



Teaching
Regulation
Agency

Mr Thomas Marshall: Professional conduct panel outcome

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

February 2019

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

Teacher: Mr Thomas Marshall

Teacher ref number: 9043360

Teacher date of birth: 8 May 1968

TRA reference: 15858

Date of determination: 20 February 2019

Former employer: Baverstock School and Baverstock Academy, Birmingham

A. Introduction

A professional conduct panel (“the panel”) of the Teaching Regulation Agency (“the TRA”) convened on 15 February 2019 – 20 February 2019 at Cheylesmore House, 5 Quinton Road, Coventry, CV1 2WT to consider the case of Thomas Marshall.

The panel members were Jean Carter (lay panellist – in the chair), Gail Goodman (teacher panellist) and John Armstrong (lay panellist).

The legal adviser to the panel was Harpreet Marok of Eversheds Sutherland (International) LLP solicitors.

The presenting officer for the TRA was Alexis Dite of Kingsley Napley LLP.

Mr Marshall was present and was represented by Tim Glover 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 15 October 2018.

It was alleged that Thomas Marshall was guilty of unacceptable professional conduct and/or conduct that may bring the profession into disrepute, in that:

1. In respect of Stone Educational Consultants, he did not:
 - a. ensure that the services of Stone Educational Consultants were procured through a tender process;
 - b. ensure that there was a contract or service level agreement in place or on file in respect of the provision of their services;
 - c. declare his connection to Stone Educational Consultants to the Trust Board and/or Finance Committee and/or in a Declaration of Interests;
 - d. obtain approval of the Finance Committee, despite cumulative expenditure exceeding £20,000.
2. He approved payment of invoices from Stone Educational Consultants in circumstances where:
 - a. purchase orders post-dated invoices;
 - b. invoices between around 5 January 2012 and 7 May 2013, included VAT charges but there was no VAT number on the invoice to indicate the company was VAT registered.
3. In respect of Noel Baker Print and IT Services (Noel Baker) he did not:
 - a. ensure that Noel Baker's services were procured through a tender process;
 - b. ensure that there was a contract or service level agreement on file in respect of the provision of their services;
 - c. obtain approval of the Finance Committee, despite cumulative expenditure and/or individual invoices exceeding £20,000.
4. He approved payment of invoices from Noel Baker in circumstances where he raised Purchase Orders which post-dated their invoices.
5. In respect of Employee A he did not:
 - a. follow and/or ensure there was a record of following recruitment procedures as part of his appointment;
 - b. acquire the appropriate authorisation for their appointment from the Chair of Governors.
6. In respect of Employee B he did not follow and/or ensure there was a record of following recruitment procedures as part of his appointment.
7. In respect of Employee C he:

- a. was involved in the recruitment process of Employee C, despite his family connection;
 - b. did not follow and/or ensure there was a record of following recruitment procedures as part of his appointment;
 - c. did not declare his family connection to Employee C;
 - d. approved out of hours payments for Employee C, in circumstances where these should not have been authorised.
8. He sent emails containing information relating to the management of the Academy to his mother.
 9. His conduct as outlined in paragraphs(s) 1 and/or 2 and/or 3 and/or 4 and/or 5 and/or 6 and/or 7 was dishonest.

The teacher has admitted to the facts in relation to allegations 1.a., 1.c., 2, 4, 7.a. and 7.c.

The teacher has not admitted to unacceptable professional conduct and/or conduct that may bring the profession into disrepute.

C. Preliminary applications

Proceeding in Absence

The panel considered whether the hearing should continue in the absence of the teacher. The teacher was absent from the first day of the hearing, but is due to attend the subsequent days of the hearing. The panel was told by the teacher's representative that the teacher is working on the first day of the hearing, however as the subsequent hearing days fall in the half term holidays he will be able to attend.

The panel is satisfied that the TRA has complied with the service requirements of paragraph 19 a to c of the Teachers' Disciplinary (England) Regulations 2012, (the "Regulations").

The panel is also satisfied that the Notice of Proceedings complied with paragraphs 4.11 and 4.12 of the Teacher Misconduct: Disciplinary Procedures for the Teaching Profession, (the "Procedures").

