



National College for  
Teaching & Leadership

# **Mrs Alison Earl: Professional conduct panel outcome**

**Panel decision**

**August 2017**

## Contents

A. Introduction	3
B. Allegations	4
C. Preliminary applications	5
D. Summary of evidence	6
Documents	6
Witnesses	6
E. Decision and reasons	7
Panel's recommendation to the Secretary of State	14

## **Professional conduct panel decision**

**Teacher:** Mrs Alison Earl

**NCTL case reference:** 15004

**Date of determination:** 10 August 2017

**Former employer:** Tollgate Primary School, Suffolk

### **A. Introduction**

A professional conduct panel (“the panel”) of the National College for Teaching and Leadership (“the National College”) convened on 10 to 12 July 2017 at 53 to 55 Butts Road, Earlsdon Park, Coventry CV1 3BH and 10 August 2017 at the Ramada Hotel, The Butts, Coventry, CV1 3GG, to consider the case of Mrs Alison Earl.

The panel members were Ms Karen McArthur (lay panellist – in the chair), Mr Mark Tweedle (teacher panellist) and Mr Sathi Ariya (lay panellist).

The legal adviser to the panel was Miss Laura Ellis of Eversheds Sutherland (International) LLP.

The presenting officer for the National College on 10 to 12 July 2017 was Mr Tom Day, instructed by Nabarro LLP. The presenting officer for the National College on 10 August 2017 was Ms Lucy Coulson, of Browne Jacobson LLP.

Mrs Earl was present and was represented by Ms Lisa Hancox, instructed by Thompsons Solicitors LLP.

The hearing took place in public and was recorded.

## B. Allegations

The panel considered the allegations set out in the Notice of Proceedings dated 29 September 2016.

It was alleged that Mrs Earl was guilty of unacceptable professional conduct and/or conduct that may bring the profession into disrepute in that she failed to maintain appropriate professional standards whilst employed as headteacher at Tollgate Primary School (“the School”) between around 2014 and 2015, in that she did not ensure the appropriate safeguarding procedures were in place and/or adhered to and/or the pupils’ welfare was maintained in the following areas:

1. Using a room and/or allowing a room to be used, to manage pupils’ behaviour where pupils were prevented from letting themselves out and/or could not let themselves out;
2. Using a room and/or allowing a room to be used, to manage pupils’ behaviour where pupils were left unattended;
3. The recording of restraint and/or physical intervention incidents with pupils, in that policies and procedures in place were inadequate;
4. The process for recruitment, selection and/or pre-employment vetting of staff and/or volunteers was inadequate including, but not limited to, the following:
  - a. not all posts were advertised;
  - b. formal interviews were not held with all appointees;
  - c. applications were either completed after individuals had been offered posts and/or application forms were not completed at all;
  - d. references were not always obtained from the candidate’s most recent employers and/or did not always cover the five most recent years of employment;
  - e. original professional qualifications were not always seen;
5. By the recruitment process set out at 4 above, she failed to adhere to the requirements of Part 3 of Keeping Children Safe in Education and/or the School’s policies;
6. By her conduct set out at 1 and/or 2 and/or 3 and/or 4 above she created a situation whereby pupils could be at risk.

Allegations 1, 3, 4, 5 and 6 are admitted on the facts. In relation to allegation 2, it is not admitted that children were left unattended in the room for periods of time that were inappropriate.

Mrs Earl denies that the conduct constitutes unacceptable professional conduct and/or conduct that may bring the profession into disrepute.

## **C. Preliminary applications**

### Admissibility of internal investigation report

The presenting officer requested to admit Witness A's internal investigation report, with the conclusions of the report redacted. Ms Hancox objected to this and contended that the outcome of the investigation was irrelevant to the decision before the panel.

After taking legal advice on the issue, the panel decided to admit the documents under paragraph 4.18 of the Teacher misconduct – Disciplinary procedures for the teaching profession (“the Procedures”), as it considered that the documents were relevant to the case and that their admission was fair to the parties. In particular, the panel was mindful that the content of the report was directly relevant to the allegations, Witness A was likely to refer to the report in her evidence, and that the conclusions from the report had been redacted by the presenting officer.

