



National College for
Teaching & Leadership

Mr Maurice O'Brien: Professional Conduct Panel outcome

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

July 2014

Contents

A. Introduction	3
B. Allegations	4
C. Preliminary applications	4
D. Summary of evidence	4
Documents	5
Witnesses	5
E. Decision and reasons	5
Panel's recommendation to the Secretary of State	9
Decision and reasons on behalf of the Secretary of State	11

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

Teacher:	Mr Maurice O'Brien
Teacher ref no:	72/45266
Teacher date of birth:	8 July 1954
NCTL Case ref no:	0011093
Date of Determination:	29 July 2014
Former employer:	St Mary's Catholic Combined School, Poole ("the School")

A. Introduction

A Professional Conduct Panel ("the Panel") of the National College for Teaching and Leadership ("the National College") convened on 29 July 2014 at 53-55 Butts Road, Earlsdon Park, Coventry, CV1 3BH to consider the case of Mr Maurice O'Brien.

The Panel members were Mrs Kulvinder Sandal (Teacher Panellist– in the Chair), Dr Geoffrey Penzer (Lay Panellist) and Mrs Ruth Winterson (Teacher Panellist).

The Legal Adviser to the Panel was Mrs Luisa Gibbons of Eversheds LLP Solicitors.

The Presenting Officer for the National College was Ms Jessica Sharpe of Nabarro LLP Solicitors.

Mr O'Brien was represented by Mr Ray Pattenden of NAHT, but convened as a meeting, neither the Presenting Officer nor Mr Maurice O'Brien or his representative were present.

The meeting took place in private and was not recorded; save for the public announcement of the Panel's findings of fact and on unacceptable professional conduct and/or conduct that may bring the profession into disrepute.

B. Allegations

The Panel considered the allegations set out in the Notice of Meeting dated 2 July 2014.

It was alleged that Mr Maurice O'Brien was guilty of unacceptable professional conduct/ conduct that may bring the profession into disrepute, in that:

Whilst employed as the Head teacher at St Mary's Roman Catholic Primary School, Poole:

1. Between 13 and 16 May 2013, he submitted the School's Year 6 SATs test papers to the Standards and Testing Agency ("STA") after he had intentionally.
 - a. altered the Reading Test script for one or more students;
 - b. altered the Mental Maths paper scripts for one or more students;
 - c. altered the Grammar, Punctuation and Spelling Test Paper 1 scripts for one or more students;
 - d. altered the Spelling Test Paper 2 for one or more students,
2. Failed to complete and/or ensure the completion of the Head teacher's Statutory Declaration and submit this to the STA.
3. By his actions set out at paragraphs 1 and 2 above, he failed to comply with the STA's guidance:
 - a. Test Administrators' Guide ("TAG"); and
 - b. Assessment Reporting Arrangements ("ARA").
4. His actions as set out in paragraph 1 above were dishonest.

Mr O'Brien has admitted the facts of the allegations and has admitted that his actions constitute unacceptable professional conduct and conduct that may bring the profession into disrepute.

C. Preliminary applications

There were no preliminary applications.

D. Summary of evidence

Documents

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

Section 1: Chronology Pages 2 – 5

Section 2: Notice of Referral, Response to Notice of Referral and Notice of Meeting
Pages 6 – 10b

Section 3: Statement of Agreed Facts and Presenting Officer Representations
Pages 11 - 18

Section 4: National College for Teaching and Leadership Documents
Pages 19 – 38

Section 5: Teacher Documents Pages 39 - 109

The Panel Members confirmed they had read all of the documents in advance of the meeting.

Witnesses

Convened as a meeting, the Panel heard no oral evidence.

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 meeting.

Summary of Evidence

Between 1996 and 2013, Mr O'Brien was employed as the Head teacher of the School. In May 2013, year 6 pupils undertook national tests in literacy and numeracy and the completed scripts were sent away to be marked. Those scripts raised suspicions by those examining them at the Standards and Testing Agency ("STA") that they had been altered. The STA notified the Local Authority on 17 June 2013. The Local Authority carried out an information gathering exercise. On 5 July 2013, Mr O'Brien stated that it was he who had tampered with the papers. Mr O'Brien resigned from his post on 6 October 2013 and the matter was referred by the School to the National College for Teaching and Leadership ("the College").

