Mr Michael Robert Leishman: Professional Conduct Panel outcome

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

January 2015
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A. Introduction

A professional conduct panel ("the panel") of the National College for Teaching and Leadership ("the National College") convened on 8 – 12 December 2014 at Ramada Hotel & Suites, Coventry City Centre, The Butts, Coventry, CV1 3GG and on 30 January 2015 at 53-55 Butts Road, Earlsdon Park, Coventry, CV1 3BH to consider the case of Mr Leishman.

The panel members were Cllr Gail Goodman (teacher panellist— in the chair), Mr Michael Carter (teacher panellist) and Mr John Elliott (lay panellist).

The legal adviser to the panel was Mrs Luisa Gibbons of Eversheds LLP Solicitors.

The presenting officer for the National College was Mr Andrew Hurst, Counsel of 2 Hare Court, instructed by Nabarro Solicitors.

Mr Leishman was present but not represented.

The hearing took place in public and was recorded.
B. Allegations

The panel considered the allegations set out in the notice of hearing dated 15 August 2014, as amended as set out in Section C below.

In the notice of hearing, it was alleged that Mr Leishman was guilty of unacceptable professional conduct and/or conduct that may bring the profession into disrepute, in that:

1. On 6 July 2012 when Pupil A was attempting to stand he:
   a. prevented a member of staff from assisting Pupil A,
   b. did so in circumstances such that your actions were:
      i. unjustified,
      ii. risked harm to Pupil A by falling,
      iii. inappropriate as regards his colleague by pushing his colleague’s arm away;

2a On 6 July 2012 as regards Pupil B he:
   i. opened a cupboard door such that the door made contact with Pupil B who was lying in front of the cupboard,
   ii. continued to attempt to open the cupboard door despite Pupil B’s position, thereby attempting to force Pupil B to move,
   iii. opened a classroom door whilst Pupil B was lying across the doorway such that the door came into contact with Pupil B,
   iv. continued to attempt to open the door despite Pupil B’s position, thereby attempting to force Pupil B to move,

b He thereby acted in a manner that:
   i. was unjustified,
   ii. risked causing unnecessary and/or unjustifiable distress to Pupil B;

3 On 5 December 2012 during a PE lesson:
   a. as regards Pupil B, without justification and/or unnecessarily you deliberately swung rope apparatus (the rope) in circumstances such that:
      i. the rope passed in close proximity to Pupil B,
      ii. he ignored a warning from a member of staff to that effect,
iii the rope struck Pupil B intentionally or accidentally but avoidably,

iv he then showed little or nor regard for Pupil B’s welfare and/or distress,

b he forced a female Pupil C to move on all fours across apparatus in circumstances that were without justification and/or were inappropriate in that:

i she was reluctant to do move across the apparatus,

ii he physically positioned yourself on all fours behind and/or over her,

iii by his physical position in 3bii above he compelled her to move forward over the apparatus,

iv he did so and/or persisted in so doing despite her distress;

4 On 5 December 2012 during a “friends and family day” without warning or expectation as regards Pupil C he:

a threw a hula hoop over Pupil C,

b swung Pupil C across the floor with a hula hoop,

c thereby caused unjustifiable and avoidable distress in Pupil C,

d threw a hula hoop(s) over Pupil D,

e thereby caused unjustifiable and avoidable distress to Pupil D;

5a On 14 March 2013 during a lesson he:

i told a Learning Support Assistant to move Pupil B physically by placing her hands above Pupil B’s waist,

ii tipped Pupil B’s chair in order to encourage him to stand,

iii encouraged Pupil C to move on one or more occasions by using his forearm on the Pupil’s back or bottom,

iv encouraged Pupil E to move on one or more occasions by using his forearm on the Pupil’s back and/or bottom,

b By your actions at 5a above he:

i failed to follow the guidelines set out in the Team Teach physical invention policy,

ii caused unnecessary and/or unjustifiable distress to each and/or any of Pupil B, Pupil C and Pupil E;
6a On 14 March 2013 and/or 18 March 2013, during a lesson he:
   i  unjustifiably withheld drinking water from Pupil B,
   ii  unjustifiably advised and/or instructed a Learning Support Assistant not to communicate verbally with Pupil C and/or to withhold drinking water from her,

b On one or more occasions he justifiably advised and/or told an MSA not to feed Pupil D,

c By your actions at 6a and/or 6b above he thereby:
   i  unjustifiably risked causing distress to each and/or any of Pupil B, Pupil C and Pupil D,
   ii  risked compromising the safety and/or well being of each and/or any of Pupil B, Pupil C and Pupil D.

Before the hearing, Mr Leishman admitted allegations 3a and 3b in writing, but denied the remainder of the allegations, and denied that he was guilty of unacceptable professional conduct and/or conduct that may bring the profession into disrepute.

