



National College for  
Teaching & Leadership

# **Nkosana Brown: Professional Conduct Panel outcome**

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

**July 2014**

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## **Professional Conduct Panel decision and recommendations, and decision on behalf of the Secretary of State**

<b>Teacher:</b>	Nkosana Brown
<b>Teacher ref no:</b>	0780508
<b>Teacher date of birth:</b>	4 September 1980
<b>NCTL Case ref no:</b>	0009320
<b>Date of Determination:</b>	9 July 2014
<b>Former employers:</b>	Thomas Tallis School and Beachcrofts School

### **A. Introduction**

A Professional Conduct Panel (“the Panel”) of the National College for Teaching and Leadership (“the National College”) convened on 7 August 2013 (Preliminary Hearing), 21 and 22 November 2013, 3 and 4 March 2014 and 7, 8 and 9 July 2014 at 53-55 Butts Road, Earlsdon Park, Coventry, CV1 3BH to consider the case of Mr Nkosana Brown.

The Panel members were Mr John Pemberton (Teacher Panellist - in the chair); Professor Janet Draper (Lay Panellist); and Mr Michael Carter (Teacher Panellist).

The Legal Adviser to the Panel was Mr Robin Havard of Blake Morgan LLP solicitors.

The Presenting Officer for the National College was Mr Bentley of Browne Jacobson LLP.

Mr Brown was present and was represented by Mr Sykes.

Save where is indicated to the contrary, the hearing took place in public and was recorded.

### **B. Allegations**

The Panel considered the allegations set out in the Notice of Proceedings dated 13 March 2014.

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

Whilst employed as a Teacher he:

1. Abused a position of trust by having an inappropriate relationship with Pupil A between 1 July 2010 and 24 November 2010, including in that he:
  - i. met with Pupil A on at least three occasions outside of School;
  - ii. permitted Pupil A to visit his home on at least one occasion;
  - iii. paid for Pupil A to make a taxi journey late one evening;
  - iv. exchanged a series of messages of an intimate nature with Pupil A;
2. Failed to comply with reasonable management instructions, including in that he:
  - i. failed to report safeguarding concerns about Pupil A to the School;
  - ii. continued to contact Pupil A after suspension from duty on 1 November 2010.
3. Failed to inform his employer during the recruitment process to work at Beachcroft School in January 2012 that at that time the Independent Safeguarding Authority was considering barring him from working with vulnerable adults and children in England, Wales and Northern Ireland.
4. Failed to declare to his employer that he was subject to National College for Teaching and Leadership proceedings whilst working at the Beachcroft School at any time before 25 November 2013.
5. Failed to declare to his employer when requesting paid absence for 21 and 22 November 2013 that he was in fact the Defendant in regulatory proceedings, and was dishonest in materially misleading Individual G by telling him that he was required as a witness for the prosecution.
6. Provided various written character references to a Professional Conduct Panel of the National College for Teaching and Leadership including:
  - a. one drafted on school letter-headed paper in the name of "Individual H" and which he submitted without the named individual having authorised the entirety of the content of the undated letter, or given permission to use in support of regulatory proceedings against him;
  - b. one drafted on school letter-headed paper in the name of "Individual F" and which he submitted without the named individual having authorised the entirety of the content of the letter dated 15.11.2013, or given permission to use in support of regulatory proceedings against him;

- c. that his conduct in regard to particulars 6a - 6b was dishonest in that he sought to mislead the Professional Conduct Panel as to the authenticity of the documents provided;
7. On or after 25 November 2013 sought to procure a signature from Individual F in respect of the character reference referred to at allegation 6.b.

The particulars of the allegations were either part admitted or denied. The allegations of unacceptable professional conduct and conduct that may bring the profession into disrepute were denied.

## **C. Preliminary applications**

Various preliminary applications were made at junctures throughout the proceedings.

The following are the decisions in respect of those applications.

### **Application by Mr Brown for late submission of documents (21.11.13)**

The Panel has considered very carefully the application of Mr Sykes for the late submission of three categories of documents, namely the application to strike out the charges, the statements of Individual A, Individual B, Individual C and Individual D and the character references.

As a general observation, this hearing has been listed for 2 days and was due to commence at 9.30am. The allegations have been known to Mr Brown since April 2013. On arrival, the Panel has been requested to consider an application to strike out or modify the particulars of the allegations. This is the second occasion when the hearing has started late and additional documents were also submitted on the morning.

Whilst wholly unsatisfactory, the Panel has to ensure that it takes account of the overriding objective for there to be a just and fair hearing. In the circumstances, the Panel is prepared to consider the application. However, whilst the Panel notes what Mr Sykes has to say regarding timing, there is a real concern that hearing the application may jeopardise the Panel's ability to reach a conclusion by the end of tomorrow. Mr Sykes has said he anticipates taking 45 minutes to 1 hour to make his application. The Panel has now read the application and has of course read the evidence beforehand. In the circumstances, the Panel requests Mr Sykes to endeavour to restrict his submissions to 30 minutes, but there will be slight leeway.

As for the remaining documents in the form of four witness statements, again, the Panel finds the late submission very regrettable but is prepared to allow their admission into evidence. It is understood that there are also some character references to be

submitted. Their admission can be considered at the appropriate stage and the Panel asked can they be done by the end of today so that we can read them.

### **Application to strike out the allegations (21.11.13)**

The Panel has considered very carefully the application made on behalf of Mr Brown that the allegations and particulars should either be struck out or amended and has listened very carefully to the submissions by Mr Sykes and Mr Bentley. The Panel has also listened to, and accepted, the legal advice provided.

