



Teaching
Regulation
Agency

Mr Paul Henry: Professional conduct panel outcome

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

April 2018

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

Teacher: Mr Paul Henry

TRA case reference: 15556

Date of determination: 30 April 2018

Former employer: Robert Bruce Middle School

A. Introduction

A professional conduct panel (“the panel”) of the Teaching Regulation Agency (“the Agency”) convened on 19 to 23 March, 26 March and 30 April 2018 at 53 to 55 Butts Road, Earlsdon Park, Coventry CV1 3BH to consider the case of Mr Paul Henry and Mrs Karen Parker.

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

The legal adviser to the panel was Ms Patricia D’Souza of Eversheds-Sutherland (International) LLP.

The presenting officer for the Agency was Mr Ian Perkins of Browne Jacobson LLP.

Mr Paul Henry was present and was represented by Ms Katherine Fudakowski of Old Square Chambers. Mrs Karen Parker was present and was not represented.

The hearing took place in public and was recorded.

B. Allegations

It was alleged that Mr Paul Henry was guilty of unacceptable professional conduct and/or conduct that may bring the profession into disrepute in that whilst employed as headteacher at the Robert Bruce Middle School, he:

1. Acted with a lack of professional integrity in relation to the preparation for and/or administration of the Key Stage 2 SATs examinations in 2015 in that he:
 - a. provided more assistance to one or more pupils sitting the examinations than he knew or ought to have known was appropriate and/or in accordance with exam requirements;
 - b. instructed staff members to provide more assistance to pupils than that which he knew or ought to have known is permitted under normal circumstances;
 - c. intimidated and / or embarrassed and / or humiliated colleagues who did not carry out his instructions at allegation 1.b;
 - d. instructed pupils to put their hand up to request to turn the page in the test paper to continue to answer the questions which is not a requirement under normal exam conditions;
 - e. placed unreasonable pressure on colleagues to take measures to secure examination results regardless of whether these were an accurate reflection of the cohort of pupils undertaking the Key Stage 2 examinations.
2. Acted with a lack of professional integrity in that he:
 - a. advised staff members the school could close and/or that they would lose their jobs if the pupils did not reach the targets, or used words to that effect;
 - b. said "I'm not asking you to cheat, but am telling you to do everything you can to get them through", or used words to that effect.
3. His conduct as may be found proven at allegations 1.a. and/or 1.d. above was dishonest in that he sought to unfairly influence the exam results obtained by pupils.

Mr Henry confirmed in the hearing that none of these allegations is admitted.

C. Preliminary applications

Postponement Application

At the start of the hearing, the panel was asked to consider a postponement application on behalf of Mrs Parker. Mrs Parker was concerned that Mr John Matharu, who replaced a panel member on this case last week, had not had sufficient time to read the papers in this case. Mrs Parker was concerned that she was notified at 4.55pm on Tuesday, 13 March that Mr Matharu would replace a previous panellist in the case. Mrs Parker considered it would take some time to understand the background to this matter. Mr Henry's representative confirmed that Mr Henry shared Mrs Parker's concerns as Mr Matharu would not have had five working days to review the bundle and this was a case where the, "devil is in the detail". Therefore, Mrs Parker submitted that a new five day listing for this matter should be sought in this case. Mr Henry's representative supported this.

Mr Matharu assured those present at the hearing that he received the bundle around midday on 15 March and he spent the whole of 16 March reading the bundle and spent large parts of both days of the weekend prior to the hearing reviewing the bundle. Mr Matharu stated that he was confident to proceed as a panellist on this case; he had read the bundle in detail and had made annotations.

The presenting officer submitted that it was up to an individual panellist to declare in the pre-meeting between the panel members and legal advisor, prior to the start of a hearing, whether they had had sufficient time to review the papers. The presenting officer said that the rules do stipulate that a bundle should be provided five working days in advance, however a panellist is required to read and interrogate the papers in order to be aware of the content and he considered that Mr Matharu's comments showed there was no detriment to proceeding with the hearing.

The panel had regard to the advice from the legal advisor with regard to paragraph 4.54 of Teacher Misconduct: Disciplinary Procedures for the Teaching Profession ("the Procedures"). The panel determined not to exercise its discretion under Paragraph 4.54 of the Procedures to adjourn the hearing.

The panel took account of the various factors drawn to its attention from the case of R v Jones [2003] 1 AC1.

In addition, the panel noted that the right to a fair trial under Article 6 of the European Convention on Human Rights includes the right to participate effectively. However, the right is not absolute and can be waived by the conduct of the defendant, if that waiver is unequivocal, meaning 'clear and unqualified'.

The panel had regard to the extent of the disadvantage to Mr Henry and Mrs Parker and whether they would be able to effectively give their account of events, having regard to

the nature of the evidence against them. Although the Procedures may state that panel members should have the bundle five working days in advance, a panellist is unlikely to need to spend an entire five working day period reviewing the papers. Mr Matharu confirmed he had read the bundle over a three day period. The panel was content that he had had sufficient time to consider the content and detail. The panel balanced the public interest against the interest of Mr Henry and Mrs Parker and decided to continue with the hearing.

The panel has noted that all witnesses relied upon are to be called to give evidence and the panel can test that evidence in questioning those witnesses, considering such points as are favourable to the teachers, as are reasonably available on the evidence. The panel considered it would be inconvenient and distressing for them to return.

The panel has had regard to the seriousness of this case, and the potential consequences for Mr Henry and Mrs Parker has accepted that fairness to them is of prime importance. However, given that there was no concern amongst the panel that Mr Matharu was not ready to proceed and the inconvenience an adjournment would cause to the witnesses; on balance, these are serious allegations and the public interest in this hearing proceeding within a reasonable time is in favour of continuing this hearing today. The panel therefore rejected Mrs Parker's postponement application.