The panel has determined to exercise its discretion under paragraph 4.29 of the Procedures to proceed with the hearing on the first day in the absence of the teacher.

The panel understands that its discretion to commence a hearing in the absence of the teacher has to be exercised with the utmost care and caution, and that its discretion is a severely constrained one.

In making its decision, the panel has noted that the teacher may waive his right to participate in the hearing. The panel has taken account of the various factors drawn to its attention from the case of R v Jones [2003] 1 AC1. Given that the teacher has indicated on his completed Notice of Proceedings Form that he intends to appear at the hearing and his representative has stated that he will be attending the subsequent hearing days, the panel therefore considers that the teacher has waived his right to be present at the first day of the hearing in the knowledge of when and where the hearing is taking place.

The panel has had regard to the requirement that it is only in rare and exceptional circumstances that a decision should be taken in favour of the hearing taking place. There is no indication that an adjournment might result in the teacher attending the hearing.

The panel has had regard to the extent of the disadvantage to the teacher in not being able to give his account of events, having regard to the nature of the evidence against him. However as the teacher is only missing one of the scheduled six days of the hearing the Panel do not consider that the teacher will be disadvantaged from his non-attendance. Also the Panel has considered that the teacher is still able to make representations in relation to the witnesses giving evidence on the first day of the hearing as he is represented throughout the entirety of the hearing.

The panel has had regard to the seriousness of this case, and the potential consequences for the teacher and has accepted that fairness to the teacher is of prime importance. However, it considers that in light of the teacher's waiver of his right to appear at the first day of the hearing; by taking such measures referred to above to address that unfairness insofar as is possible; and taking account of the inconvenience an adjournment would cause to the witnesses; that on balance, these are serious allegations and the public interest in this hearing proceeding within a reasonable time is in favour of this hearing continuing today.

Decision on Excluding the Public

The panel has considered whether to exercise its discretion under paragraph 11 of the Teachers' Disciplinary (England) Regulations 2012 (the "Regulations") and paragraph 4.57 of the Teacher Misconduct: Disciplinary Procedures for the Teaching Profession (the "Procedures") to exclude the public from part of the hearing. This follows a request by the teacher that parts of the hearing should be in private.

The panel has determined to exercise its discretion under paragraph 11(3)(b) of the Regulations and the second bullet point of paragraph 4.57 of the Procedures that the public should be excluded from the hearing.

The panel has taken into account the general rule that hearings should be held in public and that this is generally desirable to maintain public confidence in the administration of these proceedings and also to maintain confidence in the teaching profession. On this occasion, however, the panel considers that the request for the hearing to be heard in private, is a reasonable one given that it concerns confidential matters relating to the teacher's health being placed in the public domain.

The panel has had regard to whether the teacher's request runs contrary to the public interest. The panel is required to announce its decisions in public as to whether the facts have been proven and whether those facts amount to unacceptable professional conduct and/or conduct that may bring the profession into disrepute. In the event that the case continues any decision of the Secretary of State will also be in public. The panel considers that in the circumstances of this case that the public interest will be satisfied by these public announcements. Those public announcements will ensure that public confidence in these proceedings and in the standards of the profession are maintained.

D. Summary of evidence

Documents

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

Section 1: Chronology and ID Key – pages A1 to A3

Section 2: Notice of Proceedings and Response – pages B1 to B8

Section 3: Teaching Regulation Agency witness statements – pages C1 to C36

Section 4: Teaching Regulation Agency documents – pages D1 to D1138

Section 5: Teacher documents – pages E1 to E130

In addition, the panel agreed to accept the following:

A summary of the invoices, orders and payments created by the Presenting Officer for the purpose of assisting with the documents. The teacher's representative agreed to its inclusion in the bundle.

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

Witnesses

The panel heard oral evidence from the following witnesses:

Witness A Human Resources Consultant, Approach Consulting

Witness B Former Chair of Governors, Baverstock Academy
Witness C Chair of LEAP Academy Trust
Witness D Former Business Support Manager, Baverstock Academy

E. Decision and reasons

The panel announced its decision and reasons as follows:

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

We confirm that we have read all the documents provided in the bundle in advance of the hearing.