The Panel must be satisfied that Mr Brown understands the nature of the allegations being made against him. It is incumbent on Mr Bentley to prove the allegations; there is no obligation on the part of Mr Brown to disprove them.

It is for Mr Bentley to prove that Mr Brown abused his position of trust by having an inappropriate relationship with Pupil A between 1 July and 24 November 2010. To do that, Mr Bentley must first prove one or more of the particulars at paragraph 1(a) to (d), and that such behaviour as set out in those particulars which are proved satisfies the Panel that the relationship between Mr Brown and Pupil A was inappropriate as between the two dates stipulated.

Having considered the evidence and the submissions, the Panel is satisfied that Mr Brown is capable of understanding the case against him, and that the particulars are sufficiently precise.

The fact that there may be conflicting evidence is not, of itself, any reason to consider the striking out, or amendment, of the allegation and particulars. Having heard the evidence, the Panel will then have to consider, following closing submissions, which evidence it prefers before making its findings of fact.

The same conclusions have been reached in respect of allegation 2 and its particulars. Again, the Panel is satisfied that Mr Brown can understand the nature of the allegation, namely that he failed to comply with reasonable management instructions, and the particulars which support such an allegation are also capable of being understood by Mr Brown. Of course, whether or not Mr Bentley can satisfy the Panel that such an allegation and the particulars are made out is an entirely different issue.

**Application for Mr Brown to give evidence before the witness to be called by the National College, Individual E (22.11.13)**

**Decision of Chair**

Whilst taking full account of issues of convenience and cost with regard to Mr Brown, this case was listed for 2 days and it was hoped there would have been sufficient time for at least all live evidence to have been heard.

For various reasons, this has not been possible.

In accordance with paragraph 4.48 of the Disciplinary Procedures, the procedure at this hearing will be determined by me, although I have of course consulted with my colleagues in reaching this decision.

I have taken into consideration the submissions put forward by Mr Sykes and also Mr Bentley and, although certain admissions and partial admissions have been made, it is considered important to hear the entirety of the National College's case before hearing from Mr Brown.

As the one witness to be called by the National College, Individual E, is unable to give her evidence today, the unfortunate consequence is that, if Mr Brown wishes to give evidence, that will take place after having heard from Individual E at the resumed hearing.

The Panel understands Mr Sykes intends to call Individual D as a witness on behalf of Mr Brown. Individual D falls into a different category and, on the understanding there is no objection from either party, it is proposed that we hear from Individual D today.

**Application by Presenting Officer for Panel to consider an application to amend the allegations (3.3.14)**

In all of its deliberations, the Panel has had in mind its obligations to ensure that it follows an investigatory approach and that Mr Brown receives a fair hearing.

Mr Bentley wishes to apply to the Panel to amend the allegations currently confronting Mr Brown. He is able to do so in accordance with paragraph 4.55 of the Disciplinary Procedures.

The allegations set out in the Notice of Proceedings are that Mr Brown is guilty of unacceptable professional conduct and/or conduct which may bring the profession into disrepute.

Particulars of that conduct are then set out in paragraphs 1 and 2 and relate to issues concerning an alleged inappropriate relationship with Pupil A.

Mr Bentley effectively wishes to add further particulars to that allegation. The extent of the Panel's knowledge regarding the additional particulars are that they relate to certain documents submitted by Mr Brown at the hearing in November 2013 where Mr Sykes applied successfully to the Panel for it to exercise its discretion in relation to late delivery of documents.

Mr Sykes states that the additional particulars are different in nature to the existing particulars but the Panel does not consider that, of itself, prevents the Panel from deliberating on them in addition to the allegations or particulars concerning pupil A.

Consequently, adopting a step-by-step approach, the Panel has decided that it will hear Mr Bentley's application to amend the allegations currently before the Panel.

#### **Application by Presenting Officer to amend the allegations (4.3.14)**

We have listened very carefully to the representations and submissions of Mr Bentley and Mr Sykes in relation to the application of Mr Bentley to amend the allegations against Mr Brown of unacceptable professional conduct and/or conduct which may bring the profession into disrepute. We have also taken into account the advice we have received from the legal adviser.

The Panel takes account of the fact that the overarching allegation against Mr Brown is that he is guilty of unacceptable professional conduct and/or conduct which may bring the profession into disrepute. Whether or not he is guilty will be a matter for us exercising our judgment once the evidence has been presented to us and we have made the necessary findings of fact.

At the moment, the particulars of the allegation relate to an alleged inappropriate relationship between Mr Brown and Pupil A.

The proceedings were listed to be heard on 21 and 22 November 2013. On the morning of 21 November 2013, various applications were made by Mr Sykes on behalf of Mr Brown, one of which was to request the Panel's permission to submit certain documents into evidence to include testimonials which form part of the proposed additional particulars. On the following morning, Mr Bentley made enquiries regarding the validity and accuracy of the testimonials as he and the National College had only received them the day before. Such enquiries commenced as soon as reasonably practicable.

It is also relevant that, as a consequence of the various applications having to be considered on 21 November 2013, it had not been possible to call Individual E to give

evidence on behalf of the National College. On arrival at the hearing on 22 November 2013, it was stated by Individual E that a child at her school had gone missing and she had to return as a matter of urgency. The Panel was sympathetic to her predicament and, having heard evidence from a witness who appeared in support of Mr Brown, the hearing was adjourned and listed for 5 days, commencing 3 March 2014.

In the meantime, further enquiries were made in relation to not only the testimonials submitted but also other issues which are set out in the form of further particulars in the letter from the National College to Mr Brown on 26 February 2014.