Request for video evidence

The presenting officer made an application for a witness from the relevant school to give evidence via video link on the basis that he is currently a primary carer for a relative who is vulnerable, his wife who is the usual primary carer is ill, and the witness was unwell at this time. This witness did not wish to be seen by Mr Henry or Mrs Parker either and wished to give evidence via video link on 20 March 2018.

Mr Henry's representative vehemently opposed this application. It was submitted that it is imperative that witnesses who may give factual evidence should attend in person as Mr Henry wished to cross-examine him fully. Mr Henry's representative submitted that it would be highly unsatisfactory if video link were to be used as subtleties/nuance and body language would not be detected. It was further submitted that this witness could source childcare for half a day to enable him to attend in person. Mrs Parker submitted that she wished to put to this witness some of the difficult allegations that had been made by this witness and wished to physically see and engage with him in order to elicit evidence in her defence.

Further to the advice provided by the legal advisor, the panel noted that pursuant to paragraph 4.18 of the Procedures, the panel may admit any evidence where it is fair to do so, which may reasonably be considered to be relevant to the case.

The panel therefore considered it had a discretion as to whether to allow the witness subject to this application to give evidence by video-link. In exercising that discretion, the panel balanced its obligation to ensure that Mr Henry and Mrs Parker were not put at an unfair disadvantage, as against the panel's duty in the public interest to investigate the allegations in so far as possible consistent with fairness to Mr Henry and Mrs Parker. The panel also took into account that there may be subtleties of tone or body language that might be lost via the medium of video link.

The panel was not satisfied on the evidence presented that there had been sufficient explanation as to how this witness' family commitments or health would be a barrier to his attending in person. The panel noted that this witness may live approximately 1.5 to 2 hours travel time away from the hearing venue and therefore the panel did not consider that the travel time or cost would be unusual.

Allowing this witness' evidence to be given in person would ensure that Mr Henry and Mrs Parker be fully able to present their case, and fairness required that all parties should be given the opportunity to ask questions of witnesses.

The panel therefore rejected the presenting officer's application.

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 11

Section 3: Teaching Regulation Agency's witness statements – pages 12 to 38

Section 4: Teaching Regulation Agency's documents – pages 39 to 541

Section 5: Karen Parker's documents – pages 542 to 1011

Section 6: Paul Henry's documents – pages 1012 to 1183

Application for late admissibility of documents

Mr Henry's representative applied to admit to the bundle further character statements on behalf of Mr Henry, an additional witness statement for Henry and a copy of the up-to-date Ofsted report for Mr Henry's current school. This was not opposed by the presenting officer or Mrs Parker.

Mrs Parker also applied to admit before the panel a copy of a confidential agreement as she had indicated in the documents already included in the bundle that this would be

made available to the panel at the hearing. This contained a confidentiality clause. In addition, she requested one page from a disciplinary investigation report was included in the bundle.

In the course of the hearing, the panel requested a copy of the test guidance for the SATs papers in 2015 to be added to the bundle to facilitate panel deliberations in this case.

Under paragraph 4.18 of the Procedures, the panel may admit any evidence, where it is fair to do so, which may reasonably be considered to be relevant to the case. The panel considered it was both fair and relevant to admit the documents subject to Mr Henry and Mrs Parker's respective application. Therefore, these were admitted and paginated as follows:

- One page from an appendix included in the disciplinary investigation report dated 23 March 2016 relating to Mrs Parker– page 1011a;
- Updated character statement pages 1147a – 1147b;
- English reading paper – pages 1184 to 1187;
- English grammar: Paper 1 – pages 1188 to 1191;
- English grammar: Paper 2 – pages 1192 to 1195;
- Mathematics tests – Paper 1 – pages 1196 to 1199;
- Mathematics tests – Paper 2 – pages 1200 to 1203;
- 2014 – key stage 2 - test administrators' guide – pages 1204 to 1251;
- Ofsted report relating to Alameda Middle School - pages 1252 to 1261;
- Bundle 2: Confidential document - read by the panel before the hearing.
- Additional character statements for Mr Henry pages 1262 to 1267;
- Additional witness statement for Mr Henry pages 1268 to 1272;
- Additional statement from a relative page 1273.

The panel confirmed it had read all of the documents supplied in advance of the hearing and read all other documents admitted in the course of the hearing.

Witnesses

The panel heard oral evidence from the following witnesses on behalf of the Teaching Regulation Agency from the relevant school:

- Witness A – former head of mathematics
- Witness B – former information technology teacher

- Pupil A – former pupil
- Witness C – former deputy head of mathematics

Mr Henry and Mrs Parker also gave oral evidence.

E. Decision and reasons

The panel announced its decision and reasons as follows:

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

The panel confirmed it had read all of the documents supplied in advance of the hearing and read all other documents admitted in the course of the hearing.

Mr Henry had been employed at Robert Bruce Middle School (“the School”) in the third term of his Newly Qualified Teacher (NQT) year, initially as a science teacher and leader for key stage 3 from July 2012. He was appointed to the role of assistant head teacher in September 2013. In May 2015, a parent of a pupil raised an anonymous allegation of cheating during the key stage 2 SATs test with the Standards Testing Agency (“STA”). A SATs monitoring visit took place at the School on 14 May 2015 and an investigation was conducted in June 2015. On 16 July 2015, the STA notified the School that it had found maladministration involved with the key stage 2 SATs tests and all results were annulled. Mr Henry ceased working at the School in the summer of 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:

Whilst employed as an assistant headteacher at the Robert Bruce Middle School, you:

- 1. Acted with a lack of professional integrity in relation to the preparation for and/or administration of the Key Stage 2 SATs examinations in 2015, in that you:**
 - a. provided more assistance to one or more pupils sitting the examinations than you knew or ought to have known was appropriate and/or in accordance with exam requirements;**

In his opening statement, the presenting officer submitted that the School was in a deprived area. This was corroborated by Witness B’s oral evidence which confirmed that

many of the children did not have computers or support at home, and so their only time to revise was in the classroom.