Mr Marshall started working as Head Teacher of Baverstock Foundation School on 1 September 2010. This position was made permanent on 6 December 2010.

On 4 January 2011 Employee B was appointed as LEAP Maths Behaviour Support on a fixed term basis. On 16 April 2012 Employee B was sent a letter from Mr Marshall confirming that the temporary appointment as LEAP/Maths Behaviour Support would be made permanent.

Baverstock Foundation School converted to Baverstock Academy on 1 June 2013. During June 2013 Mr Marshall became Executive Head Teacher of Baverstock Academy.

On 1 October 2014 a letter was sent to Employee C by Mr Marshall confirming his permanent appointment as a Vocational Teacher.

Employee A was sent a letter by Mr Marshall on 14 November 2014 confirming his appointment to the post of Deputy Head, Curriculum & Assessment.

During February 2012 – May 2015, 29 invoices totalling £94,680.00 were paid to Stone Educational Consultants. During January 2012 – May 2013 invoices received from Stone Educational Consultants included VAT.

During 2013 and 2015, invoices totalling £34,999.61 were paid to Noel Baker Print & IT Services, the majority of this figure relates to the academic year 2014/2015.

Between February 2015 and July 2015 additional payments were made to Employee C totalling £4,288.00.

Findings of fact

Our findings of fact are as follows:

We have found the following particulars of the allegations against you proven, for these reasons:

1. In respect of Stone Educational Consultants, you did not:

- a. ensure that the services of Stone Educational Consultants were procured through a tender process;**

The panel considered the witness evidence of Witnesses A, B and C who all gave evidence that a tendering process was not followed in the procurement of Stone Educational Consultants.

Given Mr Marshall's admission, the panel is satisfied that this allegation is proven.

- b. ensure that there was a contract or service level agreement in place or on file in respect of the provision of their services;**

The panel considered the evidence available which included, in particular, a contract between Stone Educational Consultants and Baverstock School for a Maths Intervention Programme. The panel noted that the contract was signed by Mr Marshall and his mother and was dated 9 January 2012. Whilst the panel is satisfied that contract is now in existence, it has no evidence to support it being held or retained on file at the school. Witness A and Witness D both provided evidence to say they searched for a copy of the contract and could not find a copy of it in the contract file at the school. The panel took into account that Witness D mentioned some shortfalls in the filing at the school, however the panel did not consider that to be a satisfactory explanation for the absence of a contract.

The panel was concerned at the extremely brief wording of that contract and was surprised to find an absence of any particularised terms regarding costs or termination and no detail on what that programme would provide for the school. The panel did not consider that contract to have been drafted in the best interests of the school.

Based on this evidence, the panel found this allegation proven.

- c. declare your connection to Stone Educational Consultants to the Trust Board and/or Finance Committee and/or in a Declaration of Interests;**

The panel heard evidence from Witnesses B and C that Mr Marshall had not declared his connection to Stone Educational Consultants to either the Trust Board or to the Finance Committee, despite there being multiple opportunities for him to have done so. Witness B told the panel that declaration of interest forms were available at all Finance Committee meetings and therefore Mr Marshall had ample opportunity and an ongoing duty to declare this interest.

Mr Marshall accepted that he had failed to disclose his connection to Stone Educational Consultants. Given this evidence together with Mr Marshall's admission the panel is satisfied that this allegation is proven.

2. You approved payment of invoices from Stone Educational Consultants in circumstances where:

a. purchase orders post-dated invoices;

The panel heard evidence from Witnesses A and D about the school's procedures for processing payments. This evidence was corroborated by Mr Marshall. The school was in the habit of processing invoices for payment by raising purchase orders after invoices had been submitted. Mr Marshall accepted this was poor practice, but told the panel the school followed this practice in relation to all invoices, not just for Stone Educational Consultants.

Given Mr Marshall's admission, the panel is satisfied that this allegation is proven.

b. invoices between around 5 January 2012 and 7 May 2013, included VAT charges but there was no VAT number on the invoice to indicate the company was VAT registered.

Included in the evidence are a number of invoices from Stone Educational Consultants, which include VAT charges but there is no VAT number for the consultancy on the invoices. Mr Marshall accepted this to be factually correct and that his mother was not VAT registered at the relevant time. Mr Marshall said that this was simply an error on his part.