### Admissibility of meeting notes

The presenting officer requested to admit notes from meetings that Witness A had conducted with seven members of staff during her internal investigation. He explained that the National College had not called these members of staff to give evidence in addition to the current six witnesses, as this would have been disproportionate. Ms Hancox objected to the request as the evidence was hearsay and consequently those members of staff could not be cross-examined on points within the documents that were disputed by Mrs Earl.

After taking legal advice, the panel decided to admit the documents under paragraph 4.18 of the Procedures. This is because the panel considered that the documents could be of general contextual relevance to the proceedings (as they were created during Witness A's internal investigation into the allegations on behalf of the School). The panel also agrees with the presenting officer that it would be disproportionate to call each of those additional members of staff to give oral evidence. In addition, the panel is conscious that Mrs Earl has admitted the majority of the allegations on the facts, so that the only parts of the allegations that remain in dispute are the extent to which children were left unsupervised in the ‘blue room’ (regarding allegation 2), and that the allegations constitute unprofessional conduct. However, the panel does consider that it would have been good practice to obtain short statements from those members of staff to confirm the contents of the meeting notes.

The panel is very mindful of the fact that the evidence is hearsay, and consequently it will attach considerably less weight to it than the testimony of witnesses providing oral evidence. The panel also considers that Ms Hancox has the opportunity to raise any relevant points in the notes that are disputed by Mrs Earl, and that this is preferable to excluding the entirety of the documents, given their contextual relevance to the proceedings.

## **D. Summary of evidence**

### **Documents**

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

Section 1: Chronology and anonymised pupil list – pages 1 to 5

Section 2: Notice of Proceedings and Response – pages 6 to 15

Section 3: National College's witness statements – pages 16 to 51

Section 4: National College's documents – pages 52 to 518

Section 5: Teacher documents – pages 519 to 639

In addition, the panel agreed to accept the following documents, which were in a separate bundle:

- Witness A's investigation report – pages 1 to 20
- Letter to Chair of Academy Trust from some members of staff at the School – pages 21 to 23
- Notes from meetings with seven witnesses, held during Witness A's internal investigation – pages 24 to 44

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

### **Witnesses**

The panel heard oral evidence from the following on behalf of the National College:

Witness A – Strategic officer of Suffolk County Council;

Witness B – Previous assistant headteacher of the School;

Witness C – Teaching assistant at the School;

Witness D – Reception teacher of the School;

Witness E – Teaching assistant at the School;

Witness F – Assistant headteacher at the School.

## **E. Decision and reasons**

The panel announced its decision and reasons as follows:

The panel has carefully considered the case before it and has reached a decision.

The panel confirms that it has read all the documents provided in the bundle in advance of the hearing.

Mrs Earl began working at the School on 1 July 2014. She was initially seconded as the acting headteacher and then was appointed as the headteacher on 1 January 2015. It is alleged that from summer 2014, under Mrs Earl's leadership at the School, staff put children into solitary confinement in an empty room in the School (the panel will refer to this as the "Empty Room") for misbehaviour, and were left unsupervised in the room for periods of time that put them at risk. During the 2014-2015 school year, the door handle was moved higher up the door so that it was out of reach of children to prevent them from leaving the room. In the summer of 2015, the room was then partitioned so that a smaller room was created within it (also with a raised handle), which was called the 'blue room' (the panel will refer to this as the "Blue Room"). At some point later, the handle from that door was removed. This room was very small (approximately 2 metres by 1.5 metres) and a few children were put into solitary confinement in this room. The Blue Room could not be observed from the main corridor as it was within the Empty Room and glass in the door was opaque. On 20 September 2015, a safeguarding advisor visited the School and informed the staff that use of the room should stop as it was not permitted by law.

It is also alleged that under Mrs Earl's leadership, staff did not follow proper procedures regarding the reporting of restraint and that Mrs Earl did not follow proper recruitment procedures.

A group of staff at the School subsequently wrote a letter to the local authority regarding several issues at the School, including those above, and Witness A carried out an investigation on behalf of the local authority. Mrs Earl resigned from the School on 31 December 2015.