Witness C stated that the School was challenging but the children were there to work and everyone did their best to teach the children well. The other adult witnesses stated, in oral evidence, that the School was challenging in many ways and there was a lot of pressure on the School to perform well in the SATs tests for Year 6 pupils. Witness B stated, in oral evidence, that the School had falling numbers on its admissions roll and there was concern amongst the staff when redundancies at the School were mentioned in 2014 that the School could close. The panel had sight of an Ofsted report from March 2015, which said that the School was in the category of “requires improvement.” Mrs Parker’s oral evidence was that many of the pupils had difficult lives and most people would not be able or willing to come to school if they had to experience what most of the pupils experienced at home. Nonetheless, Mr Henry and Mrs Parker’s oral evidence was that there was no more pressure on this school than any other to perform well.

In his oral evidence, Pupil A stated that he and Pupil G were not permitted to take their SATs examinations in the School hall as they were both disruptive and so they took their tests apart from other pupils. When questioned by Mr Henry’s representative, Pupil A stated that he and Pupil G were taken to separate rooms for their SATs tests. Pupil A gave evidence that he saw Pupil G in a room where Mr Henry was and that Mr Henry gave assistance to Pupil G with his SATs test. When asked by Mr Henry’s representative to describe Mr Henry, Pupil A provided a description, which bore no resemblance to the physical appearance of Mr Henry in terms of height, weight and facial hair. The panel therefore did not find Pupil A’s evidence in relation to this particular allegation credible as it considered it was more likely than not that Pupil A had mistaken another member of staff for Mr Henry. It was Mrs Parker’s oral evidence that Pupil G sat his SAT test with the member of staff who was the leader of the self-esteem and emotional development centre (“SEED unit”) in the School.

Witness C’s oral evidence was that Mr Henry provided assistance to Pupil F during the SATs. She further stated that Pupil F’s performance data indicated that she was weak both in her understanding and confidence in mathematics. During the mathematics paper 1, Witness C stated that she read questions to Pupil F. With one question, Pupil F required Witness C to read the question four times. Witness C stated in oral evidence that it was clear to her that Pupil F did not understand what the question was about. When cross-examined by Mr Henry’s representative, Witness C stated that the question that Pupil F struggled with, on paper 1, was not a multiple choice question, it was a “multi-step” question.

In interview notes for an earlier investigation, Witness C stated that Pupil F had not written an answer on her test paper and Witness C had told her to move on to the next question. However, in her statement for these proceedings and in her oral evidence she stated that Pupil F wrote an answer down to the question and Witness C noticed this was wrong. At that point, Witness C’s attention was drawn to another pupil who needed her to read a question so she turned away from Pupil F. Witness C recalled seeing Mr Henry

enter the room and crouch down beside Pupil F. Witness C did not hear Mr Henry but she did see him speak to Pupil F. When Witness C turned back to Pupil F later in the test, Witness C noticed that Pupil F's answer for the question that she was struggling with was "suddenly" correct. She said that Pupil F would not have got the question right on her own and was struggling before Mr Henry went up to her.

The panel noted from the STA investigation in the bundle that Pupil F was not mentioned in relation to paper 1. However, the STA report did highlight the initials of Pupil F for the mathematics paper 2, but even here, there was no reference to Pupil F's having crossed out an incorrect answer and replaced it with the correct answer. The STA's report simply stated that the pupil arrived at the correct answer; however, figures for calculation had not been worked out.

In his oral evidence, Mr Henry denied assisting Pupil F at all during the SATs investigation. He told the panel that he entered the room in which Witness C was invigilating and read a question to another pupil (whom Mr Henry recalled had recently been evicted from his home) which he considered was within SATs guidelines and he did "nothing more." Given the differing accounts of this matter provided by Witness C and Mr Henry, and the content of the STA report, the panel was not satisfied that on the balance of probabilities Pupil F received assistance from Mr Henry in relation to her SATs examination.

In his oral evidence, Mr Henry stated that he went to collect the mental mathematics test scripts and he saw Pupil E's test script on the top of the pile, which showed many crosses down the side. Mr Henry asked staff who had invigilated this pupil in the library what had happened. He found out that Pupil E had been in the examination room with her head down on the desk and in tears. He therefore judged that she had not been well during the test and should have been removed by the invigilators. After she had completed paper 1, Mr Henry took Pupil E to Mrs Parker's office to continue the mental mathematics test from the point where she had ceased to put answers on her test script. The STA report described, "12 answer boxes with crosses in them but then an answer is recorded."

When questioned by the presenting officer, Mrs Parker confirmed she was aware that Pupil E had been removed from the examination room in which she had originally sat a SATs test. She further stated that she was in her office with her personal assistant who was administering SATs tests for more than one pupil when Mr Henry brought Pupil E to her office. Mrs Parker told the panel that she gave Mr Henry a nod to allow Pupil E to come into the room to complete the rest of her mental mathematics test. She further stated that Mr Henry then told Mrs Parker that Pupil E needed to pick up from a certain numbered question and the test script was face down. Mrs Parker said that Pupil E came in and finished the mental mathematics test.

Mr Henry stated in oral evidence that after he collected Pupil E he took her to Mrs Parker's office because Mrs Parker was conducting the mental mathematics test that

Pupil E needed to sit (and had started previously). He said he told Mrs Parker where Pupil E needed to recommence the test and sent her into Mrs Parker's office at that point.

