



Teaching
Regulation
Agency

Mr Liam Nolan: Professional conduct panel outcome

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

October 2018

Contents

A. Introduction	3
B. Allegations	4
C. Preliminary applications	5
D. Summary of evidence	7
Documents	7
Witnesses	7
E. Decision and reasons	8
Panel's recommendation to the Secretary of State	17
Decision and reasons on behalf of the Secretary of State	19

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

Teacher:	Mr Liam Nolan
Teacher ref number:	8841101
Teacher date of birth:	6 June 1967
TRA reference:	15190
Date of determination:	18 October 2018
Former employer:	Perry Beeches The Academy Trust, Birmingham

A. Introduction

A professional conduct panel (“the panel”) of the Teaching Regulation Agency (“the TRA”) convened on 15 to 18 October 2018 at Cheylesmore House, 5 Quinton Road, Coventry, CV1 2WT to consider the case of Mr Liam Nolan.

The panel members were Mr William Brown OBE (lay panellist – in the chair), Ms Fiona Tankard (teacher panellist) and Mr Ian Carter (teacher panellist).

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

The presenting officer for the TRA was Ms Samantha Paxman of Browne Jacobson LLP solicitors.

Mr Nolan was present and was represented by Mr Andrew Faux of Counsel, instructed by Ms Sarah Linden, solicitor of the Association of School and College Leaders.

The hearing took place in public and was recorded.

B. Allegations

The panel considered the allegations set out in the Notice of Proceedings dated 4 May 2018.

It was alleged that Mr Liam Nolan was guilty of unacceptable professional conduct and/or conduct that may bring the profession into disrepute, in that whilst working as the Executive Headteacher, Chief Executive Officer and Accounting Officer at Perry Beeches The Academy Trust ("the Trust"):

1. He failed to comply with recognised procedures and principles in relation to his accounting of public funds by allowing the remuneration of his role as Chief Executive Officer to be paid to a third party supplier, Nexus Schools Limited ('Nexus'), and then be subcontracted to Liam Nolan Limited, a company that he is the sole director of, in that he:
 - a. breached paragraph 3.1.22 of the Academies' Financial Handbook 2014 and 2015 because:
 - i. No confirmation was sought that his remuneration arrangements met his tax obligations;
 - ii. He was not paid through the payroll;
 - iii. There were no 'exceptional temporary circumstances' which justified payment outside the payroll;
 - b. failed to ensure that the payments were disclosed in the Trust's 2013/2014 financial statements which breached the requirements to disclose material transactions with related parties as set out at:
 - i. Paragraph 3.1.14 of the Academies' Financial Handbook 2014 and 2015;
 - ii. Paragraph 230 of the Charities Commission Statement of Recommended Practice 2005;
 - iii. Paragraph 7.6.1 of the Academies' Accounts Directions 2013 to 2014 (Statement of Recommended Practice 2005);
 - c. failed to disclose in the Annual Declaration the conflict of interest that existed in relation to his status as the sole director of a company contracted by Nexus in breach of the requirements to:
 - i. Avoid and/or manage conflicts of interest as set out at paragraph 3.1.11 – 3.1.15 of the Academies' Financial Handbook 2014 and 2015:

- ii. Identify conflicts of interest as set out at paragraphs 3.1.17-3.1.19 of the Academies' Financial Handbook 2014 and 2015;
 - d. He failed to ensure that the Trust had a written contract with Nexus for goods and services in breach of his obligations to ensure high standards of probity in the management of public funds as set out at paragraph 1.5.21 of the Academies' Financial Handbook 2014 and 2015;
 - e. He failed to ensure that the Trust applied a competitive tendering policy adequately and/or before contracting services to Nexus in breach of his obligation to apply a competitive tendering process as set out at paragraph 3.1.3 of the Academies' Financial Handbook 2014 and 2015;
2. His conduct, as may be found proven, at allegation 1.a – 1.e was lacking in integrity and/or dishonest in that he:
- a. signed the statement on Regularity, Propriety and Compliance in the Trust's 2013/14 Financial statement to confirm that no instances of material irregularity, impropriety or funding non-compliance had been discovered when he knew or ought to know that this was not the case;
 - b. signed an annual declaration of business interests on 15/12/2014 confirming that he had no business or personal interests as an employee/ governor of the Trust when he knew or ought to know that this was not the case.