### **Findings of fact**

The panel's findings of fact are as follows:

The panel has found the following particulars of the allegations against you proven, for these reasons:

**It is alleged that you are guilty of unacceptable professional conduct and/or conduct that may bring the profession into disrepute in that you failed to maintain appropriate professional standards whilst employed as Headteacher at Tollgate Primary School (“the School”) between around 2014 and 2015, in that you did not ensure the appropriate safeguarding procedures were in place and/or adhered to and/or the pupils’ welfare was maintained in the following areas:**

**1. Using a room and/or allowing a room to be used, to manage pupils’ behaviour where pupils were prevented from letting themselves out and/or could not let themselves out;**

All of the witnesses who gave oral evidence (including Mrs Earl) explained that from the summer of 2014 to September 2015 (under Mrs Earl’s leadership as headteacher), some misbehaving pupils were put into solitary confinement for varying amounts of time in the Empty Room, and that subsequently from summer 2015 the Blue Room was also used in this way. They explained that initially, only the Empty Room was used. There was evidence that some staff stood outside of that room whilst holding the handle, to keep children in the room. The handle on that door was subsequently raised, to be out of reach of the children. The panel has also seen a photograph of the outer door to the Empty Room, which shows that the handle on that door had been raised in this way. When the room was partitioned to create the Blue Room, the handle on the Blue Room door was also raised so that it was out of reach of children. Subsequently, the inner handle on that door was removed altogether. The effect of this was that anyone who found themselves in the Blue Room after the door had been shut was unable to leave. Witness F explained that on one occasion a member of staff became trapped in the Blue Room, so she installed a buzzer next to the door. This was put at a height that only adults could reach.

The law only permits children to be deprived of their liberty in specifically prescribed circumstances. Guidance published by the Department for Education in February 2014, entitled ‘Behaviour and Discipline in Schools’, states that *‘Any use of isolation that prevents a child from leaving a room of their own free will should only be considered in exceptional circumstances. The school must also ensure the health and safety of pupils and any requirements in relation to safeguarding and pupil welfare’*. The practice of placing children in solitary confinement within the Empty Room/Blue Room did not conform to the law in this regard. Mrs Earl introduced an amended ‘Behaviour Consequences Ladder’ in October 2014, which was added to the School’s Behaviour Policy. This required staff to use the Empty Room as a response to violent or aggressive behaviour. The practice is also mentioned in numerous incident reports completed by staff at the School. Mrs Earl and Witness B stated that their preference was to use the room, as an alternative to excluding pupils from the School and using restraint. No guidance was provided regarding the use of the room or supervision of pupils whilst in the room. Furthermore, no risk assessment or safeguarding procedures existed regarding the use of the room or individual children who were placed into the room.

Mrs Earl admits this allegation.



The panel finds the allegation proven.

**2. Using a room and/or allowing a room to be used, to manage pupils' behaviour where pupils were left unattended;**

Each of the witnesses who gave oral evidence explained that staff did leave children alone in the Empty Room/Blue Room, albeit they reported that this was for different lengths of time. Staff described regularly hearing children inside the room, when no adult was visibly supervising the room. A map of the school shows that no staff offices were adjacent to the room; the senior management team's offices were around a corner and there were no classrooms nearby. In relation to the Blue Room, the interior of this could not be seen from the main corridor and the glass in the door was opaque. There was no other means to monitor the room (such as by CCTV), which meant that children could not be properly supervised whilst inside it. As explained above, no risk assessment or safeguarding policy was in place regarding use of the room.

Mrs Earl stated in oral evidence that she expected staff to supervise children who were in the room, but the panel has seen no evidence that this was communicated to staff. She also stated that she and other members of the leadership team sometimes supervised pupils' safety whilst in the room, but it was her expectation that the child's teacher or teaching assistant would return every 5 to 10 minutes to assess whether the child's behaviour had improved so that they could return to the class. Mrs Earl also said that there were occasions when she had to go elsewhere for a few minutes or work in the library.

Conversely, Witnesses C, D and E stated that they understood that they were not expected to wait outside the room whilst children were inside, and that they regularly heard children shouting or crying from the room, whilst no member of staff was present in the corridor. Witness C stated that on one occasion Mrs Earl instructed her to return to a classroom after she had put a child in the room. Witness D also stated that the deputy headteacher of the School told her to do the same thing in relation to a different child.

Therefore on the balance of probabilities, the panel considers that pupils were left unattended in the Empty Room/Blue Room periodically, for varying lengths of time.