Given Mr Marshall's admission, the panel is satisfied that this allegation is proven.

3. In respect of Noel Baker Print and IT Services (Noel Baker) you did not:

b. ensure that there was a contract or service level agreement on file in respect of the provision of their services;

The panel was satisfied that a contract between Noel Baker Print and IT Services ("Noel Baker") and Baverstock Academy existed and has seen the copy of it provided in the bundle. The panel's view of this contract was that it was a comprehensive and detailed contract. In addition, the panel accepted the written evidence of the Director of Noel Baker, in which he states that he personally signed the contract and provided a copy to the school.

Again, the panel took into account the evidence of the poor filing procedures at the school and that both Witnesses A and D were unable to locate the contract. Mr Marshall accepted that as the Head Teacher, ultimately he should have ensured that the contract was filed correctly. The panel did not consider that to be a satisfactory explanation for the absence of that particular contract.

Based on this evidence, the panel found this allegation proven.

4. You approved payment of invoices from Noel Baker in circumstances where you raised Purchase Orders which post-dated their invoices.

The panel heard evidence from Witnesses A and D about the school's procedures for processing payments. This evidence was corroborated by Mr Marshall. The school was in the habit of processing invoices for payment by raising purchase orders after invoices had been submitted. Mr Marshall accepted this was poor practice, but told the panel the school followed this practice in relation to all invoices, not just for Noel Baker.

Given Mr Marshall's admission, the panel is satisfied that this allegation is proven.

5. In respect of Employee A he did not:

- a. follow and/or ensure there was a record of following recruitment procedures as part of his appointment;**

The panel has not seen any evidence of recognised recruitment procedures being followed in relation to the appointment of Employee A. It has seen no evidence of either an advertisement for the position, nor a job application form. The panel accepted Mr Marshall's evidence that Employee A was recruited mid-year and initially on secondment. However, the panel believed that this should not excuse Mr Marshall from following the appropriate recruitment procedures, particularly once Employee A's position within the school became permanent.

Based on this evidence, the panel found this allegation proven.

- b. acquire the appropriate authorisation for their appointment from the Chair of Governors.**

The panel has not seen any evidence of the appropriate authorisation being granted for the appointment of Employee A, who was recruited into a Deputy Head position. The panel considers his appointment ought to have been the subject of governor approval and accepted the evidence of Witness B to that effect. Witness B could not recall approving his appointment.

Included in the evidence is a statement by Employee A, in which he recalls a conversation between himself and Witness B regarding his appointment. Witness B was unable to recall this conversation when questioned about it. In any event, the panel considers that an informal conversation in the setting described by Employee A and Mr Marshall does not amount to formal governor approval of the appointment of a Deputy Head Teacher and would not count as appropriate authorisation even if Witness B did recall the conversation. To be appropriate, the appointment should have been raised and ratified at a formal governing body meeting, and Witness B provided evidence to that effect.

Based on this evidence, the panel found this allegation proven.

- 6. In respect of Employee B you did not follow and/or ensure there was a record of following recruitment procedures as part of his appointment.**

As with allegation 5, the panel has not seen any evidence of recognised recruitment procedures being followed during the appointment of Employee B. Mr Marshall told the panel that he advertised for the role locally and he knew Employee B, who was the only applicant for the job and was therefore recruited into the role. The panel accepted Mr Marshall's account that recruitment into the school was particularly difficult due to the school's location and circumstances, but did not consider this to be a sufficiently adequate reason for failing to follow recognised recruitment procedures.

Based on this evidence, the panel found this allegation proven.

7. In respect of Employee C you:

a. were involved in the recruitment process of Employee C, despite your family connection;

Mr Marshall accepted that he was involved in the recruitment of Employee C and, on reflection, he accepts he ought to have played no active part in Employee C's recruitment.

Given Mr Marshall's admission, the panel is satisfied that this allegation is proven.

b. did not follow and/or ensure there was a record of following recruitment procedures as part of his appointment;

As with allegations 5 and 6, the panel has not seen any evidence of recognised recruitment procedures being followed in relation to the appointment of Employee C. Mr Marshall contends that he did follow recruitment procedures but accepted the record keeping at the school to have been poor.