C. Preliminary applications

Amendment to the Allegations

At the outset of the hearing, the presenting officer made an application to discontinue allegation 4 on the basis that no evidence would be called any evidence in support of that allegation. The panel agreed to the deletion of allegation 4.

The presenting officer also applied to amend allegation 6b to amend the word “justifiably” to “unjustifiably”. Mr Leishman did not object to the amendment. The panel agreed to the amendment since it corrected a typographical error, and there was no prejudice to Mr Leishman, since he had anticipated that there had been such an error.

During the course of the hearing, the presenting officer made an application to discontinue allegation 6b on the basis that no evidence would be called in support of that allegation. The panel agreed to the deletion of allegation 6b.

Prior to the hearing of closing submissions, the presenting officer made an application to amend allegation 5ai to delete the words “above Pupil B’s waist” and replace them with “on or above Pupil B’s hips”. Mr Leishman did not object to the amendment. The panel were concerned that this application was made at such a late stage in the proceedings, and exercised caution to ensure that there was no unfairness to Mr Leishman. The panel noted that both witness statements that were potentially relevant to this allegation and which were included in the panel bundle had referred to “hands above his hips”. The
reference to hips had therefore been disclosed to Mr Leishman prior to the hearing. The panel had in mind that the interests of justice were in favour of this allegation not being defeated as a result of poor drafting. The failure itself, is alleged in allegation 5bi and ii, and those criticisms remained the same, regardless of whether the waist or hips was referred to. Mr Leishman provided his response to allegation 5ai in advance of the hearing, and on reading that explanation, the panel did not consider his response would have been different had the allegation referred to Pupil B’s hips, rather than his waist. The panel therefore agreed to the amendment.

**Telephone evidence**

During the course of the hearing, the panel decided to hear the evidence of the witness referred to as Learning Support Assistant 1 (LSA 1) by telephone. The panel decided that the interests of justice and fairness to Mr Leishman require that both Mr Leishman and the panel have the ability to test LSA 1’s evidence. The panel noted that there may be subtleties of tone and body language that may be lost via the medium of telephone, but decided that it could take such factors into account when assessing the weight that it attributes to the evidence in due course.

**D. Summary of evidence**

**Documents**

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

- **Section 1: Chronology & Anonymised Pupil List**
  - Pages 1 – 4
- **Section 2: Notice of Proceedings and Response**
  - Pages 5 – 13
- **Section 3: National College for Teaching and Leadership Witness Statements**
  - Pages 14 – 55
- **Section 4: National College for Teaching and Leadership Documents**
  - Pages 56 – 200
- **Section 5: Teacher’s Documents**
  - Pages 201 - 427

The panel members confirmed that they had read all of the documents in advance of the hearing.

**Witnesses**

The panel heard oral evidence from an education consultant; a learning support assistant employed at the school since 2008 (“LSA 1”); a learning support assistant employed at
the school for eight years (“LSA 2”); the interim head teacher at the school, the former head teacher; a senior learning support assistant (“Senior LSA”); a learning support assistant employed at the school for seven and a half years (“LSA 3”); and an assistant head teacher. LSA 1 gave evidence by telephone.

Mr Leishman also gave oral evidence.

E. Decision and reasons

The panel announced its decision and reasons as follows:

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.

Summary of Evidence

Mr Leishman gained qualified teacher status in July 1992, and during his teaching career has primarily worked in special schools. Mr Leishman commenced employment at the school, as a teacher, on 1 September 2009. The school has been a special academy since 2008. It has 150 pupils, all of whom have a statement of educational needs. In the final two terms of 2011, Mr Leishman took on responsibility for the class of pupils referred to in the allegations (“class X”), in addition to his existing class, in order to cover a maternity leave. He continued as full time teacher for class X from September 2011. Concerns were raised in December 2012 and an investigation was commenced. A disciplinary hearing took place which included a consideration of the matters set out at allegations 1 – 3 in the notice of hearing for these current proceedings. Mr Leishman was issued with a final written warning on 8 March 2013.

An education consultant was appointed to provide support and advice. She raised concerns about her observations of the class, and a further investigation was instigated. A disciplinary hearing took place on 4 July 2013 which considered the matters set out at allegations 5 and 6 in the notice of hearing for these current proceedings. Mr Leishman was dismissed with immediate effect.

Findings of Fact

Our findings of fact are as follows:

We have found the following particulars of the allegations against you proven, for these reasons:
1a  On 6 July 2012 when Pupil A was attempting to stand you prevented a member of staff from assisting Pupil A

LSA 2 provided evidence that Pupil A had been trying to get up from the floor into a standing position and put one hand on LSA 2’s right arm to steady herself. LSA 2 stated that Mr Leishman pushed her arm away saying, “she can do it herself”; and that, when Pupil A tried again to place her hand on LSA 2’s arm, Mr Leishman again pushed her arm away saying, “she is ok on her own”.