The panel therefore finds the allegation proven.

**3. The recording of restraint and/or physical intervention incidents with pupils, in that policies and procedures in place were inadequate;**

The panel has seen the School's physical intervention and restraint policy. This was reviewed and distributed by Mrs Earl in September 2014. It required all incidents that resulted in '*non-routine/emergency interventions*' to be recorded in detail, and it set out the detail required in each report of such an incident.

The panel has heard evidence that some pupils were physically restrained by staff, particularly when pupils were escorted to the Empty Room/Blue Room. However, it has seen no evidence that any such reports were made until the form that Witness F compiled in June 2015 entitled 'Record of Reasonable Force or Restraint', following some training that she undertook. This is supported by the evidence of Witness D, who stated that no specific forms existed to record the use of restraint in the School. Before this time, staff only appear to have occasionally recorded the use of restraint when completing incident reports, without providing the detail required by the School's policy. Witness D also stated that sometimes staff did not complete incident forms due to a lack of time, and so there was a lack of consistency in this regard. Consequently the panel does not consider that the School's physical intervention and restraint policy was properly communicated to staff, or that procedures were put in place to ensure its compliance. In addition, there was a lack of clarity amongst staff regarding what constituted restraint, which further contributed to the under-reporting of incidents. There appears to have been poor oversight and leadership in this area by Mrs Earl.

Mrs Earl admits this allegation.

The panel finds the allegation proven.

**4. The process for recruitment, selection and/or pre-employment vetting of staff and/or volunteers was inadequate including, but not limited to, the following:**

**a. not all posts were advertised;**

Witness A's investigation report explains that two members of staff were appointed by Mrs Earl into positions that were not advertised. Witness D was the classroom teacher under whom one of these applicants worked, and she stated that the post was not advertised. Both applicants were previously known to Mrs Earl.

**b. formal interviews were not held with all appointees,**

The investigation report explains that one of the applicants described above began his post on 10 September 2015, following an informal interview with Mrs Earl on the same day. This is corroborated by Witness D, who stated that the applicant began working on a one to one basis and unsupervised with a child in her class with significant behavioural needs, after a chat with Mrs Earl that lasted approximately twenty minutes.

**c. applications were either completed after individuals had been offered posts and/or application forms were not completed at all,**

The investigation report and the paper trail contained within the bundle explains that two applicants were appointed before the date cited on their application forms. Another application form was not fully completed, and another was not signed or dated. All applicants were previously known to Mrs Earl.

**d. references were not always obtained from the candidate's most recent employers and/or did not always cover the five most recent years of employment,**

The investigation report and paper trail in the bundle details that four members of staff were appointed by Mrs Earl who failed to provide references that either were from their most recent employers and/or covered the five previous years of their employment.

**e. original professional qualifications were not always seen;**

The investigation report and paper trail in the bundle explains that one teacher was employed by Mrs Earl, despite the fact that original copies of her professional qualifications had not been seen (and therefore certified) by the School.

Mrs Earl also admits each of these particulars listed under allegation 4. The panel finds them proven.

**5. By the recruitment process set out at 4 above, you failed to adhere to the requirements of Part 3 of Keeping Children Safe in Education and/or the School's policies;**

Part 3 of the Department for Education's guidance entitled 'Keeping Children Safe in Education', published in July 2015, details the recruitment checks that are required in schools to ensure the safety of children. The School's Safeguarding and Child Protection policy, reviewed in September 2015, also stated that the School would carry out recruitment strictly in line with this guidance.

However, further to the detail set out under allegation 4 above, it is evident that Mrs Earl did not comply with this guidance. Mrs Earl admits this allegation and stated that it was as a result of a low staff retention rate at the School and a desperate need to recruit staff to fill numerous vacancies. Whilst the panel acknowledges the difficulties faced by Mrs Earl in terms of recruitment at the School, it considers that alternative options were available to deal with the shortage of staff, and Mrs Earl acknowledged this during her oral evidence. Furthermore, although Mrs Earl stated that she knew the applicants prior to their appointment and did not consider that they would pose a risk, the panel considers that she could not have been sure that they were suitable for the roles in question without carrying out the necessary background checks. These failures of process occurred on multiple occasions. Bypassing these checks put the safety of children at risk, which the panel considers constituted an error of judgment by Mrs Earl.