Based on the lack of evidence in relation to a record of following recognised recruitment procedures, the panel found this allegation proven.

c. did not declare your family connection to Employee C;

Mr Marshall has accepted that he did not formally declare his family connection to Employee C to the governors.

Given Mr Marshall's admission, the panel is satisfied that this allegation is proven.

9. Your conduct as outlined in paragraphs(s) 1 and/or 2 and/or 3 and/or 4 and/or 5 and/or 6 and/or 7 was dishonest.

The panel looked at whether Mr Marshall had been dishonest in relation to allegations 1 to 7. The panel found that in relation to allegation 1c. Mr Marshall had been dishonest. The panel first considered what knowledge and beliefs Mr Marshall held himself. It considered that Mr Marshall knew Stone Educational Consultants was an entity run solely by his mother and that this was a connection that he should have declared to governors.

Despite having the opportunity at Finance Committee meetings, particularly when Stone Educational Consultants was mentioned in relation to the payment of invoices and budgets, Mr Marshall did not declare his connection to his mother's consultancy. The panel looked to the standards of the ordinary decent person in order to determine whether Mr Marshall acted dishonestly and the panel found that he had acted dishonestly. Due to the length of time (a period of three years) in which Mr Marshall failed to declare his association with Stone Educational Consultants, despite numerous opportunities to have done so, the ordinary decent person would think that amounted to dishonesty on his part. The panel took into account that Mr Marshall had said the services of Stone Educational Consultants was initially being trialled, and so he did not declare it. However, in not declaring it for this reason, it appears to the panel that he made a conscious decision not to do so, which the panel considered was dishonest. Furthermore, once the services provided by the consultancy became permanent, he still failed to declare his connection.

Based on the evidence, the panel found this allegation proven.

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

- 1. In respect of Stone Educational Consultants, you did not:**
 - d. obtain approval of the Finance Committee, despite cumulative expenditure exceeding £20,000.**

Included in the evidence was a list for the financial year starting 1 September 2013 of a number of creditors who had invoiced the school for sums in excess of £10,000. The panel was told in evidence that this is an example of a list which would routinely be considered during the course of Finance Committee meetings. In addition, Witness C told the panel that he had no recollection of approvals in relation to these companies being withheld. The two example lists that the panel has seen in the bundle both include an entry for Stone Educational Consultants and so they, among other creditors, would have received the approval of the Finance Committee.

The panel found this allegation was not proven.

- 3. In respect of Noel Baker Print and IT Services (Noel Baker) you did not:**
 - a. ensure that Noel Baker's services were procured through a tender process;**

The panel relied on the statement provided in the bundle by a Director of Noel Baker, in which he confirmed that Noel Baker did tender for the ICT contract at the school. The panel found this to be good reason to believe there was a tendering process.

In addition to this evidence, Witness B said she could not recall a tender process in relation to Noel Baker but qualified this by saying that did not mean a tendering process did not take place, putting her lack of memory down to the lapse in time.

The panel found this allegation was not proven.

c. obtain approval of the Finance Committee, despite cumulative expenditure and/or individual invoices exceeding £20,000.

For the same reason as allegation 1 d., this allegation was not proven. Noel Baker was one of a number of creditors that appeared on a creditors' list and so would have gained approval of the Finance Committee in this way.

The panel found this allegation was not proven.

7. In respect of Employee C you:

d. approved out of hours payments for Employee C, in circumstances where these should not have been authorised.

Mr Marshall explained to the panel that the school enrolled students from the Gypsy Roma Travelling community, and as some of these pupils had never been to school before there were some challenges, one of which was ensuring attendance at school each day. The pupils were initially taken to school in taxis at a cost borne by the Local Authority. Mr Marshall arranged to pay a staff member for driving these pupils to and from school in the school mini bus which was more cost effective. Funding for the mini bus and driver was provided to the school by the Local Authority, who also advised Mr Marshall to consider the use of out of hours payment to remunerate staff for driving duties.