The panel considered it extremely unlikely that Mrs Parker was conducting the mental mathematics test at the same time as Mr Henry brought Pupil E to her and Pupil E could not possibly have entered the room without causing any disruption or pausing of the test, which is against SATs guidelines. The panel was not satisfied with the evidence of either Mr Henry or Mrs Parker on this. There is no doubt that Pupil E heard all or some of the mental mathematics test twice, which is a clear breach of the regulations.

Mr Henry further admitted under cross-examination that he now realised this was wrong but at the time, he believed he was acting to assist Pupil E. He felt she would not have listened to the questions she had missed as she was in an emotional state at the time and she was a special needs pupil.

The panel noted that the STA test administrator's guide 2014 states, "*if a child is unwell stop the test for the individual child and note the time. After a rest break, if the child is well enough, he or she should be given the correct amount of remaining time to continue with the test. The test must be completed on the same day. If the child is too ill to continue the test, send the partially completed test script for marking*". The presenting officer notified the panel that the 2015 version of this guide was not available but the 2014 version was largely the same. Either Mr Henry or Mrs Parker did not contest this.

The presenting officer submitted that the conduct Mr Henry and Mrs Parker displayed towards Pupil E was to provide her with more assistance than they knew or ought to have known was appropriate or in accordance with examination requirements. The panel agreed that allegation 1.a. was proven, as it was clear that Mr Henry had provided Pupil E with more assistance than was appropriate as she had not been removed from the test and had therefore received the chance to sit at least part of the mental mathematics SATs test twice.

b. instructed staff members to provide more assistance to pupils than that which you knew or ought to have known is permitted under normal exam conditions;

In her witness statement, Witness A stated that Mr Henry gave instructions to staff members at two meetings, which she attended in 2015 relating to the 2015 SATs tests. She further stated that Mr Henry and another member of staff led these meetings. Mr Henry gave staff the STA guidelines (in the form of yellow and blue booklets) and told staff members in general what they could do as opposed to, "what they could not do."

The panel took account of the oral evidence from Witness B. Witness B's view was that papers were brought in under controlled conditions, pupils would start a test and normally

there would be no interaction with pupils, unless pupils put their hand up to go to the bathroom or to ask for a pen.

Witness C's oral evidence was that she recalled an instruction being given to staff to get pupils to put their hand up before turning the page when they were undertaking the SATs test. Witness B's oral evidence was that this was contrary to his expectations and experience. Witness C could not recall who said this to the staff but it was reiterated in SATs briefings each morning, which were led by Mr Henry. Witness C was not sure, if Mr Henry was the person from the senior leadership team to give this instruction or if it came from someone else. She recalled that Mrs Parker did not lead the briefing as she simply stood by the door during such briefings and she rarely said anything.

When questioned by the panel, Witness C stated that it was in accordance with SATs guidance to tell a pupil to put their hand up in order for a question to be read to them. However, it was not appropriate to instruct staff to ask pupils to put their hand up after finishing a page of the test. This was corroborated by Witness A's oral evidence.

When cross-examined by Mr Henry's representative, Witness A did not accept that this instruction came from another member of the senior leadership team. It was her evidence that this came from Mr Henry and may have been repeated by a member of the senior leadership team thereafter.

When questioned by the panel, both Witness A and Witness C stated that when pupils did put their hand up in order to request permission to turn over the page, both Witness A and Witness C told the pupils to turn over and did not check their answers.

The panel noted from the STA investigation report that it was clear that dots and crosses were made on several children's' test papers which might indicate that some staff were checking pupils' answers. However, there was no indication that Mr Henry knew about this or suggested it.

In his closing submissions, the presenting officer submitted that there was no need for staff to be advised to ask pupils to put their hands up for any other reason than to have a question read to them. This was evidence, in the presenting officer's submission, that Mr Henry attempted to improve the results of the pupils taking the SATs tests.

A statement in the bundle from the acting deputy head at the School indicated that this approach was his idea as he stated the following: "The children putting their hand up was suggested initially by me, and we had a discussion about it with the head's mentor...He said that all we were doing was asking the children to read the questions, and as far as he was concerned, that was it. It was to prevent the children making silly mistakes and leaving questions blank, and that if we could help them by reading the question to them, then we should. I wish to make it clear that I made the initial suggestion as a possible solution to children leaving out questions and misreading questions following a mock SAT. I suggested asking pupils to raise their hands at the bottom of each page to [Mr

Henry]. We checked with [the head's mentor] a former headteacher and Ofsted inspector that we could ask children to raise their hands and ask them to re-read questions. His response was 'all you're asking them to do is re-read questions'. We took this as clearance to do it. All SLT were witness to that discussion."

The panel had regard to a statement Mr Henry included in the bundle from a previous investigation which stated that the acting deputy head told staff that the pupils had to put up their hands to request to turn the page to continue to answer the questions. This statement also states that the staff members were told that they had to check that all the questions had been answered/attempted before they could allow the pupils to turn the page in their test paper. This statement indicates that the focus was to make sure students were attempting all questions and not turning two pages at a time, which had been a concern during mock SATs examinations.

In his oral evidence, Mr Henry admitted it was wrong for staff to wait for pupils to put their hands up to check they were not turning over two pages.

When cross-examined by the presenting officer, it was suggested to Mr Henry that he had told staff to review answers and to direct the pupils to questions that were unanswered or told staff to tell pupils to put crosses against questions. Mr Henry denied this.

In his oral evidence, Mr Henry drew the panel's attention to a copy of an email in the bundle which he sent to staff in March 2015 which states that "Staff MUST SUPPORT AS MUCH AS WE ARE ALLOWED during the SATs obviously staying within the rules." Mr Henry relied on this email as evidence that he did not instruct members of staff to provide more assistance to pupils, which he knew or ought to have known, was not permitted under the examination requirements.