The panel therefore finds the allegation proven.

**6. By your conduct set out at 1 and/or 2 and/or 3 and/or 4 above you created a situation whereby pupils could be at risk.**

In relation to allegations 1 and 2, the pupils who were placed inside the Empty/Blue Room were of primary school age, in an emotionally distressed state, and some had specific vulnerabilities. The incident report forms and oral evidence from witnesses indicates that some of the children became more distressed by their inability to leave the room. The panel considers that the lack of supervision of some of the children whilst they were in this room posed a significant risk to their safety, and physical and mental wellbeing. Whilst it is unavoidable to occasionally leave a child unsupervised for some ordinary activities, the panel does not consider that it is safe or acceptable to do this with young and vulnerable pupils such as these who were in a distressed state in solitary confinement. No risk assessment was carried out, and therefore no procedures were in place for the event of a fire risk, children who needed to use the bathroom, or children who could have suffered a health issue whilst in the room (such as a fit or asthma attack). Mrs Earl's 'Behaviour Consequences Ladder' required teachers to follow this specific approach to managing behaviour, which did not take children's individual health needs into account and therefore may not have been in their best interests. Whilst staff do appear to have responded to incidences of harm to individual children within the room, the School did not evaluate the overall strategy and safety of using the room.

In relation to allegation 3, the panel considers that the lack of systematic recording meant there was no opportunity for monitoring the use of restraint or its impact. This posed a risk to the safety of children at the School, although not of the same magnitude as the failings in relation to allegations 1, 2 and 4.

In relation to allegation 4, the panel does consider that this posed a significant risk to pupils. Mrs Earl could not ensure that the appointed staff were either suitable for their roles or safe to be trusted to work with the pupils, who were young and vulnerable. By way of example, one applicant was permitted to work on a one to one basis with a particularly vulnerable pupil on the same day as having a cursory interview and without having completed an application form. References and an enhanced disclosure were only obtained several days later and the member of staff was not included on the Single Central Record.

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

Having found a number of the allegations to have been proven, the panel has gone on to consider whether the facts of those proven allegations amount to unacceptable professional conduct and/or conduct that may bring the profession into disrepute.

In doing so, the panel has had regard to the document Teacher misconduct: The prohibition of teachers, which the panel refers to as "the Advice".

The panel is satisfied that the conduct of Mrs Earl in relation to the facts found proven, involved breaches of the Teachers' Standards. The panel considers that by reference to Part Two, Mrs Earl 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...
- Teachers must have an understanding of, and always act within, the statutory frameworks which set out their professional duties and responsibilities.

The panel is satisfied that the conduct of Mrs Earl fell significantly short of the standards expected of the profession.

In particular, the panel was concerned by the way in which the use of the Empty Room and Blue Room developed over time. The guidance published by the Department of Education dated February 2014 entitled ‘Behaviour and Discipline in Schools’ states that “Any use of isolation that prevents a child from leaving a room of their own free will should only be used in the most exceptional of circumstances”. Yet the panel found that Mrs Earl normalised this to the extent that it became almost a daily occurrence. Some teachers used the isolation room for relatively minor disciplinary matters and at times children were left unsupervised in the room. Whilst the panel understands that Mrs Earl wanted to avoid excluding children from the School where possible and was concerned to avoid children being restrained by teachers, she demonstrated a lack of insight into the impact of the room upon the well-being and safety of pupils and a disregard for the law and guidance. The panel notes the comments of Mrs Earl, that visitors to the School, including parents and governors, had either seen the room or were aware of its existence. However, there is no evidence that those visitors fully grasped the way in which the room was being used. Mrs Earl was an experienced headteacher and National Leader of Education who joined the School having achieved an ‘outstanding’ Ofsted rating at her previous school. She was a role model for her relatively inexperienced senior team, who considered that she was bringing best practice to the school; consequently her actions with regard to the Empty Room and Blue Room went largely unchallenged. There were incremental modifications to the Empty Room/Blue Room and their use, and therefore there were multiple decision points at which Mrs Earl could have reflected upon the wisdom of her actions. This allowed a culture to flourish at the School where local practice amongst staff filled a void, created by the absence of proper policies and procedures.