Employee C took over the role of driving the mini bus at the start and end of each day and was paid for this by way of out of hours payment in line with the advice of the Local Authority. Emails of this arrangement between Mr Marshall and Witness D regarding these payments were in line with the evidence he provided to the panel.

The panel found this allegation was not proven.

8. You sent emails containing information relating to the management of the Academy to your mother.

The panel found no documentary evidence to support this allegation. Witness A provided evidence to the panel that she had come across emails on Mr Marshall's computer when she was conducting her investigation which appeared to show him sharing details about the management of the school with his mother. Witness A could not provide exact details of the volume and nature of these emails albeit she gave one example of Mr Marshall appearing to disclose the outcome of a senior leadership team meeting. The TRA did not produce any documentary evidence of these emails.

Mr Marshall explained to the panel that he shared some details about the school with his mother because she was assisting the school in relation to its social media profile. He says this is something that Witness C was aware of. Witness C corroborated this. Mr Marshall denied this allegation.

Due to the lack of information the panel was unable to ascertain whether Mr Marshall had indeed shared confidential management information with his mother and therefore this allegation is not proven.

9. Your conduct as outlined in paragraphs(s) 1 and/or 2 and/or 3 and/or 4 and/or 5 and/or 6 and/or 7 was dishonest.

In relation to allegations 1 a., b., 2, 3, 4, 5, 6 and 7 the panel found this allegation was not proven.

In all these allegations the panel found that Mr Marshall's behaviour was not dishonest. They found his actions, such as his failure to adopt the proper recruitment procedures, to be more akin to professional laxity and a lack of integrity on his part.

With regards to allegations 1 and 7 the panel drew a distinction between the two allegations. With Employee C the panel was satisfied there was evidence to show the connection with Mr Marshall was widely known within the school, as provided by Witness B. This was not the case with Stone Educational Consultants.

With regards to allegations 1 a. and 1 b., the panel found Mr Marshall's conduct to be akin to a lack of professional integrity rather than dishonesty.

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 the teacher in relation to the facts found proven, involved breaches of the Teachers' Standards. The panel considers that by reference to Part Two, the teacher 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; and
- Teachers must have proper and professional regard for the ethos, policies and practices of the school in which they teach.

The panel is satisfied that the conduct of the teacher amounts to misconduct of a serious nature which fell significantly short of the standards expected of the profession in relation to the following allegations:

- The panel found that in respect of allegation 1 a., b. and c. Mr Marshall's failings to ensure a proper tender process and the maintenance of a contract or service level agreement together with his repeated failure to disclose his connection to Stone Educational Consultants amounted to unacceptable professional conduct. This was further aggravated by the finding of dishonesty in respect of allegation 1 c.
- In respect of allegations 7 a., b. and c. the panel found that Mr Marshall's personal involvement in the recruitment process of his brother into a salaried role within the school was sufficiently serious to amount to unacceptable professional conduct.

In respect of all other proven allegations (2, 3 b., 4, 5 and 6) Mr Marshall's failings were serious. The panel noted that Mr Marshall as Head Teacher had a burden of responsibility to ensure the HR and financial procedures were adhered to and whilst he failed in that, the panel did not consider those failures in and of themselves to amount to unacceptable professional conduct. The panel considered this to be more akin to professional laxity on his part rather than conduct which fell significantly short of the standards expected of the profession.

The panel has also considered whether Mr Marshall's conduct in respect of the allegations found to amount to unacceptable professional conduct displayed behaviours associated with any of the offences listed on pages 10 and 11 of the Advice. The panel found that none of these offences are relevant.

The panel has taken into account how the teaching profession is viewed by others and considered the influence that teachers may have on pupils, parents and others in the community. The panel has taken account of the uniquely influential role that teachers can hold in pupils' lives and that pupils must be able to view teachers as role models in the way they behave. The panel found that Mr Marshall showed a lack of professional integrity in the way that he acted.

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

The panel therefore finds that Mr Marshall's actions constitute conduct that may bring the profession into disrepute.

Having found the facts of particulars 1 a., b., c., 2, 3 b., 4, 5, 6, 7 a., b., c. and 9 proved, we further find that in respect of allegations 1. a., b., c., 7. a., b., c. and 9. Mr Marshall's conduct amounts to both 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 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 the teacher in the profession.