The panel considered that Mr Henry was inexperienced in managing staff and he appeared to take a lot of guidance from other senior staff as to what was appropriate in terms of SATs administration and in particular with regard to instructing pupils to put their hands up. Therefore, the panel considered that on the balance of probabilities, it was more likely than not that Mr Henry instructed staff members to provide more assistance to pupils than he knew or ought to have known was permitted under normal examination conditions. This allegation is found proven.

c. intimidated and/or embarrassed and/or humiliated colleagues who did not carry out your instructions at allegation 1.b.;

Mrs Parker's oral evidence was that Mr Henry took over the role of data manager in the School and he would often, at briefings and meetings with staff, refer to pupils' progress data. Mr Henry's oral evidence was that he took over this role after the School's data administrator left. For five to six months, there had been no way of tracking pupils' progress. The panel had regard to a statement of a former member of staff who mentored Mr Henry when he first joined the School and took over the data management

role. This statement indicated that during Mr Henry's first 18 months in post it was necessary to put in place professional expectations and processes and for many of the staff this came as a "surprise" including a senior manager. In his oral evidence, Mr Henry stated that the staff in the School were not used to reviewing data about pupils' progress and being held accountable for their pupils' performance. His further oral evidence was that Witness A and Witness C were particularly resistant to this method of accountability.

In his witness statement, Mr Henry stated that Witness A and Witness C took it that they were being blamed for the School's poor performance as set out in the 2015 Ofsted inspection. In his oral evidence, Mr Henry stated that during a meeting when the Ofsted results were discussed, Witness A appeared upset and he regretted not telling her to not worry about it but he said, "What's done is done." Mrs Parker's oral evidence was that Witness A did not like Mr Henry because he held her accountable for the mathematics results.

Witness B stated in oral evidence that a female pupil had not attempted the test and she had put crosses the whole way down the test. In his statement, Witness B stated that two teachers were "terrified." Mr Henry had called these two members of staff to the corridor and "was furious" as they had not followed his instructions. He said that they had let the School down by not checking the script of a pupil who had quite a few answers wrong. Witness B recalled in oral evidence that Mr Henry shouted that this was not acceptable, as the pupil had not answered the questions.

The panel had regard to a signed statement of Mr Henry, which had been prepared in relation to a previous investigation. This stated that Mr Henry did reprimand staff in the library for the lack of answers from one child in the mental maths test. He did wave the paper in front of the staff and informed them that it was "disgraceful" and there were "too many crosses on this test paper" and this "pupil should have been taken out."

In his written statement for these proceedings, Mr Henry admitted that during the SATs test week he did reprimand a staff member. This was not a personal attack on the staff member but rather an attempt to improve support for students. In his statement, he further stated that it was unnecessary and he regretted his tone of voice at the time. Mr Henry admitted in oral evidence that he had had a strong tone of voice, but he did not wave papers in the face of a member of staff. In his statement, he attributed his handling of the situation to the stress and pressure he was under at the time. Mr Henry's further oral evidence was that the mathematics department needed to be held to account for their results but with hindsight, he could have done things differently. Mr Henry denied that he intimidated or embarrassed or humiliated colleagues.

In light of the content of Mr Henry's written statements and his oral evidence, the panel considered he was guilty of having embarrassed and humiliated two members of staff in the corridor as set out above. The panel did not find that there was sufficient evidence to establish, on the balance of probabilities that Mr Henry had intimidated colleagues who

did not carry out his instructions as referenced at allegation 1.b. However, this allegation was found proven.

The panel noted the advice of the legal advisor and a recent Court of Appeal judgement of *Wingate & Anr v SRA* and *SRA v Malins* (two separate appeals heard together). The panel further noted that the concepts of dishonesty and want of integrity are separate and distinct and that integrity connotes adherence to the ethical standards of one's own profession that involves more than mere honesty. However, it is linked to the manner in which the profession professes to serve the public.

The panel considered that its findings in relation to 1.a., 1.b., and 1.c., are all examples of a lack of professional integrity on the part of Mr Henry, a failure to adhere to ethical standards, in relation to the preparation for and/or administration of the key stage 2 SATs examinations in 2015.

The panel has found the following particulars of the allegations against you not proven, for these reasons:

1. Acted with a lack of professional integrity in relation to the preparation for and/or administration of the Key Stage 2 SATs examinations in 2015, in that you:

d. instructed pupils to put their hand up to request to turn the page in the test paper to continue to answer the questions which is not a requirement under normal exam conditions;

The panel considered that there was limited evidence in the bundle and limited oral evidence that suggested that Mr Henry had himself directly instructed pupils to put their hands up during either the practice and/or formal SATs examinations. The panel therefore found this allegation not proven on the balance of probabilities.

e. placed unreasonable pressure on colleagues to take measures to secure examination results regardless of whether these were an accurate reflection of the cohort of pupils undertaking the Key Stage 2 examinations.

When cross-examined by the presenting officer, Mr Henry's attention was drawn to an email he had sent to the mathematics staff, Witness A and Witness C. One email asked what Witness A and Witness C were going to do as they were not running an Easter school in order to ensure that all that students exceeded expectations and that all students made two levels of progress to improve results from the previous year's. In another email, Mr Henry stated that not enough improvement had been made and he was making changes having analysed some data. Mr Henry did not accept that such emails increased pressure on staff. However, he did accept in oral evidence that they were challenging and perhaps the tone could have been altered to include some niceties in addition to the request for improvement plans.

In her oral evidence, Mrs Parker denied that she placed any unreasonable pressure on colleagues to take measures to secure examination results. She considered that the mathematics department at the School was not placed under any more pressure than other departments to perform well. She did not consider that Mr Henry placed unreasonable pressure on colleagues and stated, in oral evidence, that he was not an aggressive person.

When questioned by the presenting officer, Mr Henry stated in oral evidence that he accepted that providing attainment data to staff on the morning of a SATs examination was unnecessary and was an example of his providing too much information. Mr Henry denied that this was an attempt to place pressure on staff to improve pupils' SATs results.