The Panel listened to lengthy submissions from Mr Sykes in the course of which he made a number of allegations against Mr Bentley and Individual E regarding their conduct in respect of how the hearing in November 2013 came to be adjourned and against Mr Bentley regarding his involvement in the ensuing investigation. We do not consider these are matters for the Panel to adjudicate upon at this stage. However, having listened to the submissions made yesterday, it appeared to the Panel that there was an absence of cogent evidence to support such serious allegations.

The issue to be determined by the Panel is whether the further particulars as set out in the National College's letter should be added to the proceedings and, if so, whether they should be considered by this Panel or by a different Panel.

Mr Sykes has submitted that it will be unfair to allow the application but we have accepted the advice given to us and have decided that it would be fair and proportionate to allow the amendment by the addition of further particulars and that it would be appropriate for one Panel, namely this Panel, to consider the entirety of the case. It is not accepted that the Panel would be in any way influenced in an adverse way simply because the additional particulars include allegations of dishonesty.

At this stage, the Panel has yet to hear from Individual E and has yet to hear from Mr Brown. Consequently, the Panel has made no findings of fact and this will only take place once all the evidence has been heard. No doubt there will be additional evidence, both in terms of documents and witnesses, to be produced in respect of the further particulars as well.

Mr Sykes has produced a decision of the Court of Appeal in relation to the case of Benabbou. The Panel accepts the legal advice it has been given with regards to the distinctions, both practical and legal, to be drawn between criminal and regulatory proceedings.

Regulatory proceedings such as these are conducted in an investigative manner as opposed to an adversarial basis. If findings of fact are made which lead to a finding of

unacceptable professional conduct, any sanction imposed is not designed to be punitive although it is accepted that it may have a punitive effect.

Also, there is only one sanction that could be considered which is the imposition of a prohibition order for life, subject to the teacher being permitted, in certain circumstances, to apply for a review after a certain period, the minimum being 2 years.

The Panel only makes recommendations to the Secretary of State in terms of whether a prohibition order should be made and, if so, whether the teacher should be entitled to a review after a certain defined period.

The Secretary of State then has to make the decision on both issues.

We agree with the legal advice provided that it would be impractical for separate Panels to consider the separate set of particulars both relating to the alleged conduct on the part of Mr Brown and then, if appropriate, make separate and sequential recommendations to the Secretary of State who then has to make separate decisions.

The comparison made by Mr Sykes to the criminal process, whereby the court is referred, effectively, to a persons previous convictions is not appropriate.

The other factor which supports our view that one Panel should consider all particulars is that, in considering the additional particulars, the Panel will have to know the background facts which have given rise to the need for testimonials, for example, or matters relating to Mr Brown's absence from school on 21 and 22 November 2013. One Panel must consider the totality of the alleged conduct when, and if, it makes its recommendations to the Secretary of State.

Consequently, Mr Bentley's application is granted.

#### **Application by Mr Brown to adjourn (4.3.14)**

The issue to be determined by the Panel is whether to allow Mr Bentley to call Individual E to give evidence at this stage.

Mr Sykes said yesterday that if the additional particulars were to be allowed to be made which would lead to an adjournment, it would be appropriate for Individual E to give evidence at the adjourned hearing. The Panel and the parties would then hear her evidence in conjunction with any further evidence to be called by the Presenting Officer in relation to the additional matters.

However, Individual E attended on 21 November 2013 expecting to give evidence. She was unable to do so as a result of the time that had to be taken to resolve various applications made on behalf of Mr Brown.

Individual E could not give evidence on 22 November 2013 as a result of unforeseen circumstances. Nevertheless, the Panel was prepared to accommodate a witness called on behalf of Mr Brown, namely Individual D, to cater for his availability and also to make effective use of the time made available for the hearing.

The hearing was then adjourned to 3 March 2014 and was listed for 5 days. All parties have had many weeks notice of the hearing date and 5 days had been allowed. Individual E attended yesterday but again, as a result of the time it took to deal with various applications, it was not possible for her to be called to give evidence.

Mr Sykes was present yesterday in order to represent Mr Brown. However, Mr Sykes is not here today and Mr Brown is representing himself. Mr Sykes indicated yesterday that he had other commitments today and also on Thursday and Friday of this week.

Whether or not Mr Brown is represented by Mr Sykes is obviously a matter for him but that choice cannot be a matter which is determinative regarding the issue of whether the hearing proceeds or not.

The Panel is conscious that this is the fourth day that Individual E has had to attend in the expectation of giving evidence. The Panel is also concerned to ensure that, whilst at all times being mindful of its duty to ensure a fair hearing, time allocated is used as effectively and efficiently as possible.

Bearing in mind that a transcript of today's hearing will be made available to all parties and that the Panel will assist Mr Brown in the course of the proceedings insofar as it is appropriate to do so, the Panel concludes that it is appropriate for Individual E to give her evidence today.

#### **Further application for late submission of documents (7.7.14)**

The Panel is prepared to exercise its discretion in accordance with paragraphs 4.24 and 4.25 of the Disciplinary Procedures and allow into evidence the unsigned and undated statement of Mr Brown which can be found at pages 485 to 492 of the bundle.

#### **Application regarding constitution of the Panel (7.7.14)**

The Panel has carefully considered the submissions of Mr Sykes regarding the continuing presence of Professor Draper on this Panel. It has also considered the legal advice which it has accepted.