Mr Nolan admitted the facts alleged in 1.b.ii and 1.b.iii, 1.c.ii and 1.e, but denied the remaining allegations. No admissions were made as to unacceptable professional conduct or conduct that may bring the profession into disrepute,

C. Preliminary applications

Application to admit documents

Mr Faux made an application for admission of documents on behalf of Mr Nolan. Ms Paxman did not object to the application, although stated that it was not accepted that all of the documents are relevant to the allegation to be determined by the panel. Ms Paxman also made an application that two individuals named by Mr Nolan in his statement should not be referred to by name. After hearing submissions from Ms Paxman and Mr Faux and receiving legal advice, the chair announced the decision of the panel, as follows:

'The panel has considered an application by Mr Faux for the admission of additional documents, consisting of a 70 page statement from Mr Nolan and 183 pages of further documents. The explanation provided by Mr Faux is that his instructing solicitor is part of

a small legal team at the union concerned and was unable to comply with the deadline because of commitments on other cases. The panel is not satisfied that this is an acceptable explanation. It is important that the union concerned and their representatives address this issue to be able to respond in a timely fashion. However, the panel has decided that the statement and other documents should be admitted in the interests of a fair hearing.

The panel has noted the presenting officer's position that some of the documents are not relevant to the allegations to be determined by the panel. The panel has also taken note of the submissions from Mr Faux to the contrary. The panel has agreed to admit the documents without making a determination as to their relevance at this stage.

The panel has also considered the application from Ms Paxman that two individuals should not be referred to by name during the course of this hearing. The panel has noted that the individuals will be the subject of criticism during the course of these proceedings. The two individuals are not being called as witnesses and there will not be an opportunity for them to respond to that criticism at this hearing. Furthermore, Ms Paxman has stated that there has not been an opportunity to give the individuals notice of this intended criticism and this arises, at least in part, from the lateness of the service of the documents on behalf of Mr Nolan. Taking all of these circumstances into account, the panel is satisfied that it is in the interests of justice that the two individuals should not be named and should be referred to as Individual A and Individual B. The panel is satisfied that this measure will not impair Mr Nolan's ability to present his case. The presenting officer is asked to produce an anonymised list.'

Application to amend allegations

Ms Paxman made an application to amend the allegation 1.b.iii by substituting the years 2013 to 2014 for 2014 to 2015. In addition, Ms Paxman applied for allegations 1.d and 1.e to be made allegations 2 and 3 respectively, with the effect that the stem of allegation 1 would not apply to them. A consequential further amendment would be that allegation 2 would become allegation 4. Mr Faux opposed the application. After hearing submissions from Ms Paxman and Mr Faux and receiving legal advice, the chair announced the decision of the panel, as follows:

'The panel has considered an application by Ms Paxman for amendment of the allegations. The panel has listened carefully to the submissions of Ms Paxman and Mr Faux.

As to the proposed amendment to allegation 1.b.iii, the panel is satisfied that it is in the interests of justice to substitute the years 2013 to 2014 for 2014 to 2015. This amendment does not affect the substance of the allegation and, in the panel's view, does not cause any prejudice. Accordingly, the panel has agreed to this amendment.

As to allegations 1.d and 1.e, the panel has considered Ms Paxman's application to make these stand-alone allegations which are not subject to the stem of allegation 1. Mr Faux has objected to these proposed amendments on the basis that the effect would be to expand the nature of the allegations. The panel accepts that these amendments might cause prejudice to Mr Nolan who has already set out his response to the allegations in his written statement. Accordingly, the panel refuses the application to amend allegations 1.d and 1.e.

On a separate point, the panel has noted that allegations 2.a and 2.b use the phrase 'knew or ought to know'. The panel believes that the appropriate wording should be 'knew or ought to have known'. Subject to any representations that the parties may wish to make, the panel believes that allegation 2.a and 2.b should be amended by replacing the words 'ought to know' with 'ought to have known'.

D. Summary of evidence

Documents

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

Section 1: Chronology and list of key people – pages 1 to 3

Section 2: Notice of Proceedings and response – pages 4 to 14

Section 3: Teaching Regulation Agency witness statements – pages 15 to 28

Section 4: Teaching Regulation Agency documents – pages 29 to 1539

Section 5: Teacher documents – in a separate bundle, comprising a statement - pages E1 to E70 and other documents –pages F1 to F183.

In addition, the panel agreed to accept the following document, which was added to Section 4 of the bundle as pages 1540 to 1543:

- EFA publication: 'Academies accounts direction 2013 to 2014'.

The panel members confirmed that they had read all of the documents in sections 1 to 4 in advance of the hearing. The panel members read the teacher's statement in advance of the application to amend the allegations and the remainder of the teacher's documents before the opening statements of the parties.