The panel noted from Witness C's statement and oral evidence that when Mr Henry spoke to her and Witness A about the mock SATs result he said they were "not fucking good enough." Mrs Parker then apologised and said she was sorry, but Mr Henry stated he was not sorry, as he did not know how they could "sleep at night." Witness A's statement for these proceedings stated that Mr Henry said the results were "shit" and in her oral evidence she said he said the results were "fucking shit." However, Witness A recalled this being said during a meeting to discuss the outcome of the Ofsted inspection. Mr Henry denied, in his oral evidence, swearing at any member of staff. This was corroborated by Mrs Parker's evidence. The panel was not satisfied on the balance of probabilities that there was sufficient evidence that Mr Henry swore at staff. However, it was clear that Witness A and Witness C did feel under pressure because of Mr Henry's conduct.

The panel considered that Mr Henry's conduct in passing pupils' progress data to members of staff immediately prior to the SATs examinations and asking staff to participate in extra revision over holiday periods placed unreasonable pressure on staff, particularly Witness A and Witness C. Nevertheless, the panel considered it was unable to find this allegation proven. The evidence it had heard and received in the bundle did not satisfy it that Mr Henry's conduct amounted to "measures to secure examination results regardless of whether these were an accurate reflection of the cohort of pupils undertaking the key stage 2 examinations." The panel considered that Mr Henry was pressuring staff to assist pupils to achieve the best possible results but this would not be an inaccurate reflection of their ability. The panel did not find there was sufficient evidence to establish that Mr Henry was pressurising staff to assist pupils to gain more marks than they were capable of.

This allegation was therefore found not proven on the balance of probabilities.

2. Acted with a lack of professional integrity in that you:

- a. advised staff members the School could close and/or that they would lose their jobs if the pupils did not reach the targets, or used words to that effect;**

Witness B's oral evidence was that he remembers it being said to staff that it was not good enough if staff were not doing enough to get pupils through SATs as the hard line was that the School will close and lose jobs. Witness B further stated that this was said in a staff briefing and said by Mrs Parker and not by Mr Henry. In her witness statement, Witness C stated that Mr Henry and Mrs Parker told staff that the staff were responsible for the results and if they were poor there would be no school left next year, and staff would be held accountable.

The panel had regard to a statement in the bundle from the acting deputy head which stated that he had said earlier on before the SATs that the School needed to reach the "floor targets" and that should the School fail to reach that, there could be a consequence that the School could close. Mr Henry's representative submitted that the panel needed to be certain on the balance of probabilities that a similar statement was made by Mr Henry to staff.

In her written statement, Witness A stated that Mr Henry informed her and other staff members that they were responsible if pupils did not get above "floor target" as the School would close and everybody would be out of a job.

Mr Henry's oral evidence was that he did not say this and another member of the senior leadership team said this instead.

The panel considered that it was more likely than not that the whole leadership team stated to staff that the School would close if the SATs results were not good. Mr Henry was clearly a loyal member of the senior leadership team. However, the panel considered this did not amount to a lack of professional integrity as this was a genuinely held belief by Mr Henry and he was informing staff of this. He had no knowledge that the School was due to close anyway and had no reason to argue with the acting deputy head's statement in this regard to staff. Whereas, Mrs Parker's oral evidence was that she knew all along the School would close regardless. This allegation is therefore found not proven.

b. said "I'm not asking you to cheat, but am telling you to do everything you can to get them through", or used words to that effect;

In her oral evidence, Mrs Parker stated that she did not recall Mr Henry ever stating the words referred to in allegation 2.b. or any words to that effect. If she had heard such a comment, she would have "stepped in" and corrected it and it is not an acceptable thing to say to staff as some staff could have misconstrued the wording relating to "...do everything you can to get them through." Mrs Parker's oral evidence was that staff were not asked to cheat.

The panel had regard to Witness A's statement which stated that she was told by Mr Henry that the staff members in the School had to ensure that the pupils achieve a level 4 in their examination. The statement went on to state that Mr Henry said, "I'm not asking you to cheat but I am telling you to do everything you can to get them through," and, "go

to the wire.” Mr Henry’s representative submitted that only Witness A provided evidence in relation to this allegation. None of the other witnesses recalled this comment.

When Mrs Parker was cross-examined by Mr Henry’s representative, her attention was drawn to a handwritten statement from a former member of staff at the School, which states that Mr Henry led the SATs briefings each morning and he said each morning to “take it to the line but not over the line.” Mrs Parker’s oral evidence was that if the staff heard Mr Henry state that they should “go to the line and do not cross it,” he meant for them to follow the SATs guidelines contained within the yellow and blue booklets provided by the School to staff. She further stated in oral evidence that no staff came to her to ask her advice about whether what they were told to do was contrary to guidelines. In his oral evidence, Mr Henry denied making this comment and he pointed out to the panel that only one witness, Witness A, had attributed this alleged comment to him and none of the other the Agency’s witnesses had.

Mr Henry denied, during the hearing, that he said the words set out in allegation 2.b. His evidence was that he told staff to go to the line and not cross it. The panel considered that the words Mr Henry admits to using were not similar in effect to stating that someone should not cheat but do everything to get pupils through an examination. Therefore, the panel found this allegation not proven on the balance of probabilities.

Your conduct as may be found proven at allegations 1.a. and / or 1.d. above was dishonest in that you sought to unfairly influence the exam results obtained by pupils.

As the panel found allegation 1.d. not proven, the panel only considered allegation 3 in the context of the wording of allegation 1.a. as this was found proven.