The Panel does not consider any valid reason has been put forward why Professor Draper should recuse herself. It is not suggested that Professor Draper will be in any way biased. Furthermore, all members of the Panel will approach this case, and each and every stage which may be reached, purely on the individual facts of Mr Brown's case and his case alone.

### **Application by Mr Brown for removal of the statements taken by the National College from Individual F, Individual G and Individual H (7.7.14)**

As for the statements signed by Individual F, Individual G and Individual H for the purposes of these proceedings, any concerns expressed by Mr Sykes can, in the view of the Panel, be properly covered when those witnesses provide their evidence.

Consequently, the application that the statements provided by Individual F, Individual G and Individual H for the purposes of these proceedings should be removed is refused.

### **Application for hearing to be in private (8.7.14)**

In accordance with paragraph 4.56 of the Disciplinary Procedure, the Panel has concluded that it would be in the interests of justice for that part of this stage where reference is made to medical evidence to be heard in private.

When matters other than the medical evidence are being considered, the hearing will revert to being heard in public.

## **D. Summary of evidence**

### **Documents**

In advance, and in the course, of the hearing, the Panel received a bundle of documents which included:

- Section 1** Anonymised pupil list (page 2)
- Section 2** Notice of Proceedings and Response (pages 3 to 9)
- Section 3** Witness statements (pages 11 to 19)
- Section 4** NCTL documents (pages 21 to 276)
- Section 5** Teacher documents (pages 278 to 348)

**Section 6** Notice of Proceedings and Response (pages 349 to 355)

**Section 7** Witness statements (pages 356 to 364)

**Section 8** NCTL documents (pages 365 to 483)

**Section 9** Teacher documents (pages 485 to 511)

The Panel Members confirmed that they had read all of the documents in advance and in the course of the hearing.

## **Witnesses**

The Panel heard oral evidence from four witnesses called by the Presenting Officer, namely: Individual E, Individual F, Individual G and Individual H. As well as hearing evidence from Mr Brown, the Panel heard evidence on his behalf from Individual D and Individual I.

## **E. Decision and reasons**

The Panel announced its decision and reasons as follows:

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

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

At the material time, Mr Brown was a mathematics teacher at Thomas Tallis School, Kidbrooke, London SE3 9PX, having commenced at the school in September 2002.

On 22 October 2010, another teacher at the school was approached by four Year 12 pupils who outlined their concerns regarding an alleged relationship between a Year 12 pupil, Pupil A, and Mr Brown.

An investigation ensued, leading to disciplinary proceedings. Mr Brown did not attend the disciplinary hearing on 7 January 2011 and he resigned with immediate effect on that day. On the same day, Mr Brown was informed that the circumstances would be referred to the General Teaching Council and the ISA.

Following the conclusion of the ISA's consideration, by letter of 17 April 2013, Notice of Proceedings was served on Mr Brown by the National College outlining allegations in relation to his alleged relationship with Pupil A."

The substantive hearing was listed to be heard on 21 and 22 November 2013. By this time, Mr Brown was employed at Beachcroft School, 35 Finchley Road, London. At the commencement of the hearing, Mr Brown's representative requested, and was granted, leave to introduce late a number of documents to include two standard character and professional references. The hearing was then adjourned until March 2014. On making enquiries of Beachcroft School, the National College discovered information which led to concerns about the manner in which Mr Brown had produced the references and doubts as to the amount of reliance that could be placed on them. There were also concerns relating to the level of information provided by Mr Brown during the recruitment process for a full-time position at the school and also the reason provided by Mr Brown to the headteacher regarding the need for special leave to be granted to enable him to attend the hearing on 21 and 22 November 2013.

The hearing was adjourned initially to 3 and 4 March 2014 but was not concluded and was further adjourned to 7 - 10 July 2014.

By Notice of Proceedings dated 13 March 2014, further allegations were served on Mr Brown, such allegations relating to: his alleged conduct surrounding the submission of references without the approval or authorisation of the referees; his application for employment at Beachcroft School and the basis of his request for special leave so that he could attend the hearing on 21 and 22 November 2013.

### **Findings of Fact**

1. Abused a position of trust by having an inappropriate relationship with Pupil A between 1 July 2010 and 24 November 2010, including in that he:
  - a. met with Pupil A on at least three occasions outside of School;

This particular was partly admitted to the extent that Mr Brown met Pupil A at a time when the school was closed and once on the night of 16 to 17 October 2010.

However, the Panel found that, between 1 July 2010 and 24 November 2010, Mr Brown met with Pupil A on five occasions outside school.

On 1 July 2010, Mr Brown met with Pupil A at a dance to celebrate the TTRA ("Thomas Tallis Records of Achievement awards") at which he had agreed beforehand to have the first dance with Pupil A. In his evidence, Mr Brown confirmed that he did not in fact dance with Pupil A.

On 2 July 2010, Mr Brown met with Pupil A at Bellingham and the two of them went for a walk in Bellingham Park. This meeting lasted approximately 40 minutes.

At the end of July/beginning of August 2010, Mr Brown met with Pupil A on a one-to-one basis at the Glades Shopping Mall in Bromley for a coffee and the meeting lasted approximately one hour.

At the end of August 2010, after the examination results had been published, Mr Brown again met with Pupil A at the Glades on a one-to-one basis.

In early September 2010, when at the Glades in the company of his brother and a friend, Mr Brown met with Pupil A who gave him a birthday gift.

Consequently, the Panel found this particular proved.