Witnesses

The panel heard oral evidence from the following witness called by the presenting officer:

Witness A, Lead Investigator, Education and Skills Funding Agency.

The panel also heard oral evidence from Mr Liam Nolan.

E. Decision and reasons

The panel announced its decision and reasons as follows:

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

The panel confirms that it has read all the documents provided in sections 1 to 4 of the bundle in advance of the hearing and the teacher's documents in section 5 following their admission on the first day of the hearing prior to the reading of the allegations.

Mr Liam Nolan qualified as a teacher in September 1989 and initially worked as a teacher of English and drama in several schools, before becoming a deputy headteacher in 2000. In April 2007, Mr Nolan joined Perry Beeches School, Birmingham, an inner-city comprehensive school, as headteacher. Examination results improved to the extent that the school was recognised as 'Secondary School of the Year' at the Times Education Supplement Awards in 2011. Mr Nolan was also named 'Headteacher of the Year in the Midlands'.

In May 2012, Perry Beeches School became an Academy and was known as 'Perry Beeches The Academy'. In September 2012 'Perry Beeches The Academy took on the opening of a new school in Ladywood, Birmingham, which became known as 'Perry Beeches II The Free School'. Mr Nolan remained headteacher of 'Perry Beeches The Academy' and another headteacher was appointed to run Perry Beeches II. Mr Nolan assumed an executive headteacher role.

In or around January 2013, further applications were made by the Trust for two more free schools in the Ladywood area. 'Perry Beeches III' opened in September 2013 and 'Perry Beeches IV' in September 2014. 'Perry Beeches V' opened in the Small Heath area of Birmingham in September 2015.

In September 2015, the Education Funding Agency ('EFA') received an allegation from a whistleblower regarding concerns over financial management and governance at the Trust. The allegations concerned payments for the provision of executive services to the Trust paid through a third party private company, Nexus Schools Limited ('Nexus'). Nexus was used by the trust to procure a range of goods and services, including accountancy support, payroll, health and safety audits and HR support.

The EFA conducted a fact-finding visit to the Trust on 30 September and 1 October 2015, which included interviews with Mr Nolan and others and a review of documentation. The EFA review established that the Trust paid Nexus for providing the services of a chief executive officer for the Trust and Nexus sub-contracted that role to Liam Nolan Limited, a company whose sole director was Mr Liam Nolan, who was also the accounting officer

for the Trust. The EFA review established that this arrangement had been approved by the directors of the Trust.

Findings of fact

The panel's findings of fact are as follows:

- 1. You failed to comply with recognised procedures and principles in relation to your accounting of public funds by allowing the remuneration of your role as Chief Executive Officer to be paid to a third party supplier, Nexus Schools Limited ('Nexus'), and then be subcontracted to Liam Nolan Limited, a company that you are the sole director of, in that you:**
 - a. breached paragraph 3.1.22 of the Academies' Financial Handbook 2014 and 2015 because:**
 - i. No confirmation was sought that your remuneration arrangements met your tax obligations;**

The panel was presented with a copy of the Academies Financial Handbook 2014 ('AFH') which sets out the financial framework for academy trusts reflecting their status as companies, charities and public bodies. Paragraph 3.1.22 of the AFH, which was effective from 1 September 2014, stated:

'Academy trusts must ensure that their senior employees' payroll arrangements fully meet their tax obligations and comply with HM Treasury's guidance about the employment and contract arrangements of individuals on the avoidance of tax, as set out in HM Treasury's Review of the Tax Arrangements of Public Sector Appointees. Failure to comply with these requirements can result in a fine by HM Treasury'.

The panel was provided with a copy of a letter to Mr Nolan from HM Revenue and Customs dated 7 March 2017, which stated that there was 'a low risk that IR35 applied'. (IR35 refers to legislation designed to eliminate the avoidance of tax via the use of intermediary companies). The letter also stated that the HMRC would not be making further enquiries.

The panel recognised that Mr Nolan's salary as headteacher of Perry Beeches The Academy and executive headteacher of Perry Beeches II was paid through payroll. In terms of the potential tax liabilities, the additional payments made through his company, Liam Nolan Limited appear to have been appropriately monitored by a professional accountant.

Taking all of these factors into consideration, the panel was not satisfied that there was a failure to comply with paragraph 3.1.22 in not seeking confirmation that Mr Nolan's remuneration arrangements met Mr Nolan's tax obligations.