In relation to the recruitment of staff, the panel considers that Mrs Earl demonstrated a disregard for statutory requirements in this area. The panel has some sympathy for the difficulty faced by Mrs Earl in retaining and recruiting staff, but does not consider that this

provided justification for the breaches of the safer recruitment requirements. Furthermore, there were multiple breaches in this area, which aggravated the risk to pupils. Mrs Earl sought to rely upon her personal knowledge of applicants as a substitute for rigorous safety procedures. The panel considers that this demonstrated poor management and leadership of the School. As an influential leader within her profession, Mrs Earl should have modelled good practice, but instead failed to set the required standards in this area.

In addition, the panel has also considered whether Mrs Earl's conduct displayed behaviours associated with any of the offences listed on pages 8 and 9 of the Advice. The panel has found that none of these offences are relevant.

Accordingly, the panel is satisfied that Mrs Earl 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 pupils' 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 Mrs Earl'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 professional 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 Advice and having done so has found them to be relevant in this case, namely: the protection of pupils, the maintenance of public confidence in the profession, declaring and upholding proper standards of conduct, and the interest of retaining the Mrs Earl in the profession. There is a public interest consideration in the protection of pupils, given

the findings of the inappropriate use of the Empty/Blue room to discipline children. However, the panel also considered that there is a strong public interest consideration in retaining Mrs Earl in the profession. This is because she was previously a successful headteacher (her previous school received an 'outstanding' Ofsted report under her leadership), no doubt has been cast upon her abilities as an educator, she is well-respected by her colleagues, and therefore in the view of the panel, 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 Mrs Earl.

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 Mrs Earl. 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 proven. In the list of such behaviours, those that are relevant in this case are:

- a serious departure from the personal and professional conduct elements of the Teachers' Standards;
- misconduct seriously affecting the education and/or well-being of pupils, and particularly where there is a continuing risk;
- abuse of position or trust (particularly involving vulnerable pupils) or violation of the rights of pupils.

Even though there were behaviours that would point to a prohibition order being appropriate, the panel went on to consider whether or not there were sufficient mitigating factors to militate against a prohibition order being an appropriate and proportionate measure to impose.

Although Mrs Earl's actions at the time were deliberate and she was not under duress, the panel agrees with the National College that Mrs Earl was 'misguided', and that her actions were the result of a series of errors of judgment, rather than any malicious intent. Mrs Earl previously had a good history. The evidence presented by both parties shows that Mrs Earl was working under a considerable pressure at the time, to rapidly improve standards in a School that was previously judged by Ofsted to be 'failing' and was in a very challenging environment. Witnesses spoke of her being hardworking and dedicated to improving standards at the School, and stated that she took a holistic approach to the education of children. The panel noted that attainment at the School was rising quickly under her leadership. Oral evidence from some of the witnesses and Mrs Earl herself indicates that Mrs Earl put considerable pressure on herself to succeed.

In relation to the use of the Empty/Blue room, Mrs Earl and other colleagues explained in oral evidence that this was the result of trying to avoid excluding children from the School where possible. This was because often their home environment was not the best place

for them to be and some parents stated that they were unable to look after their children at home during the school day. The panel notes Mrs Earl's commitment to inclusion and desire to keep children in school where possible, but it appears that the School was not adequately resourced to achieve this in a safe and secure way. Mrs Earl's actions in this regard, whilst misguided, appear to have been an attempt to balance the competing priorities of pupil inclusion and challenging pupil behaviour.

Similarly, in relation to the failure to follow a proper recruitment process, the panel notes the lack of staff capacity within the School, high staff turnover, and difficulty in recruiting staff into the challenging environment. In addition, the evidence indicated that Mrs Earl's senior leadership team was relatively inexperienced and therefore did not provide adequate challenge.

The panel has considered the seven references submitted by Mrs Earl, which are all positive regarding her ability as a teacher and headteacher. In summary, they state that she is conscientious, child-focused, an effective leader, and was very successful in her previous roles. This was also echoed by the oral witness evidence.

Furthermore, the panel considers that in her oral evidence, Mrs Earl was honest about what had happened, admitted the majority of the allegations, and demonstrated considerable insight into her failings. She readily accepted where she had made mistakes and was remorseful regarding the impact of her actions. As a result of the above, the panel considers that the risk of Mrs Earl repeating such conduct in the future is low.