- b. permitted Pupil A to visit his home on at least one occasion;

On 2 July 2010, Pupil A travelled to Bellingham to meet with Mr Brown. Whilst there were certain inconsistencies with regard to Mr Brown's account of what took place, he indicated that he no longer lived at the address at Bellingham. There was insufficient evidence presented on behalf of the National College that Pupil A entered Mr Brown's home, whether at Bellingham 2 July 2010 or anywhere else at any other time and therefore the Panel did not find this particular proven.

- c. paid for Pupil A to make a taxi journey late one evening;

This was admitted by Mr Brown save that it is suggested that it was early one morning as opposed to late one evening. Pupil A had been to a party and then travelled to South Bromley where she telephoned Mr Brown asking him to meet her. Mr Brown paid the taxi fare to enable Pupil A to return home but he neither notified Pupil A's parents nor reported this incident to anyone at school.

The Panel found this particular proved.

- d. exchanged a series of messages of an intimate nature with Pupil A;

This particular was part-admitted on the basis that there were some messages of an intimate nature.

On the basis of screen shots of a number of messages exchanged between Mr Brown and Pupil A on 10 November 2010 and between 21 and 24 November 2010, the Panel found that Mr Brown sent a number of messages to Pupil A which were of an intimate nature. Such messages can be found on pages 224 to 240 of the bundle.

The following are examples:

10 November 2010 at 10.02

“And I would never want to see you down and would protect you with my life”

10 November 2010 at 10.10

“We can have anything we want if we are willing to be strong and really support each other. X”

10 November 2010 at 10.23

“Everybody else thinks I am blind cos it’s only you I see! All I need you to do is to be strong for me. I don’t want to ever see past you! You just got to have my back like I’ve got yours! X can’t wait to catch up with you!”

24 November 2010

By this stage, messages were being sent by WhatsApp

The following were sent by Mr Brown to Pupil A

Kisses all over your body  
X – that’s for your tummy  
X – for your left cheek  
X – for your right cheek  
X – for your neck (the right side)  
X – for your upper back  
X – that’s for your left thigh  
X – that’s for your right thigh  
X – that’s for your left inner thigh  
X – that’s for your right inner thigh

The following exchange took place:

Pupil A – You're stuck with me I'm afraid haha

Mr Brown – Are you sure boobie?

Pupil A – I've never been more sure about anything in my life

Mr Brown – Good! Because I feel the same way!

The Panel found this particular to be proved in that such messages were of a highly intimate nature. The Panel noted that Pupil A had initiated some of the messages. The Panel did not accept Mr Brown's evidence that the messages sent on 10 November 2010 were sent when he was depressed and felt alone without support at a time when he understood the school and the Police to be investigating the matter. Even if that had been true, it was wholly inappropriate for Mr Brown to have relied in this way on the support of a pupil.

Indeed, later in his evidence, Mr Brown stated that when he was sending the texts on 24 November 2010, he was "...in a really cheerful mood", and that "...we were talking so much I felt comfortable that I wrote that." He described the messages as "playful" and "flirtatious". The Panel noted that this was on the same day as he attended an investigatory meeting with Individual J and Individual E.

Consequently, as a result of its findings in respect of particulars 1a, c and d, the Panel found that Mr Brown abused a position of trust by having an inappropriate relationship with Pupil A between 1 July 2010 and 24 November 2010

2. Failed to comply with reasonable management instructions, including in that he:
  - a. failed to report safeguarding concerns about Pupil A to the School;

The Panel accepted the evidence of Individual E, who the Panel considered to be a credible and reliable witness, and found that, together with all other staff, Mr Brown received regular training and briefing sessions with regard to safeguarding issues whilst at Thomas Tallis School. Furthermore, by July 2010, Mr Brown had been at the school for some eight years and was therefore a teacher of some experience. The Panel rejected the evidence of Mr Brown that he had received no training in relation to safeguarding issues which would have included a reasonable management instruction that staff at the school, to include Mr Brown, should report safeguarding concerns to the School. There were clear and obvious matters of concern which should have been reported.

- i. At the investigatory meetings with Individual J and Individual E on 1 and 24 November 2010, Mr Brown had indicated that Pupil A had telephoned him to inform him that she wished to see him as she had been “assaulted” (the word used by Mr Brown on 1 November 2010) or “molested” (the word used on 24 November 2010) some years before and that she felt suicidal and desperate.

Mr Brown then stated that when he agreed to meet with her, Pupil A did not wish to talk about it. It was suggested that the whole suggestion was a ploy on the part of Pupil A to trick him to meet with her. Mr Brown said that, as a consequence, he saw no point in reporting the matter. The Panel considered that such an approach was a dereliction of his professional obligation to ensure the welfare of pupils. The very fact that Pupil A mentioned such serious matters to him should have been reported. Even if they were a fabrication, it is still a serious matter which should have been reported to appropriate senior staff at the school. Even if Mr Brown is correct and that it was a ploy to manufacture a reason to meet with him, the obsession which it was suggested Pupil A had with Mr Brown should in itself have been reported.

- ii. As for the incident in October 2010 when Pupil A arrived at South Bromley in the early hours and Mr Brown paid her taxi fare to enable her to return home, again, this supported the suggestion that Pupil A clearly had feelings towards Mr Brown which went far beyond a normal teacher/pupil relationship. Mr Brown should have made sure that he notified appropriate senior staff of the position.

Consequently, the Panel found this particular to be proved.

- b. continued to contact Pupil A after suspension from duty on 1 November 2010.

On 1 November 2010, Mr Brown was suspended. By a letter of 2 November 2010, the School wrote to Mr Brown confirming the decision. Mr Brown confirmed that he received that letter some time during that week. He accepted and the Panel found that the instruction in that letter to refrain from contacting Pupil A or her parents was clear. However, despite that instruction, Mr Brown was in regular contact with Pupil A. Furthermore, such contact included the sending of highly intimate messages as set out at particular 1d above.