The panel finds 1.a.i not proved.

- ii. You were not paid through the payroll;**
- iii. There were no 'exceptional temporary circumstances' which justified payment outside the payroll;**

The panel considered 1.a.ii and 1.a.iii together. Paragraph 3.1.22 of the AFH requires trusts to comply with the HM Treasury guidance, 'Review of the Tax Arrangements of Public Sector Appointees', published in May 2012. Paragraph 4.5 of this guidance states that senior management 'should be on the payroll, unless there are exceptional, temporary circumstances'. The guidance further states that any such exceptions should not exist for longer than six months.

The panel noted that the minutes of the Trust's Finance Directors Meeting, chaired by Mr Nolan, on 12 March 2015 recorded that Mr Nolan had been paid for his role as chief executive officer through Nexus and Liam Nolan Limited since April 2013.

The panel also heard evidence from Witness A of the Education and Skills Funding Agency (formerly the EFA), whom the panel regarded as a credible witness. In September 2015, Witness A was a senior risk analysis officer with the EFA and was one of those conducting the financial management and governance review. Witness A interviewed Mr Nolan on 1 October 2015 and the panel was provided with notes of that interview. According to these notes, Mr Nolan did not say that the payments via Nexus were a temporary arrangement when he was interviewed.

The panel was also presented with a copy of an unsigned document dated 22 April 2013 headed 'Private and Confidential: For Members Eyes Only'. Mr Nolan said that he believed that this document had been prepared by the chair of governors and he gave evidence that this included the chair's proposals as to how Mr Nolan should be remunerated. However, the panel also saw emails that indicated that Mr Nolan was involved in making some proposals. The document stated at paragraph 4:

'The role of CEO of the Academy Trust should now be put in the hands of our Management Consultancy Company, Nexus Schools Limited. For them to appoint. They should be asked to appoint the most appropriate CEO to lead the current company position, its structures and leadership. The CEO needs to set the vision for the future, be the outward face of PB and be responsible for the further development of business. The CEO salary should be set at £60K annum from the 1st September 2013. 'Liam Nolan Limited' will apply to Making Learning Work to sub-contract this role and suggest its employee, Liam Nolan, MA, be the CEO'.

The panel noted that this document did not suggest that this would be a temporary arrangement and the reference to the sum of £60,000 as an annual figure suggests that it was intended to apply for more than one year.

Given that the arrangement was in place for two years, the panel was satisfied that there were no exceptional temporary circumstances to justify the payments off payroll. On that basis, there was a failure to comply with paragraph 3.1.22 of the AFH.

The panel finds 1.a.ii and 1.a.iii proved.

b. failed to ensure that the payments were disclosed in the Trust's 2013/2014 financial statements which breached the requirements to disclose material transactions with related parties as set out at:

i. Paragraph 3.1.14 of the Academies' Financial Handbook 2014 and 2015;

The AFH was published in August 2014 and came into effect on 1 September 2014. Paragraph 3.1.14 of the AFH states that trusts 'must recognise that some relationships with connected parties may attract greater public scrutiny'. Paragraph 3.1.14 further states that trusts 'must maintain sufficient records, and make sufficient disclosures in their annual accounts, to evidence that transactions with these parties, have been conducted in accordance with the high standards of accountability and transparency required within the public sector'.

It is not disputed that there was no reference to the payments to Mr Nolan via Nexus in the Trust's 2013/2014 financial statements. Mr Nolan submitted that the requirement paragraph 3.1.14 of the AFH was intended to apply to financial statements for the year 2014/15 and not for the previous year. However, the panel noted that the AFH stated that it came into effect on 1 September 2014. Furthermore, the foreward by Lord Nash to this edition of the AFH places emphasis on accountability as a fundamental part of the academies and free school movement and stated, 'Nowhere is this more important than when transacting with connected parties'. The introduction to the AFH also drew attention to changes since the 2013 edition, including the requirements of paragraph 3.1.14. The panel was satisfied that the AFH was intended to apply with immediate effect and should, therefore, have been complied with in relation to the Trust's financial statements for the year 2013/14, which were prepared after 1 September 2014.

The panel also considered it significant that the notes to the Trust's financial statements for the year ended 31 August 2014 included several 'related party disclosures', indicating an awareness of the need to make such disclosures. Despite this, there was a failure to include any reference to the payments to Mr Nolan via Nexus in the financial statements.

The panel finds 1.b.i proved.