The panel took into account the advice from the legal advisor who stated that the Supreme Court case of *Ivey v Genting Casinos (UK) Ltd* had changed the application of the test of dishonesty in criminal law proceedings. It is now the case that once the defendant’s state of knowledge and belief has been established, whether that state of mind was dishonest or not is to be determined by the application of the standards of the ordinary honest person. It has not yet been considered by the courts whether this test is the correct test to apply in professional discipline cases, but it must be presumed that it is, given that previous advice provided in relation to dishonesty would have been based on the test in *R v Ghosh* which has now been held not to correctly represent the law.

In his closing submissions, the presenting officer stated that any wilful act by a member of the teaching profession to disrupt the administration of SATs in order to unfairly influence the examination results obtained by pupils is conduct, which is dishonest.

Mr Henry’s representative submitted in her closing submissions that there is no evidence that Mr Henry provided more assistance to pupils sitting the SATs examination. It was also submitted that ordinary honest people would not consider that allowing Pupil E to

retake her mental mathematics test when she had clearly exhibited mental distress and ought to have been removed, was dishonest.

With regard to allegation 1.a. the panel considered that Mr Henry knew or believed that providing assistance to one or more pupils during the SATs, as was given to Pupil E, was inappropriate but it did not consider that he was aware that his conduct was dishonest. The panel also agreed that ordinary honest people would not consider it dishonest to permit Pupil E, who had previously been unwell, to restart the test when she had composed herself. It was not clear from the evidence that Mr Henry was attempting to unfairly influence the outcome of the SATs test. For these reasons, the panel found this allegation not proven.

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

Having found allegations 1.a., 1.b. and 1.c. 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 Mr Henry in relation to the facts found proven, involved breaches of the Teachers’ Standards. The panel considers that by reference to Part Two, Mr Henry 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...;
- 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 Mr Henry amounts to misconduct of a serious nature, which fell significantly short of the standards expected of the profession. Mr Henry is a member of the senior leadership team and he ought to have known the correct procedures for SATs administration and the extra assistance afforded to Pupil E, to enable her to retake a test, and telling staff to ask pupils to put their hands up before turning a page was in breach of the guidelines. In addition, Mr Henry’s conduct in embarrassing and humiliating two colleagues on at least one occasion fell significantly short of the Teachers’ Standards.

The panel has also considered whether Mr Henry’s conduct displayed behaviours associated with any of the offences listed on pages 8 and 9 of the Advice. The Advice indicates that where behaviours associated with such an offence exist, a panel is likely to conclude that an individual’s conduct would amount to unacceptable professional conduct. The panel has found that none of these offences is relevant.

Nevertheless, the panel is satisfied that Mr Henry is guilty of unacceptable professional conduct.

The panel has taken into account the way the teaching profession is viewed by others and considered the influence that teachers may have on pupils, parents and others in the community. The panel 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.

For all the reasons set out above, the panel found that Mr Henry's actions constituted conduct that may bring the profession into disrepute. His actions, as part of the senior leadership team, led ultimately to the annulment of the 2015 SATs results. This is bound to have had a negative impact on the pupils concerned and the reputation of the School.

Having found the facts of particulars 1.a., 1.b. and 1.c. proved, the panel further found that Mr Henry's conduct amounted to unacceptable professional conduct and 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 a punitive effect.

The panel has had regard to the particular public interest considerations set out in the Advice and having done so has found a number of them to be potentially 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 teacher in the profession.

There is a potential public interest consideration in respect of the protection of pupils given the findings of fact relating to Mr Henry contributed to the 2015 Key Stage 2 SATs results of the School being annulled which must have been distressing for the pupils concerned and their parents. However, this did not stem solely from the actions taken by Mr Henry or Mrs Parker as it was a result of a practice suggested by the deputy headteacher and implemented by the whole senior leadership team in the School.

Similarly, the panel considered that public confidence in the profession could potentially be weakened if conduct such as that found against Mr Henry were not treated with seriousness when regulating the conduct of the profession.

The panel considered that a public interest consideration in declaring proper standards of conduct in the profession was also potentially present.

However, the panel considered that there was a strong public interest consideration in respect of retaining Mr Henry in the profession, since no doubt has been cast upon his abilities as an educator and he is clearly able to make a valuable contribution to the profession.

The panel considered carefully whether it would be proportionate to impose a prohibition order taking into account the effect that this would have on Mr Henry.

In carrying out the balancing exercise, the panel has had regard to the public interest considerations both in favour of and against prohibition as well as the interests of Mr Henry. 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. The panel found none of these behaviours or factors relevant.

The panel then went on to consider whether or not there were sufficient mitigating factors to militate against the appropriateness and proportionality of the imposition of a prohibition order, particularly taking into account the nature and severity of the behaviour in this case.

The presenting officer submitted to the panel that there were no previous disciplinary proceedings or warnings relating to Mr Henry. The panel considered there was therefore no indication that Mr Henry was of previous bad character. The panel considered that there was no evidence that Mr Henry's actions were not deliberate, although it did not consider his conduct amounted to dishonesty. The panel particularly noted from a statement in the bundle that the deputy head of the School developed the instruction that staff ask pupils to put their hands up before turning over the page in the SATs examination.

Mr Henry's representative asked the panel to be mindful that Mr Henry had only been a teacher for two and a half years at the time of the facts found proven against Mr Henry. It was further submitted by Mr Henry's representative that Mr Henry is at the start of his career and he has continued to work in the profession for the three years since the timeframe of the allegations. It was submitted that the panel's findings relating to unacceptable professional conduct and conduct, which may bring the profession into disrepute is a sufficient sanction in this case.

The panel noted that there was no evidence to suggest that Mr Henry was acting under duress, albeit that Mr Henry's representative submitted that the panel should consider duress in its wider sense and that Mr Henry's family circumstances had an impact on his

behaviour. The panel was not persuaded by this argument; however, it considered that Mr Henry had been under a great deal of personal and professional stress at the time, which may have impacted, on his behaviour to some extent. For example, his discussion with two members of staff outside the library, which he has admitted was inappropriate, was out of character.