Mr Leishman accepted that he pushed LSA 2’s arm away, and the panel considered that in doing so he prevented LSA 2 from assisting Pupil A.

This allegation was therefore found proven.

1bii  did so in circumstances such that your actions risked harm to Pupil A by falling

School records (pen pictures) of Pupil A’s character written in July 2011 and July 2012 described Pupil A as “walks, but is unsure on uneven ground”. A general progress report in October 2011 referred to there being the “potential for stumbling when walking around school. Pupil A has a good sense of balance, knows her limitations and adapts to each situation”.

The panel accepted Mr Leishman’s explanation that his motivation was to maintain a consistent approach of not providing a hand, in order to encourage independence. The panel noted Mr Leishman’s evidence that, having worked with Pupil A for some time, he considered it extremely unlikely that she would fall. The panel also noted that Pupil A’s pen picture from July 2011 stated that Pupil A “pulls herself to standing position using chairs, tables etc”. However, the panel did consider that, in removing an arm held out to Pupil A, the shift in support could have potentially placed Pupil A at risk of falling.

This allegation was therefore found proven.

1biii  did so in circumstances such that your actions were inappropriate as regards your colleague by pushing your colleague’s arm away

The panel considered that it was inappropriate to push LSA 2’s arm away. In Mr Leishman’s closing submissions, he accepted that the physical contact was not ideal, nor necessary and that he should have approached the situation in a different way. The panel considered that it would have been more appropriate for Mr Leishman to have provided an explanation to LSA 2, rather than to have pushed her arm away.

This allegation was therefore found proven.
On 6 July 2012 as regards Pupil B you opened a cupboard door such that the door made contact with Pupil B who was lying in front of the cupboard

LSA 2 provided evidence that, on an occasion when she worked in Mr Leishman’s class to cover another LSA, Pupil B was lying on the floor in front of a cupboard door and that Mr Leishman opened the cupboard door “wide enough to put his head in the cupboard, forcing Pupil B to move with the cupboard door”.

Mr Leishman did not dispute that he opened the door such that the door made contact with Pupil B who was lying in front of the cupboard.

The panel therefore found this allegation proven.

On 6 July 2012 as regards Pupil B you opened a classroom door whilst Pupil B was lying across the doorway such that the door came into contact with Pupil B

LSA 2 provided evidence that, later in the lesson, Pupil B was taken to the toilet by Mr Leishman and that, when Pupil B returned but before Mr Leishman could re-enter the classroom, Pupil B slumped and lay across the closed classroom door. LSA 2 stated that Mr Leishman then opened the door and tried to get into the classroom. She stated that he must have known that it was Pupil B lying in front of the door, as he had just let Pupil B into the classroom.

Mr Leishman did not dispute that he opened the classroom door such that the door came into contact with Pupil B, who was lying in front of it.

The panel therefore found this allegation proven.

On 5 December 2012 during a PE lesson as regards Pupil B, without justification and/or unnecessarily you deliberately swung rope apparatus (the rope) in circumstances such that the rope passed in close proximity to Pupil B

A senior LSA gave evidence that, during a PE lesson, Mr Leishman tried to get the attention of Pupil B during a PE lesson by swinging the rope apparatus. She stated that the rope hit Pupil B.

Mr Leishman did not dispute that he had swung the rope, nor that it had hit Pupil B. He stated that if he had taken a more measured approach in swinging the rope, the accidental striking of Pupil B could have been avoided.

The panel did consider that the swinging of the rope was neither necessary, nor sufficiently justified and, that it did pass in close proximity to Pupil B in order to hit him, albeit accidentally.

The panel therefore found this allegation proven.
3aii On 5 December 2012 during a PE lesson as regards Pupil B, without justification and/or unnecessarily you deliberately swung rope apparatus (the rope) in circumstances such that you ignored a warning from a member of staff to that effect

The senior LSA stated that she warned Mr Leishman that he was going to hit Pupil B with the rope if he was not careful and she had no reason to believe that he did not hear her.

Mr Leishman accepted that he should have heeded the warning given by the senior LSA.

The panel therefore found this allegation proven.

3aiii On 5 December 2012 during a PE lesson as regards Pupil B, without justification and/or unnecessarily you deliberately swung rope apparatus (the rope) in circumstances such that the rope struck Pupil B intentionally or accidentally but avoidably

The senior LSA gave evidence that the rope hit Pupil B.

Mr Leishman accepted that if he had heeded the warning or taken a more measured approach, he could have avoided Pupil B being hit.