The panel first 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 is sufficient.

The panel is of the view that in applying the standard of the ordinary intelligent citizen, recommending no prohibition order is a proportionate and appropriate response. In light of the strong mitigating factors that were present in this case (detailed above), the panel considers that a recommendation for a prohibition order is not appropriate in this case. The panel considers that the publication of the adverse findings that it has made against Mrs Earl is sufficient to send an appropriate message as to the standards of behaviour, and that this meets the public interest requirement of declaring proper standards in 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 and review period.

In considering this case I have given very careful attention to the advice that is published by the Secretary of State concerning the prohibition of teachers.



In this case the panel has found allegations proven and found that those proven facts amount to unacceptable professional conduct and conduct that may bring the profession into disrepute. The panel has made a recommendation to the Secretary of State that Mrs Earl should not be the subject of a prohibition order. The panel considers that the publication of the findings of unacceptable professional conduct and conduct that may bring the profession into disrepute is proportionate and in the public interest.

In particular the panel has found that Mrs Earl 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.
- Teachers must have an understanding of, and always act within, the statutory frameworks which set out their professional duties and responsibilities.

The panel is satisfied that the conduct of Mrs Earl fell significantly short of the standards expected of the profession.

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 or not 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 Mrs Earl, and the impact that will have on her, is proportionate.

In this case I have considered the extent to which a prohibition order would protect children. The panel has observed that Mrs Earl, "demonstrated a lack of insight into the impact of the room upon the well-being and safety of pupils and a disregard for the law and guidance." On recruitment the panel say, "there were multiple breaches in this area, which aggravated the risk to pupils."

A prohibition order would therefore prevent such a risk from being present. I have also taken into account the panel's comments on insight and remorse which the panel sets

out as follows, “Furthermore, the panel considers that in her oral evidence, Mrs Earl was honest about what had happened, admitted the majority of the allegations, and demonstrated considerable insight into her failings. She readily accepted where she had made mistakes and was remorseful regarding the impact of her actions. As a result of the above, the panel considers that the risk of Mrs Earl repeating such conduct in the future is low.”

I have therefore given this element considerable weight in reaching my 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 likely 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 failure to impose a prohibition order might be regarded by the public 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 Mrs Earl herself. The panel say it, “has considered the seven references submitted by Mrs Earl, which are all positive regarding her ability as a teacher and headteacher. In summary, they state that she is conscientious, child-focused, an effective leader, and was very successful in her previous roles. This was also echoed by the oral witness evidence.”

A prohibition order would prevent Mrs Earl from continuing that work. A prohibition order would also clearly deprive the public of her contribution to the profession for the period that it is in force.

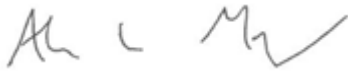
In this case I have placed considerable weight on the panel’s comments concerning mitigation. The panel has said, “ Mrs Earl’s commitment to inclusion and desire to keep children in school where possible, but it appears that the School was not adequately resourced to achieve this in a safe and secure way. Mrs Earl’s actions in this regard, whilst misguided, appear to have been an attempt to balance the competing priorities of pupil inclusion and challenging pupil behaviour.”

The panel has also said, Mrs Earl was ‘misguided’, and that her actions were the result of a series of errors of judgment, rather than any malicious intent. Mrs Earl previously had a good history. The evidence presented by both parties shows that Mrs Earl was working under a considerable pressure at the time, to rapidly improve standards in a School that

was previously judged by Ofsted to be 'failing' and was in a very challenging environment. Witnesses spoke of her being hardworking and dedicated to improving standards at the School, and stated that she took a holistic approach to the education of children. The panel noted that attainment at the School was rising quickly under her leadership. Oral evidence from some of the witnesses and Mrs Earl herself indicates that Mrs Earl put considerable pressure on herself to succeed.

On balance therefore I consider that a published decision is in the public interest.

A published finding of unacceptable professional conduct and conduct that may bring the profession into disrepute is a serious matter, and in my view meets the public interest in this case.

A handwritten signature in black ink, appearing to read 'Alan Meyrick', with a stylized flourish at the end.

**Decision maker: Alan Meyrick**

**Date: 22 August 2017**

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