Consequently, the Panel found this particular proved.

3. Failed to inform your employer during the recruitment process to work at Beachcroft School in January 2012 that at that time the Independent Safeguarding Authority was considering barring you from working with vulnerable adults and children in England, Wales and Northern Ireland.

Mr Brown admitted that he did not inform Beachcroft School of the investigation of the ISA. However, the Panel further found that, whether or not the application form had a particular section asking for information in relation to the pendency of any other investigation, there was a professional duty on the part of Mr Brown to bring this information to the attention of the headteacher in the recruitment process. This would have enabled the school to assess the existence of any safeguarding risks and, if so, how best to manage such risks.

Whilst it was acknowledged by the Panel that Mr Brown had a right to a private life, this was a qualified right and exceptions to that right includes where interference is necessary in the interests of public safety, for the protection of health or morals or for the protection of rights of others.

Consequently, on this basis, the Panel found the Particular proved.

4. Failed to declare to your employer that you were subject to National College for Teaching and Leadership proceedings whilst working at the Beachcroft School at any time before the 25 November 2013.

This Particular was admitted. It was admitted on the basis that Mr Brown considered that he had no obligation to report the matter to the headteacher of Beachcroft School. For the reasons articulated at particular 3 above, the Panel rejected the explanation put forward by and on behalf of Mr Brown and found that he should have reported the existence of the proceedings before the National College well before 25 November 2013. Indeed, the only reason that the school became aware of the proceedings was as a result of the National College making enquiries of the school in relation to the references that Mr Brown had purported to have obtained from staff at the school.

Consequently, the Panel found this particular proved.

5. Failed to declare to your employer when requesting paid absence for 21 and 22 November 2013 that you were in fact the Defendant in regulatory proceedings, and were dishonest in materially misleading Individual G by telling him that you were required as a witness for the prosecution.

The Panel found Mr Brown's evidence on this issue to be entirely lacking in credibility. Mr Brown confirmed that he knew the policy relating to special leave and had submitted an application for two days paid leave on 21 and 22 November 2013 for "personal reasons". Individual G spoke to him about it and asked him to clarify the position. Individual G was adamant that Mr Brown had informed him it was because he was a witness for the prosecution and that he could not say anymore as it may prejudice the case.

Mr Brown on the other hand stated that he accepted that he told Individual G that he was to appear as a witness rather than a defendant. However, he then asked the Panel to accept that even though he had signed the request form asking for paid leave, he would have happily taken unpaid leave.

It was said on behalf of Mr Brown that what he had said was a "half truth" and the motive for saying a half-truth was to avoid inviting further awkward questions, which suggested to the Panel that the aim must have been to mislead Individual G.

The Panel was effectively being asked to prefer a half-truth to the firm evidence of Individual G about what was said to him. The Panel was entirely satisfied that Individual G as opposed to Mr Brown was telling the truth and that Mr Brown had indicated that the reason for his request for special leave was that he was to appear as a witness for the prosecution rather than a defendant in regulatory proceedings.

The Panel found that such conduct would be considered dishonest by the standards of reasonable and honest people and that, by those standards, Mr Brown knew that he was being dishonest.

The Panel found this particular to be proved.

6. Provided various written character references to a Professional Conduct Panel of the National College for Teaching and Leadership including:
  - a. one drafted on school letter-headed paper in the name of "Individual H" and which you submitted without the named individual having authorised the entirety of the content of the undated letter, or given permission to use in support of regulatory proceedings against you;

Mr Brown accepted that, on 21 November 2013, his representative submitted a number of documents to include a reference from Individual H. He also accepted that the content had not been authorised by Individual H nor had he given Mr Brown permission to use the reference in support of

regulatory proceedings. The Panel heard evidence from Individual H who it found to be a credible witness. He confirmed that he had seen the first paragraph of the reference which they had drafted together but not the second. He also stated that he did not realise the reference would be printed on school letter heading and had he seen it on school letter heading, he would not have signed it until he had received permission from his manager.

There were also elements of the second paragraph about which he was unclear. However, Individual H did say that he believed he was providing a personal reference. He confirmed that he was happy to do so as he considered Mr Brown to be a man of good character and that he was a good teacher.

The Panel also found that Mr Brown had signed a form dated 31 October 2011 to confirm that he had read and understood a number of policies applying to the school when he started at Beachcroft School to include the Code of Conduct. In the Code of Conduct at paragraph 9.12 it states that employees may give personal references but they must never be on school stationary and that the reference must make it clear that it is provided on a personal basis.

The Panel did not accept Mr Brown's evidence that he had not meant the references to be handed in as final documents on the basis that they were still in draft and that it was a mistake on the part of his representative to do so. The Panel noted that Mr Brown was in attendance at the hearing when the documents were handed in and no comment was made to the Panel. The Panel found that Mr Brown intended to rely on the references in the form submitted on 21 November 2013 in support of his case. In the course of the hearing on 21 November 2013, the Chair of the Panel stated that the references were unsigned but no mention was made by either Mr Sykes or Mr Brown of the fact that the documents were in draft form only.

Particular 6a was therefore found proved.