The panel found this allegation proven, but considered that Mr Leishman’s actions were accidental rather than deliberate.

3aiv On 5 December 2012 during a PE lesson as regards Pupil B, without justification and/or unnecessarily you deliberately swung rope apparatus (the rope) in circumstances such that you then showed little or no regard for Pupil B’s welfare and/or distress

The Senior LSA stated that Mr Leishman did not go over to Pupil B, but remained where he was, saying something like, “You’re alright mate”. She said that Mr Leishman “appeared to want to shrug it off”.

Mr Leishman stated that he observed Pupil B to see if there were any changes to Pupil B’s behaviour or body language to indicate that something was significantly wrong or if he was in distress. Mr Leishman accepted that some physical action or vocal comment by him would have indicated to the other staff that he was looking for signs of distress. The panel considered that Mr Leishman showed little regard for Pupil B’s welfare and/or distress, although he may have been concerned about Pupil B’s welfare without this being apparent to the Senior LSA.

The panel therefore found this allegation proven.
3bi On 5 December 2012 during a PE lesson you forced a female Pupil C to move on all fours across apparatus in circumstances that were without justification and/or were inappropriate in that she was reluctant to do move (sic) across the apparatus

The senior LSA and LSA 3 gave evidence that, during the same PE lesson as referred to above, one activity involved the pupils climbing over a set of padded steps. They both described Mr Leishman placing himself over Pupil C whilst she was on all fours. The Senior LSA stated that he then manipulated Pupil C over these steps. LSA 3 stated that he left Pupil C with no option other than to go over the steps. Both described that from the noises Pupil C was making it was apparent that she did not want to go over the steps.

Both stated that they did not believe that his actions were sexually motivated, and this was not alleged.

Mr Leishman stated that this was an activity that Pupil C had previously completed, and, on this occasion, he had allowed his desire for her to complete the activity to overtake her signs of distress. He said he had interpreted her protests at the commencement of the activity to be the usual protests that she would often make before participating in physical activities. Mr Leishman accepted that he had erred in persisting for longer than necessary and that he should have responded to Pupil C’s attempts to let him know that she was not enjoying the activity.

The panel therefore found this allegation proven.

3bii On 5 December 2012 during a PE lesson you forced a female Pupil C to move on all fours across apparatus in circumstances that were without justification and/or were inappropriate in that you physically positioned yourself on all fours behind and/or over her

LSA 3 described Mr Leishman as invading Pupil C’s personal space. Mr Leishman accepted that his actions were without justification and/or were inappropriate.

The panel did consider that it was inappropriate for Mr Leishman to have physically positioned himself on all fours behind and/or over Pupil C. In doing this, Mr Leishman demonstrated a disregard for Pupil C’s dignity and could have opened himself up to his actions being misinterpreted.

This allegation was therefore found proven.

3biii On 5 December 2012 during a PE lesson you forced a female Pupil C to move on all fours across apparatus in circumstances that were without justification and/or were inappropriate in that by your physical position in 3bii above you compelled her to move forward over the apparatus

For the reasons stated at allegation 3bi above, this allegation was found proven.
3biv  On 5 December 2012 during a PE lesson you forced a female Pupil C to move on all fours across apparatus in circumstances that were without justification and/or were inappropriate in that you did so and/or persisted in doing so despite her distress

For the reasons stated at allegation 3bi above, this allegation was found proven.

5ai  On 14 March 2013 during a lesson you told a Learning Support Assistant to move Pupil B physically by placing her hands on or above Pupil B’s hips

The education consultant who observed Mr Leishman’s lesson on 4 March 2013, stated that she saw Mr Leishman and one of his LSAs physically move Pupil B from behind by placing their hands above his hips. She said that this had been to move Pupil B from the floor.

LSA 1 stated that she witnessed Mr Leishman advising another LSA to physically move Pupil B from behind using their hands above his hips. She said this had occurred when Pupil B was moving from one location to another.

Mr Leishman explained that he had developed this technique in order to assist with guiding Pupil B in a particular direction. Otherwise when walking alongside a staff member Pupil B tended to lean against the adult and put his weight against them. This technique was described in team meeting notes dated 21 February 2012 which stated “a reminder that if you want to guide him in a specific direction then use his hips”.

There was evidence that this was the technique being used to assist Pupil B in moving.

The panel therefore found this allegation proven.

5aiii  On 14 March 2013 during a lesson you encouraged Pupil C to move on one or more occasions by using your forearm on the Pupil’s back and/or bottom

The education consultant stated that she observed Mr Leishman place his forearm down the midline of Pupil C’s back to encourage Pupil C to stand from sitting.

