was not acting maliciously. Witness H provided candid evidence that Ms Sale had sought to help the pupils and was very hard working and committed to the Centre. Her evidence was that Ms Sale was highly stressed and that this affected her decision making and practice.

In our view, Ms Sale's conduct has fallen significantly below the standards expected of a teacher. We are of the view that her behaviour has the potential to undermine the reputation of the profession and to damage public confidence in the standards expected of Teachers. Her actions show that she has failed to maintain the fundamental requirement for teachers to act in a way which safeguards pupils and ensures their wellbeing.

Ms Sale's actions had the potential to place pupils at risk and we have not been reassured that she has shown insight into the concerns which have been raised. We are also not reassured that she has understood that her actions could have caused harm.

We have considered whether to conclude this case without recommending the imposition of a sanction. We have decided that the issues raised in this case are so serious that we recommend that a Prohibition Order is necessary and appropriate. We have reached this decision after careful consideration. We have reminded ourselves that a sanction is not intended to act punitively but is imposed to reflect the seriousness of her behaviour, to uphold public confidence in the standards of conduct expected of the profession and to protect the public and/or pupils. We suggest that a Prohibition Order is necessary and proportionate in this case in order to uphold public trust and confidence and standards of conduct expected of the profession.

We considered carefully whether to allow Ms Sale the opportunity to apply for the Prohibition Order to be reviewed. We have not been able to ask questions of her during this hearing. We have not had the opportunity to hear from her directly as to whether she has, since the date of the incidents, reflected on her conduct. Given the significant mitigation which she has presented in relation to the length of her career, her apparent commitment and concern for the pupils, the regard with which professional colleagues held her as well as considering the complex environment which she was managing we have decided that it would be appropriate and proportionate to allow Ms Sale the opportunity to apply to set aside the Order.

We have decided that a period of two years should elapse, being the minimum period, before which she can apply to set aside the Order. This would be an appropriate period of time in order to reflect her mitigation, her previous experience and an acknowledgement of the context and challenges which she faced at the Centre.

Secretary of State's Decision and Reasons

I have given very careful consideration to this case, which is a complex one. I have read the findings of the panel in respect of the facts of the case that they have found proven, and those where they have not found the allegations proved. I have also given careful consideration to the findings of unacceptable professional conduct that have been made by the panel, and to their recommendation in respect of sanction.

It is clear from the panel's findings and from their recommendation that the challenges faced by Ms Sale were considerable. It is also clear that in taking the actions that she did, and failing to take other actions in terms of monitoring and appropriate controls, that Ms Sale failed to maintain the fundamental requirement for teachers to act in a way which safeguards pupils and ensures their wellbeing.

Ms Sale's actions also had the potential to place pupils at risk. In addition it is not clear that Ms Sale has shown insight into the concerns which have been raised. It is not clear that she has understood that her actions could have caused harm.

A prohibition order should act to protect the public and be in the public interest and should be proportionate. In my view, in the light of the findings of this case, a prohibition order meets those tests and should be imposed upon Ms Sale.

I have also given careful consideration to the issue of a review period. In my view the panel have given proper consideration to the mitigating circumstances including her commitment and concern for the pupils, the regard with which professional colleagues held her, as well as the complex environment which she was managing. I support a two year review period.

This means that Ms Annette Sale is prohibited from teaching indefinitely and cannot teach in any school, Sixth Form College, relevant youth accommodation or children's home in England. She may apply for the Prohibition Order to be set aside, **but not until 7 February 2015, 2 years from the date of this order at the earliest.** If she does apply, a panel will meet to consider whether the Prohibition Order should be set aside. Without a successful application, Ms Annette Sale remains barred from teaching indefinitely.

This Order takes effect from the date on which it is served on the Teacher.

Ms Annette Sale has a right of appeal to the Queen's Bench Division of the High Court within 28 days from the date she is given notice of this Order.

NAME OF DECISION MAKER: Alan Meyrick

DATE: 31 January 2013