- b. one drafted on school letter-headed paper in the name of "Individual F" and which you submitted without the named individual having authorised the entirety of the content of the letter dated 15.11.2013, or given permission to use in support of regulatory proceedings against you;

Individual F stated that, had he seen the completed reference, he would have signed it as he was happy with its content. However, had he seen the reference on school letter heading, it would have rung "alarm bells" and did

not expect it to be anything other than a personal reference. He said that if it was on school letter heading, it "...looks really official as if it was from senior management". Again, the Panel found Individual F to be a reliable witness.

The Panel repeated its findings as set out under particular 6a above in relation to the submission of the reference by or on behalf of Mr Brown on 21 November 2013 and also Mr Brown's awareness of the provision of paragraph 9 of the School's Code of Conduct.

The Panel found this particular to be proved.

- c. that your conduct in regard to particulars 6a - 6b was dishonest in that you sought to mislead the Professional Conduct Panel as to the authenticity of the documents provided;

The Panel repeated its findings as set out in particulars 6a and 6b above. Mr Brown intended the Panel to rely on the references of Individual H and Individual F handed in to the Panel on 21 November 2013 even though they were unsigned and even though he knew that neither Individual H nor Individual F had approved or authorised their use. It was suggested that this was entirely academic in that both Individual H and Individual F were happy to support the content of the references. However, that was not relevant and also the Panel considered that the submission of the references on school letter heading was of particular concern as it changes the status of the reference as recognised, for example, by Individual F. Also, as stated, Individual H would not have signed such a reference without first gaining the approval of his manager.

The Panel was satisfied that such conduct was dishonest according to the standards of a reasonable and honest person and that Mr Brown knew, by those standards, his conduct was dishonest.

Consequently, particular 6c is found proved.

7. On or after 25 November 2013 sought to procure a signature from Individual F in respect of the character reference referred to at allegation 6.b.

The Panel found that Mr Brown did seek to procure a signature from Individual F in respect of the reference but concluded that he did so partly or wholly as a result of being requested to do so by the Panel at the hearing on 21 November 2013.

To that extent, and on that basis, the facts of particular 7 are found proved.

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

In respect of those matters and allegations relating to the inappropriate relationship with Pupil A whilst a teacher at Thomas Tallis School, namely particulars 1 and 2, and in respect of those allegations and particulars found proved, the Panel found that Mr Brown was guilty of unacceptable conduct and conduct likely to bring the profession into disrepute.

The behaviour found proved fell significantly short of the standards expected of a teacher. Mr Brown's conduct failed to ensure that he maintained appropriate professional boundaries and failed to treat pupils with dignity. He also failed to have regard for the need to safeguard pupils' well-being.

Much was said by and on behalf of Mr Brown that it was behaviour on the part of Pupil A which resulted in the inappropriate relationship between them. Even if that is correct, it showed a complete lack of recognition on the part of Mr Brown of his responsibility as a professional teacher to behave in a way which would safeguard against the development of such a relationship. The Panel was particularly concerned at the failure of Mr Brown to consider safeguarding issues in relation to the welfare of Pupil A having been told by her of an event in her past life and the fact that she felt suicidal and desperate. This should undoubtedly have been reported to the appropriate manager at the school at the first available opportunity whatever Mr Brown's personal judgment might have been.

Finally, the Panel was deeply concerned at the content and meaning of the messages sent by Mr Brown to Pupil A between 10 and 24 November 2010. Whilst the Panel did not reach any conclusions, and its decision was not based in any way on findings of any physical sexual activity between Mr Brown and Pupil A, it was nevertheless satisfied that the messages sent by Mr Brown to Pupil A were of a sexual nature and amounted to wholly inappropriate communications between teacher and pupil.

As for the Panel's findings in respect of particulars 3 to 6, it found Mr Brown guilty of unacceptable professional conduct and conduct likely to bring the profession into disrepute.

Whilst the facts of particular 7 were found proved, for the reasons outlined, the Panel did not find Mr Brown guilty of unacceptable professional conduct or conduct likely to bring the profession into disrepute in regard to this particular.

As for particulars 3 to 6, again it is of fundamental importance that teachers must act with the utmost honesty and integrity. Teachers must have proper and professional regard for

the ethos, policies and practices of the school in which they teach. In addition teachers must have an understanding of, and always act within, the statutory frameworks which set out their professional duties and responsibilities.

Mr Brown failed to adhere to his responsibilities as a teacher to behave honestly in all his dealings with the school both at the time he applied for a position and then later when applying for special leave. It was also of concern that he wished his own regulator to rely on the content of documents which he knew had not been approved by his colleagues and failed to abide by the Code of Conduct at the school.

The integrity of the whole system and, by extension, the well-being of pupils, are entirely dependent on teachers being honest and transparent and acting in a professional manner.

### **Panel's recommendations to the Secretary of State**

We have decided to recommend a Prohibition Order for the following reasons.

The Panel took very careful account of the mitigation material put forward on behalf of Mr Brown, the medical evidence relating to the stress of which Mr Brown complained when the investigation into his conduct at Thomas Tallis school was underway, the submissions made on his behalf and the references as to his ability as a teacher.

During mitigation it was submitted to the Panel that there were no disciplinary matters regarding Mr. Brown prior to July 2010. Indeed it would appear that he was quite highly thought of as a teacher and was allowed to progress to the upper pay scale. During recent years when Mr. Brown has been teaching via agency work, it was indicated that there have been no issues with regards to safeguarding, his relationships with pupils and staff and his work within schools. From the evidence presented, whilst the Panel was not fully aware of the extent of the information provided to the schools at which Mr Brown had been working, it did appear that schools were prepared to employ him even though they knew of the proceedings before the National College.

The Panel also listened to what Mr Brown had to say at the very end of proceedings when he stated that he regretted his actions, apologising for any adverse impact those actions may have had.