LSA 1 stated that on a number of occasions she saw Mr Leishman moving Pupil C by putting his arm down Pupil C’s back.

Mr Leishman stated that mostly Pupil C would stand up from the chair by herself, but if she did not he would gently slide his forearm down behind Pupil C, palm facing the back of the chair and Pupil C would sometimes begin to stand. If she did not, Mr Leishman would use his forearm to provide a physical prompt. She would then stand by herself.

This allegation was admitted by Mr Leishman and was therefore found proven.
On 14 March 2013 during a lesson you encouraged Pupil E to move on one or more occasions by using your forearm on the Pupil’s back and/or bottom

The education consultant stated that she observed Mr Leishman place his forearm down the midline of Pupil E’s back to encourage Pupil E to stand from sitting.

LSA 1 stated that on a number of occasions she saw Mr Leishman moving Pupil E by putting his arm down Pupil E’s back.

Mr Leishman stated that Pupil E would sit for a long time without any inclination to move. He stated that if it was felt necessary for Pupil E to be somewhere else, sitting alongside him, he would place the outside of his arm down behind his back and then he would slowly lean forward and against him to encourage Pupil E to stand up with this physical prompt.

This allegation was accepted and therefore was found proven.

We have found the following particulars of the allegations against you not proven, for these reasons:

1bi On 6 July 2010 when Pupil A was attempting to stand you did so in circumstances such that your actions were unjustified

The panel accepted Mr Leishman’s justification for pushing LSA 2’s arm away when Pupil A was attempting to stand. The panel noted the strategy referred to in Pupil A’s general progress report of November 2011 that “staff are very aware of what Pupil A is able to do, which is not always the same as what she will try to get away with. They may offer a hand, when asking her to get up off the ground/chair but not actually let Pupil A hold onto it as she gets up”. LSA 2 had no previous involvement with class X and therefore was not aware of the strategy to encourage Pupil A to get up independently. The panel accepted that Mr Leishman was attempting to provide a consistent message to Pupil A so that she understood that she was expected to get up from the floor as independently as possible.

This allegation was therefore found not proven.

2a On 6 July 2012 as regards Pupil B you continued to attempt to open the cupboard door despite Pupil B’s position, thereby attempting to force Pupil B to move

The panel had regard to Mr Leishman’s explanation that he was using the door as a physical prompt to encourage Pupil B to move himself away from the door. He did so in a controlled and measured way to avoid the need for a greater level of physical intervention from the adults in the room. He described that reaching out a hand to Pupil B would often result in Pupil B engaging in a playful slapping or scratching of the adult’s hand. He also stated that alternative methods of encouraging Pupil B to move would have involved greater physical intervention from a member of staff, placing both Pupil B
and the staff member at risk of harm. He stated that he had devised the strategy of using the door with a gentle constant pressure to encourage Pupil B to move his body by himself. The panel noted that others were aware of this strategy as evidenced by team meeting notes dated 15 May 2012 which read “lying in front of door – tell him your (sic) going to open it/ ask to move/ put bit of pressure on if no attempt to move to see if that ‘prompts’ him to do it”.

When LSA 2 gave evidence at the school’s disciplinary investigation she was asked what force was used to open the door. She responded, “It wasn’t hard, wasn’t forceful”. The panel considered that this accords with Mr Leishman’s description of the constant gentle pressure.

Although the panel believed the gentle pressure would have technically constituted force, the panel did not consider that Mr Leishman’s actions constituted attempting to force, in accordance with everyday usage of the term “force”. The panel considered that it was an encouragement for Pupil B to move by himself, rather than the door being used to force Pupil A to move across the floor.

This allegation was therefore found not proven.

2aiv On 6 July 2012 as regards Pupil B you continued to attempt to/ open the door despite Pupil B’s position, thereby attempting to force Pupil B to move

For the reasons stated in relation to allegation 2a ii above, the panel also found this allegation not proven.

2bi You thereby acted in a manner that was unjustified

The panel considered that the strategy developed by Mr Leishman to respond to Pupil B’s tendency to lay in front of doors was justified in situations when that door needed to be opened. The panel noted that the alternative would have been involved greater physical intervention, and that holding out a hand could have resulted in the adult being slapped or scratched. Pupil B’s general progress report from December 2011 and an extract from team meeting notes written in June 2012 both referred to Pupil B sometimes slapping an adult’s hand.

The head teacher gave evidence that it would have been more appropriate to remove the items from the cupboard to avoid the problem of needing to move Pupil B. The panel did not consider that this was feasible, as those items would have needed to have been stored elsewhere in the classroom, where they may have been accessible to pupils. The panel also did not consider that this provided a solution when the classroom door itself needed to be opened to exit or enter the classroom.