- ii. **Paragraph 230 of the Charities Commission Statement of Recommended Practice 2005;**
- iii. **Paragraph 7.6.1 of the Academies Accounts Directions 2013 to 2014 (Statement of Recommended Practice 2005);**

Mr Nolan has admitted these particulars.

The panel is satisfied that the failure to disclose the payments to Mr Nolan through Nexus amounted to a failure to comply with section 230 of the Charities Commission Statement of Recommended Practice 2005 and paragraph 7.6.1 of the Academies Accounts Directions 2013 to 14. Paragraph 7.6.1 requires that material transactions with related parties be disclosed in accounts. Section 230 states that transactions with trustees should always be regarded as material and should, therefore, be disclosed.

The panel finds 1b.ii and 1.b.iii proved.

- c. **failed to disclose in the Annual Declaration the conflict of interest that existed in relation to your status as the sole director of a company contracted by Nexus in breach of the requirements to:**
 - i. **Avoid and/or manage conflicts of interest as set out at paragraph 3.1.11 – 3.1.15 of the Academies' Financial Handbook 2014 and 2015:**

Mr Nolan accepted that he did not include his CEO consultancy paid to Liam Nolan Limited through Nexus in the annual declaration of business interests. However, it was not admitted by Mr Nolan that this failure represented avoiding or not managing conflicts of interest.

The panel noted that paragraph 3.1.12 of the AFH states that trusts must be even-handed in their relationships with connected parties by ensuring that, amongst other things, 'all members, trustees, local governors of academies with a multi-academy trust, and senior employees have completed the register of interests retained by the trust, in accordance with sections 3.1.16 to 3.1.19 of this handbook, and there are measures in place to manage any conflicts of interest'.

The panel was presented with a copy of the annual declaration of business interests which was signed by Mr Nolan on 15 December 2014 in which he recorded 'none'. Mr Nolan, in evidence, stated that no other governor declared any business interest, with one exception. The panel felt that this was irrelevant to Mr Nolan's obligations. The panel accepted the submission by the presenting officer that the declaration of a potential conflict is an essential step in avoiding and/or managing conflicts. Furthermore, Mr Nolan confirmed in his oral evidence that he signed invoices submitted by Nexus for payment of

executive consultancy services. His signature authorised payment of the invoices by the Trust to Nexus, despite the fact that Liam Nolan Limited was the provider of those services to Nexus and, thus, Mr Nolan was the ultimate recipient of the payment. This was a clear conflict of interest which no measures were taken to avoid or manage.

The panel finds 1.c.i proved.

ii. Identify conflicts of interest as set out at paragraphs 3.1.17-3.1.19 of the Academies' Financial Handbook 2014 and 2015;

Mr Nolan admitted this particular.

The panel finds 1c.ii proved.

d. You failed to ensure that the Trust had a written contract with Nexus for goods and services in breach of your obligations to ensure high standards of probity in the management of public funds as set out at paragraph 1.5.21 of the Academies' Financial Handbook 2014 and 2015;

Mr Nolan admitted that there was no written contract between the Trust and Nexus. It was submitted on behalf of Mr Nolan that there was no express requirement in paragraph 1.5.21 of the AFH for a written contract and that it was an essential element of the allegation, as drafted, that the need for a written contract was 'set out' in paragraph 1.5.21. The panel understood the high standards of probity to be what was set out in paragraph 1.5.21, rather than the express requirement for a written contract.

Paragraph 1.5.21 stated, '[t]he role of accounting officer includes specific responsibility for financial matters. It includes a personal responsibility to Parliament and to the EFA's accounting officer, for the financial resources under the trust's control. Accounting Officers must be able to assure Parliament, and the public, of high standards of probity in the management of public funds'.

Paragraph 1.5.21 then referred specifically to propriety, including the requirement that expenditure and receipts be dealt with in accordance with standards of corporate governance and value for money, including the effective use of resources and prudent and economical administration.

The panel considered whether these high standards of probity and management could be achieved without a written contract being in place between the Trust and Nexus. The panel observed that there were written contracts in place for other suppliers. Furthermore, once the EFA had made its recommendations, a written contract was put in place with Nexus immediately.