In light of the panel's findings against Mr Marshall, which involved a repeated and ongoing failure to disclose a personal connection to Stone Educational Consultants and a finding of dishonesty in relation to this, there is a strong public interest consideration in declaring and upholding proper standards of conduct.

Similarly, the panel considers that public confidence in the profession could be seriously weakened if conduct such as that found against Mr Marshall 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 Marshall was outside that which could reasonably be tolerated.

The panel also considered that there was a strong public interest consideration in retaining Mr Marshall in his profession, since no doubt has been cast upon his abilities as an educator and there is no evidence to suggest that he would not be able to make a valuable contribution to the profession.

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

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 Marshall. 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; and

- dishonesty especially where there have been serious consequences, and/or it has been repeated and/or covered up.

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

There was evidence that Mr Marshall's actions were deliberate in that his failure to declare his association with Stone Educational Consultants continued despite opportunities for him to do so, and there was no evidence to suggest that he was acting under duress at any time. The panel placed particular weight on Mr Marshall's actions to make such a declaration and considers his omission to have had ongoing, and therefore, escalating consequences.

Mr Marshall did have a previously good history and character, and the panel has noted and taken into account the considerable number of character references submitted in support of him and his teaching.

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

The panel is of the view that applying the standard of the ordinary intelligent citizen recommending no prohibition order is not a proportionate and appropriate response. Recommending that publication of adverse findings is sufficient in the case would unacceptably compromise the public interest considerations present in this case, despite the severity of consequences for the teacher of prohibition.

The panel is of the view that prohibition is both proportionate and appropriate. The panel has decided that the public interest considerations outweigh the interests of Mr Marshall. The repeated failure over a three year period by Mr Marshall and his overall lack of insight and remorse about this 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 for them to decide to recommend that a review period of the order should be considered. The panel was mindful that the Advice advises 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 2 years.

The Advice indicates that there are behaviours that, if proven, would militate against a review period being recommended. One of these behaviours includes fraud or serious dishonesty. The panel has found that Mr Marshall has acted dishonestly in relation to his

repeated failure to disclose his connection to Stone Educational Consultants. While there has been repeated dishonesty, the panel does not have any evidence to suggest that there were serious consequences as a result of Mr Marshall's dishonesty, nor is there any evidence of Mr Marshall actively covering up or concealing his dishonesty. Due to these findings, the panel does not consider the dishonesty to be so serious that a review period should not be recommended and believes that a review period of 2 years would be fair and proportionate. The panel accepted that Mr Marshall received no financial gain from his dishonesty, and his actions were borne out of an educational need to improve standards. There was evidence that maths results at the school improved.

The panel believed these findings indicate a situation in which a review period would be appropriate, and as such decide that it would be proportionate in all the circumstances for the prohibition order to be recommended with provisions for a review period after 2 years following its imposition.

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 both sanction and review period.

In considering this case, I have also given very careful attention to the Advice that the Secretary of State has published concerning the prohibition of teachers.

In this case, the panel has found a number of the allegations proven. It has gone on to find some of those proven allegations also amount to unacceptable professional conduct and conduct that may bring the profession into disrepute. In this case, the panel has also found a number of the allegations not proven. It has also found that some of the allegations found proven do not amount to unacceptable professional conduct or conduct that may bring the profession into disrepute. Where facts have been found not proven, or where the facts found proven have not been found to amount to unacceptable professional conduct or conduct that may bring the profession into disrepute I have put those matters entirely from my mind.

In summary, I have focused my attention on the findings at 1a 1b 1c, 7a 7b and 7c and 9. In the case of 1 c there is also a finding of dishonesty.

At Allegation 9, I have followed the panel, who set out; " In relation to allegations 1 a., b., 2, 3, 4, 5, 6 and 7 the panel found this allegation was not proven. In all these allegations the panel found that Mr Marshall's behaviour was not dishonest. They found his actions, such as his failure to adopt the proper recruitment procedures, to be more akin to professional laxity and a lack of integrity on his part. With regards to allegations 1 and 7 the panel drew a distinction between the two allegations. With Employee C the panel was satisfied there was evidence to show the connection with Mr Marshall was widely known within the school, as provided by Witness B. This was not the case with Stone Educational

Consultants. With regards to allegations 1 a. and 1 b., the panel found Mr Marshall's conduct to be akin to a lack of professional integrity rather than dishonesty."