The panel therefore did not find this allegation proven.
2bii You thereby acted in a manner that risked causing unnecessary and/or unjustifiable distress to Pupil B

The panel noted that LSA 2 stated that Pupil B did not show any reaction to Mr Leishman’s actions.

Mr Leishman produced stills from a video taken on another occasion (on 4 May 2012) when Pupil A lay slumped in front of the door, and the door was opened. It was apparent from those stills, that Pupil A could be seen peeking around the door, not demonstrating any signs of distress or upset.

The panel did not consider that Mr Leishman risked causing unnecessary or unjustifiable distress to Pupil B. The panel noted Mr Leishman’s explanation that he maintained a constant pressure to ensure that the door did not make any sudden and potentially dangerous movements, ensuring that Pupil B’s fingers and toes did not become trapped.

The panel did not find this allegation proven.

5a(ii) On 14 March 2013 during a lesson you tipped Pupil B’s chair in order to encourage him to stand

The education consultant who observed Mr Leishman’s lesson stated that she saw Mr Leishman tipping Pupil B’s chair to make him stand. In oral evidence she stated that the back legs of the chair were lifted 6 inches off the floor.

LSA 1 stated that, on the same day, she saw Mr Leishman tip Pupil B’s chair in order to encourage him to stand up. In oral evidence, she stated that the two back legs of the chair had lifted off the floor by 5 – 10 cm. She said that there had been occasions when this had happened inadvertently as Pupil B shifted his weight off the chair. She also said that she found it difficult to remember what had happened on this occasion but that she was “pretty sure it was a deliberate tip”.

LSA 3 provided evidence that she had witnessed Mr Leishman slightly nudging Pupil B’s chair in order to encourage him to stand and that she had herself used this method. She stated that sometimes, a slight nudge was enough to get Pupil B up and on the move. She said that this would be a nudge with the knee against the back of the chair as Pupil B was being supported under the elbow with a hand against Pupil B’s back. She stated that the legs of the chair would not leave the floor. She told the panel that Mr Leishman was not advocating the tipping of Pupil B’s chair.

Mr Leishman stated that, when Pupil B was getting up, staff would place a hand towards the back of the chair as a precautionary measure in order to stabilise it, should the chair begin to tip, and that the education consultant and LSA1 had misinterpreted what they had seen. The panel considered this to be a reasonable plausible explanation.
The panel was not persuaded by the evidence of the education consultant or LSA 1 that there had been a deliberate tip. Both were new to Mr Leishman’s class and did not know that class. In contrast, LSA 3 was working as an LSA in his class and she plainly described that there was no intentional tipping of Pupil B’s chair to encourage him to stand. The panel considered it more likely than not that the education consultant and LSA 1 were mistaken and that the chair inadvertently tipped as Pupil B shifted his weight.

This allegation was therefore found not proven.

5bi By your actions at 5a above you failed to follow the guidelines set out in the Team Teach physical intervention policy

The panel noted that the ‘team teach’ physical intervention policy was not contained within the documents relied upon by the presenting officer. Mr Leishman provided an extract from the ‘team teach’ workbook and from the ‘team teach’ website. The panel noted that these stated that “physical prompts, guides, and reassurances are necessary in a range of settings. More intrusive physical contact is necessary when people are supporting young children or older people with disabilities”. They also referred to the objectives of ‘team teach’ to be “to recognise the importance of and using de-escalation techniques and working as a team when managing challenging behaviours; applying an understanding of the legal implications of positively handling; and using a gradual and graded response to managing challenging behaviours and the use of positive handling as a last resort option”.

The panel noted the evidence of the education consultant that ‘team teach’ was applicable in the normal ebb and flow of the class day and that there were areas of the body which should not be touched between the knees and the upper chest area. She also stated that any interaction with a child should be side on and never from behind.

The panel, however, had regard to the school’s behaviour access document. This described physical prompting as being “planned physical contact designed to assist a pupil do something, which they either cannot or will not do voluntarily. Prompting may persist unless the pupil displays signs of continued distress”. The panel considered that Mr Leishman’s actions set out in 5a1,iii, and iv accorded with the physical prompts described in the behaviour access document, which according to the ‘team teach’ workbook could include more intrusive physical contact.

The panel also noted that LSA 2, when describing the action she would have taken as an alternative to prompting Pupil B with a door, stated that she would have gone behind Pupil B to help him up. The panel noted this did not accord with the education consultant’s view that you would not go behind a pupil to support him. The panel concluded that the education consultant had a rigid view of ‘team teach’ which did not necessarily accord with practice in the school.

This allegation was therefore found not proven.
5bii  By your actions at 5a above you caused unnecessary and/or unjustifiable distress to each and/or any of Pupil B, Pupil C and Pupil E

There was no evidence of any distress caused to Pupil B, C or E. The panel therefore found this allegation not proven.