The panel noted from the character statements included in the bundle that Mr Henry was regarded as a colleague of “outstanding ability” and an “adept manager of adults and pupils.” He demonstrated vision, drive and values to meet the demands of a very challenging environment in very difficult circumstances. He worked closely with colleagues at all levels to influence the style and direction of the School at a time of accelerated change in curricular, legislative and management terms. He has “boundless energy, optimism, tenacity”, and conducts himself in all his dealings with “integrity, sincerity and sensitivity”. It was considered that Mr Henry had the capacity to inspire confidence and trust and had the capability to motivate staff who had a professional outlook, in seeking quality in education for all the students and adults with whom he works. Despite being busy with his responsibilities on the senior leadership team, he always found time to act as a “sounding board” for colleagues. The panel also noted that Mr Henry was personally mentioned in a positive light in an Ofsted report.

The character statement from the deputy headteacher of Mr Henry’s current school describes Mr Henry as a “great asset.” He promoted both literacy and numeracy skills and made it a fun experience for pupils. He supported pupils both inside and outside school and communicated effectively with parents. More than one member of his current school commented that Mr Henry had been observed by many members of the senior leadership team and was graded as outstanding according to the Ofsted framework. This statement went on to state that the profession could “ill afford” to lose a dedicated hardworking and caring member of the profession such as Mr Henry.

The panel noted from Witness B’s oral evidence that he was “behind” what Mr Henry and Mrs Parker was trying to achieve at the School, which was in a deprived area.

In his witness statement, Mr Henry quoted from two Ofsted reports relating to the School, which he stated reflected his teaching standards. He stated that the 2013 Ofsted report said, “In a Year 8 resistant materials lesson, students were asked to work in teams to plan an engineering project. The teacher used challenging questions matched to students’ abilities, which ensured students had high expectations.”

The panel found the character evidence submitted on Mr Henry’s behalf particularly impressive as they were not only from former colleagues but from colleagues in the senior leadership team in his current school, who clearly found Mr Henry to be an impressive and valuable member of the profession with the ability to inspire others.

The further witness statement that Mr Henry submitted in the course of the hearing, which related to mitigation, gave the panel no concern that any similar behaviour would

be repeated in the future. Mr Henry demonstrated in both these proceedings and his written evidence considerable insight over the inappropriateness of his previous actions.

The panel is therefore of the view that applying the standard of the ordinary intelligent citizen, recommending no prohibition order is a proportionate and appropriate response. Given that the nature and severity of the behaviour is at the less serious end of the possible spectrum and in light of the mitigating factors that were present in this case, the panel has determined that a recommendation for a prohibition order will not be appropriate in this case. The panel considers that the publication of the adverse findings it has made is sufficient to send an appropriate message to Mr Henry, as to the standards of behaviour that are not acceptable and meets the public interest requirement of declaring proper standards of the profession.

Therefore, no prohibition order is recommended.

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. As the panel do not recommend a prohibition order there is no consideration by the panel of a review period.

In considering this case, I have also 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 1a, 1b and 1c proven and found that those proven facts amount to unacceptable professional conduct and conduct that may bring the profession into disrepute. Where the panel has not found the allegations proven, I have put these matters from my mind entirely. The panel has made a recommendation to the Secretary of State that Mr Henry should not be prohibited, but that a published finding of unacceptable professional conduct and conduct that may bring the profession into disrepute is sufficient.

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

I have to determine whether the imposition of a prohibition order is proportionate and in the public interest. In considering that for this case I have considered the overall aim of a prohibition order which is to protect pupils and to maintain public confidence in the profession. I have considered the extent to which a prohibition order in this case would achieve that aim taking into account the impact that it will have on the individual teacher. I have also asked myself whether 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 Mr Henry, and the impact that will have on him, is proportionate.

In this case I have considered the extent to which a prohibition order would protect children. The panel has observed “he ought to have known the correct procedures for SATs administration and the extra assistance afforded to Pupil E, to enable her to retake a test, and telling staff to ask pupils to put their hands up before turning a page was in breach of the guidelines. In addition, Mr Henry’s conduct in embarrassing and humiliating two colleagues. “A prohibition order would therefore prevent such a breach from occurring again. I have also taken into account the panel’s comments on insight and remorse which the panel sets out as follows, “The further witness statement that Mr Henry submitted in the course of the hearing, which related to mitigation, gave the panel no concern that any similar behaviour would be repeated in the future. Mr Henry demonstrated in both these proceedings and his written evidence considerable insight over the inappropriateness of his previous actions.” I have therefore given this element considerable weight in reaching my overall decision.

I have gone on to consider the extent to which a prohibition order would maintain public confidence in the profession. The panel observe, “His actions, as part of the senior leadership team, led ultimately to the annulment of the 2015 SATs results. This is bound to have had a negative impact on the pupils concerned and the reputation of the School.”

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 Mr Henry. He has subsequently secured work teaching and the panel comment, among other positive factors, “This statement went on to state that the profession could “ill afford” to lose a dedicated hardworking and caring member of the profession such as Mr Henry.”

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

In this case I have placed considerable weight on the panel's comments concerning insight and remorse.

I have given considerable weight to the positive references. In my view it is not necessary to impose a prohibition order in order to maintain public confidence in the profession. A published decision, backed up by remorse or insight does, in my view satisfy the public interest requirement concerning public confidence in the profession.

For these reasons I have concluded that a prohibition order is not necessary in this case, but that the published decision meets the wider public interest test.

A handwritten signature in blue ink, appearing to read 'Alan Meyrick', with a checkmark at the end.

Decision maker: Alan Meyrick

Date: 4 May 2018

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