The panel has taken into account the fact that there was a long relationship between Nexus and Perry Beeches, which existed before academy status in 2012 and this

relationship had been managed without a written contract. However, the panel was satisfied the payments made to Nexus for executive services provided by Liam Nolan Limited were not typical transactions which were capable of being conducted on standard terms that applied to other transactions. The panel also noted that the Nexus invoices did not refer to Liam Nolan Limited. Invoices submitted in 2015 for Mr Nolan's executive services included a contract management fee of 8%, which was not charged in relation to other transactions. Furthermore, this fee was not charged on earlier invoices for executive services, calling into question the basis on which this charge was made. In the absence of a written contract setting out the contract period and other terms, Mr Nolan was not in a position, as accounting officer, to assure Parliament, and the public, of high standards of probity in the management of public funds.

The panel finds 1.d proved.

- e. You failed to ensure that the Trust applied a competitive tendering policy adequately and/or before contracting services to Nexus in breach of your obligation to apply a competitive tendering process as set out at paragraph 3.1.3 of the Academies' Financial Handbook 2014 and 2015;**

Mr Nolan has admitted this allegation.

Paragraph 3.1.3 of the AFH requires trusts to ensure that a competitive tendering process is in place and applied. No such process was applied in relation to Nexus.

The panel finds 1.e proved.

- 2. Your conduct, as may be found proven, at allegation 1a - 1e was lacking in integrity and/or dishonest in that you;**
 - a. signed the statement on Regularity, Propriety and Compliance in the Trust's 2013/14 Financial statement to confirm that no instances of material irregularity, impropriety or funding non-compliance had been discovered when you knew or ought to have known that this was not the case;**

Mr Nolan signed the Statement on Regularity, Propriety and Compliance which read as follows:

'As accounting officer for Perry Beeches The Academy Trust I have considered my responsibility to notify the academy trust Governing Body and the Education Funding Agency of material irregularity, impropriety and non-compliance with EFA terms and conditions of funding under the funding agreement in place between the academy trust and the Secretary of State. As part of my consideration I have had due regard to the requirements of the Academies Financial Handbook.

I confirm that I and the academy trust Governing Body are able to identify any material irregular or improper use of funds by the academy trust, or material non-compliance with the terms and conditions of funding under the academy trust's funding agreement and the Academies Financial Handbook.

I confirm that no instances of material irregularity, impropriety or funding non-compliance have been discovered to date'.

In the light of the panel's findings in allegations 1.a to 1.e, the panel was satisfied that there were instances of material irregularity or impropriety. The panel was also satisfied that Mr Nolan's remuneration details were omitted.

The panel considered whether Mr Nolan knew or ought to have known that there were instances of material irregularity or impropriety when he signed the statement.

Mr Nolan's evidence was that he had, at best, 'skim-read' the accounts when he signed the statement. The panel was concerned that Mr Nolan had adopted such a cavalier approach to his role as accounting officer, for which he was accountable to Parliament. In particular, Mr Nolan had made an assertion that he had had due regard to the AFH, when he clearly had not done so. However, the panel was not satisfied that it had been established on the balance of probabilities that Mr Nolan knew that there were instances of material irregularity or impropriety at that time. Accordingly, the panel was not satisfied that his conduct was dishonest in relation to this specific allegation.

The panel was satisfied that Mr Nolan ought to have known that there was material irregularity or impropriety. As to whether Mr Nolan demonstrated a lack of professional integrity, the panel had regard to the guidance of the Court of Appeal in *Wingate v SRA*; *SRA v Mallins* [2018] to the effect that professional integrity connotes adherence to the standards of the profession and involves more than mere honesty.

The panel was satisfied that Mr Nolan signed the declaration with a reckless disregard for its accuracy and without considering the requirements of the AFH before doing so. In so acting, the panel was in no doubt that Mr Nolan failed to adhere to the ethical standards of the teaching profession. The panel recognised the need to avoid applying unreasonably high standards and that the professional integrity of a teacher should be a linked to the manner in which teaching profession serves the public. However, Mr Nolan's position as the executive headteacher, chief executive officer and accounting officer carried with it the responsibility to ensure that he complied with recognised procedures and principles in relation to the accounting for public funds. The panel did not accept Mr Nolan's assertion that he was 'an educator not an accountant', particularly when he had accepted a leadership role of such magnitude. In particular, the panel was concerned that Mr Nolan's errors and omissions related to his own remuneration.

The panel was satisfied that Mr Nolan's proven conduct displayed a lack of integrity.

The panel finds allegation 2.a proved on that basis.

b. signed an annual declaration of business interests on 15/12/2014 confirming that you had no business or personal interests as an employee/ governor of the Trust when you knew or ought to have known that this was not the case.

In his evidence, Mr Nolan stated that his remuneration arrangements were transparent and everybody knew about them, including the existence of Liam Nolan Limited and the fact that he received part of his remuneration through that vehicle. Therefore, he did not need to declare either Liam Nolan Limited or Nexus as a business interest.