6ai  On 14 March 2013 and/or 18 March 2013 during a lesson you unjustifiably withheld drinking water from Pupil B

The education consultant described Mr Leishman attempting to mimic drinking with Pupil B, and because Pupil B did not pass Mr Leishman his beaker to fill, Mr Leishman did not give Pupil B a drink. The panel noted that this incident was not referred to by LSA 1 who was also present.

Mr Leishman stated that Pupil B would pick up an empty beaker and push it towards an adult indicating that he wanted some water to drink. He said that the speech and language therapist had agreed that Pupil B should be given the opportunity to request a drink without an adult gesturing if he should want one. In Pupil B’s annual review, the speech and language therapy report noted that “sometimes Pupil B will request a drink by picking up an empty cup and holding it towards a person...this method of making a request with a functional object should be encouraged”.

The Panel considered that this was a deliberate strategy to encourage Pupil B’s communication skills, and that the education consultant had misunderstood this as a result of her not being familiar with the pupils.

This allegation was therefore found not proven.

6aii  On 14 March 2013 and/or 18 March 2013 during a lesson you unjustifiably advised and/or instructed a Learning Support Assistant not to communicate verbally with Pupil C and/or to withhold drinking water from her

The education consultant stated that she observed Mr Leishman tell an LSA to withhold water from Pupil C unless she picked the correct symbols from a choosing folder. The folder contained a blank symbol as well as a symbol for water. In oral evidence, she stated that she did not think Pupil C had the capability to decide which symbol to give, and that she would be unable to differentiate between the blank symbol and one symbolising a drink.

Mr Leishman stated that in consultation with the speech and language therapist, it was decided to introduce a blank symbol to her choosing folder alongside genuine choices. He stated that the aim was to encourage Pupil C to understand that the blank symbol did not represent a real drink or snack. He stated that Pupil C was given three opportunities to request a drink/snack. He provided a copy of Pupil C’s snack and drink choosing record. He also stated that if Pupil C chose a drink, she only tended to have sips and that she had a drink at lunch time, without use of the choosing folder.
The panel considered that Mr Leishman was not withholding a drink from Pupil C and that this was part of a strategy to develop her functional communication. The panel considered that the education consultant had misunderstood this as a result of not being familiar with the pupils.

This allegation was therefore found not proven.

6ci By your actions at 6a above you thereby unjustifiably risked causing distress to each and/or any of Pupil B and Pupil C

This allegation was found not proven, as a result of allegation 6a having been found not proven.

6cii By your actions at 6a above you thereby risked compromising the safety and/or well being of each and/or any of Pupil B and Pupil C.

This allegation was found not proven, as a result of allegation 6a having been found not proven.

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

In considering the allegations that the panel has found proven, the panel has had regard to the definitions in the Teacher misconduct – The prohibition of teachers advice, which we refer to as the ‘guidance’.

The panel is satisfied that the conduct of Mr Leishman in respect of the facts found proven in Allegation 3, involved breaches of the Teachers’ Standards. The panel considers that by reference to Part Two, Mr Leishman 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, by treating pupils with dignity, building relationships rooted in mutual respect, and at all times observing proper boundaries appropriate to a teacher’s professional position;
  having regard for the need to safeguard pupils’ well-being, in accordance with statutory provisions;
- Teachers must have proper and professional regard for the ethos, policies and practices of the school in which they teach, and maintain high standards in their own attendance and punctuality;

In respect of allegation 3, the panel did consider that Mr Leishman’s actions were contrary to the school’s safeguarding policy.
Further, the panel is satisfied that Mr Leishman’s conduct in respect of allegation 3 fell significantly short of the standards expected of the profession.

The panel did not consider Mr Leishman’s conduct fell significantly short of the standards expected of the profession in respect of any of the other allegations found proven.

The panel has also considered whether Mr Leishman’s conduct displayed behaviours associated with any of the offences listed on page 8 and 9 of the guidance. The panel found that none of these offences are relevant.

Accordingly, the panel is satisfied that Mr Leishman is guilty of unacceptable professional conduct.

The panel has taken into account how 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 has taken account of the uniquely influential role that teachers can hold in pupil’s lives and that pupils must be able to view teachers as role models in the way they behave.