The panel has made a recommendation to the Secretary of State that Mr Marshall should be the subject of a prohibition order, with a review period of 2 years.

In particular, the panel has found that Mr Marshall 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; and
- Teachers must have proper and professional regard for the ethos, policies and practices of the school in which they teach.

The panel has set out that it "is satisfied that the conduct of the teacher amounts to misconduct of a serious nature which fell significantly short of the standards expected of the profession in relation to the following allegations:

- The panel found that in respect of allegation 1 a., b. and c. Mr Marshall's failings to ensure a proper tender process and the maintenance of a contract or service level agreement together with his repeated failure to disclose his connection to Stone Educational Consultants amounted to unacceptable professional conduct. This was further aggravated by the finding of dishonesty in respect of allegation 1 c.
- In respect of allegations 7 a., b. and c. the panel found that Mr Marshall's personal involvement in the recruitment process of his brother into a salaried role within the school was sufficiently serious to amount to unacceptable professional conduct.

In my view, the findings of misconduct are particularly serious as they include a finding of dishonesty in respect of allegation 1c and in relation to a headteacher.

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 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 Marshall, and the impact that will have on him, is proportionate and in the public interest.

In this case, I have considered the extent to which a prohibition order would protect children. The panel has observed that it did, “ not have any evidence to suggest that there were serious consequences as a result of Mr Marshall’s dishonesty.”

I have also taken into account the panel’s comments on insight and remorse, which the panel sets out as follows, “The repeated failure over a three year period by Mr Marshall and his overall lack of insight and remorse about this was a significant factor in forming that opinion.” In my judgement, this lack of insight means that there is some risk of the repetition of this behaviour. 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 how the teaching profession is viewed by others and considered the influence that teachers may have on pupils, parents and others in the community. The panel has taken account of the uniquely influential role that teachers can hold in pupils’ lives and that pupils must be able to view teachers as role models in the way they behave. The panel found that Mr Marshall showed a lack of professional integrity in the way that he acted.”

I am particularly mindful of the finding of dishonesty in respect of allegation 1 c 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 the public might regard a failure to impose a prohibition order 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 Marshall himself. The panel comment “ Mr Marshall did have a previously good history and character, and the panel has noted and taken into account the considerable number of character references submitted in support of him and his teaching.”

A prohibition order would prevent Mr Marshall 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 insight or remorse. The panel has said, “ Mr Marshall’s actions were deliberate in that his failure to declare his association with Stone Educational Consultants continued despite opportunities for him to do so, and there was no evidence to suggest that he was acting under duress at any time. The panel placed particular weight on Mr Marshall’s

actions to make such a declaration and considers his omission to have had ongoing, and therefore, escalating consequences. “

I have also placed considerable weight on the finding of the panel that Mr Marshall, “has acted dishonestly in relation to his repeated failure to disclose his connection to Stone Educational Consultants.”

I have given less weight in my consideration of sanction therefore, to the contribution that Mr Marshall has made to the profession. In my view, it is necessary to impose a prohibition order in order to maintain public confidence in the profession. A published decision, in light of the circumstances in this case, that is not backed up by full remorse or complete 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 intended aims of a prohibition order.

I have gone on to consider the matter of a review period. In this case, the panel has recommended a 2 year review period.

I have considered the panel’s comments “ the panel does not consider the dishonesty to be so serious that a review period should not be recommended and believes that a review period of 2 years would be fair and proportionate. The panel accepted that Mr Marshall received no financial gain from his dishonesty,”

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. The proposed review period is the minimum set out in the framework.

I consider therefore that a two year review period is required to satisfy the maintenance of public confidence in the profession.

This means that Mr Thomas Marshall 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 4 March 2021, 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 Thomas Marshall remains prohibited from teaching indefinitely.

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

Mr Thomas Marshall 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.

Al C M

Decision maker: Alan Meyrick

Date: 22 February 2019

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