However, whilst Mr Brown made such remarks, the evidence he gave to the Panel when responding to the allegations being made against him as summarised above was markedly different, particularly as he offered no apology, looked to place responsibility for what took place at Thomas Tallis with the pupil, and gave no indication that he realised the significance or seriousness of his actions i.e. he showed little insight.

It was also suggested in mitigation that, had the allegations not arisen as a result of his conduct at Thomas Tallis, the allegations arising out of his conduct whilst at Beachcroft School would not have occurred. Whilst this may be strictly correct, the Panel concluded that it did not excuse in any way the dishonest behaviour of Mr Brown.

It was also important to consider the wide nature of the allegations which had been established against him. They include: having an inappropriate relationship with a pupil; continuing that inappropriate relationship despite the fact that he knew there was an ongoing investigation and had been forbidden to contact the pupil; dishonestly withholding information from Beachcroft School which may have given rise to safeguarding issues; dishonestly misleading his headteacher, and dishonestly attempting to mislead his regulator, the National College, in the course of these proceedings.

The period over which the allegations extend is from July 2010 to November 2013 and therefore cannot be described as isolated instances of misconduct.

We have found that Mr Brown's behaviours were a serious departure from a significant number of the Teachers' Standards as particularised above and was misconduct seriously affecting the wellbeing of pupils. Despite what was said on his behalf and the submission of Mr Brown himself, the Panel was concerned at the overall attitude and approach of Mr Brown and concluded that his behaviour in its overall terms was fundamentally incompatible with that expected of a professional teacher.

The Panel was concerned that, whilst there was no evidence of physical sexual relations having taken place between Mr Brown and Pupil A, and that its decision is not based on any such relationship having taken place, the messages exchanged are, as already stated above, of an intimate sexual nature.

In the view of the Panel, a Prohibition Order is necessary in order to: protect children; to maintain public confidence in the teaching profession, and to declare and uphold proper standards of conduct. We are satisfied that this is a proportionate recommendation. Safeguarding, child protection and the overall honesty of teachers are core features of a teacher's responsibilities and there is a public interest in ensuring that the conduct of Mr Brown giving rise to the allegations found proven cannot be tolerated.

There was evidence that some aspects of Mr Brown's ability as a teacher were satisfactory or even good and a Review Panel might conclude that he should be given the opportunity to return to teaching although no doubt any Review Panel will be looking for significant evidence to reassure itself that there is no risk of a repetition of the sort of behaviour which has led to the making of this Order.

A prohibition order applies for life and means that Mr Brown would not be permitted to undertake unsupervised teaching work in schools, including academies, local authority

maintained schools, non-maintained schools, independent schools, sixth form colleges, relevant youth accommodation and children's homes.

Having taken full account of the guidance contained within the document entitled "Teacher misconduct – the prohibition of teachers Advice on factors relating to decisions leading to the prohibition of teachers from the teaching profession", we have decided to recommend that Mr Brown be allowed to apply to have the Prohibition Order reviewed after a period of five years.

If Mr Brown does apply, he would need to demonstrate to the review panel that he is suitable to teach again and the National College for Teaching and Leadership may require documents or other material evidence to be submitted in order for his application to be considered. Without a successful application being made, Mr Brown will remain prohibited from teaching.

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

**I have given very careful consideration to those facts found proven by the panel and the panel's subsequent recommendations.**

**The panel have found a range of allegations to be proven including having an inappropriate relationship with a pupil, continuing that relationship whilst an investigation was ongoing (that expressly forbade Mr Brown to make contact) and more than an isolated instance of dishonesty. These behaviours extended over a period of more than 3 years.**

**The panel have found Mr Brown to be guilty of unacceptable professional conduct and conduct that may bring the profession into disrepute. His behaviour has fallen well short of the standards expected of a teacher. He has failed to maintain appropriate professional boundaries, failed to treat pupils with dignity and failed to have regard for the need to safeguard pupils' well being. Mr Brown had a number of responsibilities as a teacher that he failed to discharge properly – acting with honesty and integrity, having proper and professional regard for the ethos, policies and practices of the schools in which he taught, and acting within the statutory frameworks which set out a teacher's professional duties and responsibilities. I agree with the panel's recommendation that Mr Brown should be prohibited from teaching.**

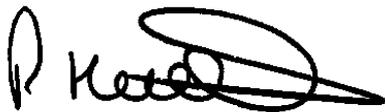
**Whilst Mr Brown apologised for and stated that he regretted his actions at the end of the hearing, his responses throughout the hearing were at odds with this. Indeed the panel found that Mr Brown showed little insight into his behaviour.**

**There was though some evidence of Mr Brown's ability as a teacher being satisfactory or even good. The panel have recommended that Mr Brown be allowed the opportunity to apply for the order to be set aside after a minimum period of 5 years. This would allow time for Mr Brown to reflect upon his behaviour and prove to any future panel that there is no risk of repetition. I agree with the panel's recommendation.**

This means that Mr Nkosana Brown 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 18 July 2019, 5 years from the date of this order at the earliest.** If he does apply, a panel will meet to consider whether the Prohibition Order should be set aside. Without a successful application, Mr Nkosana Brown remains barred from teaching indefinitely.

This Order takes effect from the date on which it is served on the Teacher.

Mr Nkosana Brown 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.

A handwritten signature in black ink, appearing to read 'P Heathcote', with a large, sweeping flourish at the end.

**NAME OF DECISION MAKER: Paul Heathcote**

**Date: 11 July 2014**