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

The panel therefore finds that Mr Leishman’s actions constitute 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 unprofessional conduct and conduct that may bring the profession into disrepute, it is 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 has to consider whether it is an appropriate and proportionate measure, and whether it is 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 has considered the particular public interest considerations set out in the guidance and having done so has found all of them to be relevant in this case, namely the protection of pupils; the maintenance of public confidence in the profession; and declaring and upholding proper standards of conduct.
The conduct at allegation 3 involved safeguarding issues and the protection of pupils. However, the panel did not consider that there is any future risk to pupils for the following reasons: the conduct complained of related to one lesson in the context of an unblemished record; the actions taken by Mr Leishman were misguided but well-intentioned, and he did not intend for the pupils to come to any harm; he had the pupils' best interests at heart in encouraging their independence. Furthermore, the National College emphasised throughout this case, there was no allegation of sexual motivation.

Mr Leishman demonstrated significant insight into his behaviour. He admitted at the outset of this hearing shortcomings in relation to his conduct. He has reflected on the events over the past 22 months and considered how he would improve his practice should he be allowed to teach. The panel do not believe that Mr Leishman would make a similar error of judgement again.

The panel considered that public confidence in the profession is maintained by the panel's findings of unacceptable professional conduct and conduct that may bring the profession into disrepute. Mr Leishman's appearance before this panel is sufficient to remind him and other teachers that there are limits to acceptable contact and interaction with pupils, especially those with special educational needs.

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 Leishman. In forming a judgement in this respect, the panel considered the mitigation evidence presented to it by Mr Leishman.

In carrying out the balancing exercise, the panel has considered the public interest considerations both in favour of and against prohibition as well as the interests of Mr Leishman. The panel took further account of the guidance, which suggests that a prohibition order may be appropriate if certain behaviours of a teacher have been proven. In the list of such behaviours, it is relevant that this was a serious departure from the personal and professional conduct elements of the teachers' standards. However, these actions took place during a single lesson in an otherwise unblemished career. No pupil came to harm, nor was any pupil intentionally placed at any risk of harm. Importantly, the Panel did not consider that there was any deep-seated attitude that leads to harmful behaviour. The panel considered that Mr Leishman came to this hearing exhibiting an unassuming, insightful approach.

The panel’s view was that there were sufficient mitigating factors that militated against a prohibition order being an appropriate and proportionate measure being imposed in this case. Mr Leishman has a previously good record as a teacher. The panel observed Mr Leishman’s genuine enthusiasm for working with pupils with special educational needs. The panel noted that Mr Leishman researched, implemented and monitored strategies to support the pupils and to help them achieve their full potential. The panel felt that Mr Leishman had the pupils' best interests at heart of his educational practice. The panel
considered it would be a loss to both the profession and vulnerable pupils if a teacher with Mr Leishman’s apparent skill and dedication is deprived of the ability to teach.

In reaching that conclusion, the panel noted the positive evidence of his character and teaching provided by others. The former deputy headteacher at the school stated “There are two allegations, in the PE lesson, where Mike totally acknowledges that he misjudged the situation and regrets his choice of approach and activity. I believe that if he were to be given the opportunity to teach again, that he would not repeat this grave error of judgment... I have directly observed his practice and seen the very positive impact on some of the most cognitively challenged learners. Parents of these students have also borne witness to the progress the students have made, and acknowledged that this has been as a direct result of Mike’s input and the approach he has taken to teaching and learning”. The assistant headteacher stated that “I think Mr Leishman had an excellent understanding regarding the functioning of our pupils. Although I believe that some of his behaviours were unacceptable, I thought that with support from the School, he could re-shape them”.

The Panel noted that none of the allegations that immediately preceded the referral to the National College have been found proven, and that the school, when dealing with the matters set out at allegation 3, issued a warning to Mr Leishman rather than taking any further action. The panel, exercising its’ independent judgement, is not persuaded that prohibition is a proportionate and appropriate response. Accordingly, given the mitigating factors that were present in this case, the panel has determined not to recommend a prohibition order.

**Decision and reasons on behalf of the Secretary of State**

I have carefully considered the findings and recommendations of the panel in this case.

The panel have found a number of the allegations proven and have judged that the facts relating to the PE lesson on 5 December 2012 amount to both unacceptable professional conduct and conduct that may bring the profession into disrepute.

The panel have considered both the interests of the public and the teacher when deciding whether a prohibition order would be an appropriate and proportionate sanction. Whilst allegation 3 involves safeguarding issues and the protection of pupils, the panel do not consider that there is a continuing risk to pupils. This was an isolated instance in the context of an unblemished record. There was no intent to harm pupils.

Mr Leishman has demonstrated significant insight and has properly considered how he would improve his practice if he were allowed to teach again. He has a previous good record as a teacher and the panel observed a genuine enthusiasm for working with pupils with special educational needs.
In the circumstances I agree with the panel’s recommendation that findings of unacceptable professional conduct and conduct that may bring the profession into disrepute are of themselves sufficient and it would not be appropriate or proportionate to impose a prohibition order.

NAME OF DECISION MAKER:  Paul Heathcote

Date:  2 February 2015

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