The panel understood from the correspondence in the bundle that at least some of the trustees knew about Mr Nolan's remuneration arrangements. However, the panel also noted the communication from the whistleblower which led to the initial investigation, indicating that the remuneration arrangements were not wholly transparent. The panel also had sight of the EFA notes of the interview with the acting chief finance officer, which indicate that she was not aware of the off-payroll arrangements, except through rumour.

Taking all of these factors into account, the panel could not be satisfied that Mr Nolan's failure to declare the business interests which were known to trustees was dishonest. However, Mr Nolan still had a personal and professional obligation to ensure that the declaration form was properly completed. The panel is satisfied that his failure to do so amounted to a lack of integrity. The panel finds allegation 2.b proved on that basis.

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 Mr Nolan in relation to the facts found proven, involved breaches of the Teachers' Standards. The panel considers that by reference to Part Two, Mr Nolan is in breach of the following standards:

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

The panel has also considered whether Mr Nolan'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 is relevant.

However, the panel is satisfied that the conduct of Mr Nolan amounts to misconduct of a serious nature which fell significantly short of the standards expected of the profession.

Teachers, and in particular headteachers, have to conduct their professional life transparently and with integrity, particularly in relation to the management of public funds.

Accordingly, the panel is satisfied that Mr Nolan 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.

The panel, therefore, finds that Mr Nolan'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 a number of them to be relevant in this case, namely the maintenance of public confidence in the profession, declaring and upholding proper standards of conduct and the interest of retaining Mr Nolan in the profession.

The panel considers that public confidence in the profession could be seriously weakened if conduct such as that found against Mr Nolan were not treated with the utmost seriousness when regulating the conduct of the profession.

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

Although the panel has not been presented with any third party evidence in mitigation, the panel accepts that Mr Nolan has made a significant contribution to the profession.

The panel considered that there was a public interest consideration in retaining Mr Nolan in the profession.

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

In carrying out the balancing exercise the panel has considered the public interest considerations both in favour of and against prohibition as well as the interests of Mr Nolan. 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:

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

Even though there were behaviours that would point to the appropriateness of a prohibition order, the panel went on to consider whether or not there were sufficient mitigating factors to militate against a prohibition order, particularly taking into account the nature and severity of the behaviour in this case.

The panel noted from Mr Nolan's statement that he had received a reprimand from the General Teaching Council for England following a criminal conviction in 2007. The panel accepted the presenting officer's submission that this conviction was unrelated to the current proceedings and that the reprimand would have expired after two years. Therefore, the panel could not regard Mr Nolan as having a previously good record. However, the panel noted his significant contribution to the development of the Perry Beeches schools.

There is no evidence that Mr Nolan was acting under duress. Mr Nolan stated in his evidence that he was under pressure in developing the Perry Beeches schools and that it was against this background that he made what he described as mistakes. However, the panel was not convinced this justified his lack of integrity in managing public finances.

Although Mr Nolan apologised for some of his failings as accounting officer, there did not appear to be sufficient insight into the seriousness of those failings or his responsibility in that post. In particular, the panel was concerned that Mr Nolan blamed the trustees, accountants and others for the remuneration arrangements that are at the heart of this case.

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

The panel is of the view that, applying the standard of the ordinary intelligent citizen, recommending no prohibition order is not a proportionate and appropriate response.

Recommending that the publication of adverse findings is sufficient in the case would unacceptably compromise the public interest considerations present in this case, despite the severity of the consequences for Mr Nolan of prohibition.

The panel is of the view that prohibition is both proportionate and appropriate. The panel has decided that the public interest in maintaining public confidence in the teaching profession and declaring and upholding proper standards of conduct outweighs both the public interest in retaining a good teacher in the profession and the personal interests of Mr Nolan. Mr Nolan's cavalier attitude to his role as accounting officer, which the panel found involved a lack of integrity on his part, was a significant factor in forming that opinion.

Accordingly, the panel makes a recommendation to the Secretary of State that a prohibition order should be imposed with immediate effect.

The panel went on to consider whether or not it would be appropriate to recommend that a review period of the order should be considered. The panel was mindful that the Advice states that a prohibition order applies for life, but there may be circumstances in any given case that may make it appropriate to allow a teacher to apply to have the prohibition order reviewed after a specified period of time that may not be less than two years. In this case, the panel had sight of previous outstanding Ofsted inspections of some of the schools that Mr Nolan led.

The panel felt the findings indicated a situation in which a review period would be appropriate and as such decided that it would be proportionate in all the circumstances for the prohibition order to be recommended with provision for a review after a period of two years. This period would allow Mr Nolan a period in which to reflect on his failings and gain appropriate insight.

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 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 all of the allegations proven except for one of the particulars of the first allegation. The panel also did not find dishonesty where it was alleged, but did make findings of lack of integrity for those specific allegations. Where the panel did not make findings of fact, I have put those matters from my mind entirely. I have also put from my mind the issue of dishonesty, but have instead focused on the finding of lack of integrity. The panel has found for those allegations proven, that the 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 Mr Nolan should be the subject of a prohibition order, with a review period of two years.

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

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

The findings of misconduct are particularly serious in this case as they include a finding of lack of integrity and in support of this the panel say that Mr Nolan had a, “cavalier attitude to his role as accounting officer, which the panel found involved a lack of integrity on his part”.

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 Nolan, 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 no direct need to protect children in its finding of unacceptable professional conduct. However the panel does say in respect of its finding of conduct that is likely to bring the profession into disrepute, that it, “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.”

A prohibition order would therefore prevent such a risk of adverse influence on pupils from being present.

I have also taken into account the panel’s comments on insight and remorse which the panel sets out as follows, “Although Mr Nolan apologised for some of his failings as accounting officer, there did not appear to be sufficient insight into the seriousness of those failings or his responsibility in that post. In particular, the panel was concerned that Mr Nolan blamed the trustees, accountants and others for the remuneration arrangements that are at the heart of this case.” 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 that it, “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.” I am particularly mindful of the finding of lack of integrity in this case and the impact that such a finding has on the reputation of the profession.

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 therefore also considered the impact of a prohibition order on Mr Nolan himself. The panel comment that it, “noted from Mr Nolan's statement that he had received a reprimand from the General Teaching Council for England following a criminal conviction in 2007. The panel accepted the presenting officer's submission that this conviction was unrelated to the current proceedings and that the reprimand would have expired after two years. Therefore, the panel could not regard Mr Nolan as having a previously good record. However, the panel noted his significant contribution to the development of the Perry Beeches schools.”

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

In this case I have placed considerable weight on the panel's comments concerning the lack of full insight or remorse. The panel has said, “Mr Nolan's cavalier attitude to his role as accounting officer, which the panel found involved a lack of integrity on his part, was a significant factor in forming that opinion.”

I have given less weight in my consideration of sanction therefore, to the contribution that Mr Nolan has made to the profession. I have taken into account in this consideration the panel's observation that it, “had sight of previous outstanding Ofsted inspections of some of the schools that Mr Nolan led.” These are clearly positive and I have viewed them as such. I have also reminded myself that the panel observe, “There is no evidence that Mr Nolan was acting under duress. Mr Nolan stated in his evidence that he was under pressure in developing the Perry Beeches schools and that it was against this background that he made what he described as mistakes. However, the panel was not convinced this justified his lack of integrity in managing public finances.”

In my view it is necessary to impose a prohibition order in order to maintain public confidence in the profession. A published decision that is not backed up by full remorse or insight does not 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 proportionate and in the public interest in order to achieve the aims which a prohibition order is intended to achieve.

I have gone on to consider the matter of a review period. In this case the panel has recommended a 2 year review period. The legislation sets out that a 2 year review period is the minimum required by law. In my view this case does not merit a longer review period. The panel say that, "This period would allow Mr Nolan a period in which to reflect on his failings and gain appropriate insight." I agree.

I have considered whether a 2 year review period reflects the seriousness of the findings and is a proportionate period to achieve the aim of maintaining public confidence in the profession. In this case, in my view, a 2 year review period is proportionate and in the public interest.

This means that Mr Liam Nolan is prohibited from teaching indefinitely and cannot teach in any school, sixth form college, relevant youth accommodation or children's home in England. He may apply for the prohibition order to be set aside, but not until 30 October 2020, 2 years from the date of this order at the earliest. This is not an automatic right to have the prohibition order removed. If he does apply, a panel will meet to consider whether the prohibition order should be set aside. Without a successful application, Mr Liam Nolan remains prohibited from teaching indefinitely.

This order takes effect from the date on which it is served on the teacher.

Mr Liam Nolan has a right of appeal to the Queen's Bench Division of the High Court within 28 days from the date he is given notice of this order.



Decision maker: Sarah Lewis

Date: 22 October 2018

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