Findings of Fact

Our findings of fact are as follows:

We have found the following particulars of the allegations against Mr O'Brien proven, for these reasons:

1. Whilst employed as the Head teacher at St Mary's Roman Catholic Primary School, Poole ("the School") between 13 and 16 May 2013, he submitted the School's Year 6 SATS test papers to the Standards and Testing Agency ("STA") after he had intentionally

a) altered the Reading Test script for one or more students,

b) altered the Mental Maths paper scripts for one or more students, c) altered the Grammar, Punctuation and Spelling Test Paper 1 scripts for one or more students,

d) altered the Spelling Test Paper 2 for one or more students.

Mr O'Brien has admitted each of the component parts of this allegation in a Statement of Agreed Facts signed by him on 26 May 2014 and by the Presenting Officer on 7 May 2014 (the "Statement of Agreed Facts"). With regard to the Reading Test script, the Panel noted that Mr O'Brien has admitted to altering 30 out of 51 Reading Test scripts.

The Panel also had sight of the Report to the Governing Body of the School which stated that the STA had found evidence of maladministration in each of the test papers set out in the allegations. The Report states that the Head of Young People and Learning had received a voicemail message from Mr O'Brien on 5 July 2013 stating "it was me who tampered with the papers". The Panel has seen a note of an interview on 1 August 2013 with the Director of Schools in the Plymouth Diocese who stated that he received a telephone call from Mr O'Brien who said that he had done it, then provided further clarification that he had changed the children's answer papers.

The Senior Advisor for School Improvement visited Mr O'Brien on 5 July 2013 and the note of a subsequent interview with her on 29 July 2013 states that Mr O'Brien had said that he was sorry, he had been weak and he apologised for his actions. It is stated in the interview note that Mr O'Brien was then asked to clarify what he was saying which was that he had altered SATs answer papers but that he couldn't remember how many.

The Panel also noted that in the notes of an interview carried out by an independent investigator with Mr O'Brien on 6 September 2013 it is stated that Mr O'Brien readily acknowledged what he had done. That note describes how Mr O'Brien had access to the unsealed test papers, and that he altered some of them, focusing on those least likely to do as well as they should.

The Panel finds this allegation proven in its entirety.

2 Whilst employed as the Headteacher at St Mary’s Roman Catholic Primary School, Poole (“the School”), he failed to complete and/or ensure the completion of the Headteacher’s Statutory Declaration and submit this to the STA.

Mr O’Brien has admitted this allegation in the Statement of Agreed Facts. In a note of an interview with Mr O’Brien on 6 September 2013, the Panel noted that it is stated that Mr O’Brien cannot remember signing the declaration form for the STA, which has not been found or provided. The Report to the Governing Body of the school also states that the STA have no record of the declaration form. Therefore, Mr O’Brien cannot have ensured the declaration was submitted. On the balance of probabilities, the Panel considers it likely Mr O’Brien failed to complete the declaration.

The Panel finds this allegation proven.

3 Whilst employed as the Headteacher at St Mary’s Roman Catholic Primary School, Poole (“the School”), by his actions set out at paragraphs 1 and 2 above he failed to comply with the STA’s guidance:

a) Test Administrators’ Guide (“TAG”); and

b) Assessment Reporting Arrangements (“ARA”).

Mr O’Brien has admitted this allegation in the Statement of Agreed Facts. The Panel do not have these Guidance documents amongst the Panel Bundle. However, the Report to the Governing Body states that STA’s guidance requires head teachers to:

- Keep all test materials secure and treat them as confidential before, during and after the test period;
- Ensure that the tests are administered according to the published procedures;
- Complete and submit the head teacher’s declaration from after all test scripts have been collected for marking.

It is not clear that these requirements come from the STA’s guidance “TAG” or “ARA”, but in light of the specific admission in the Statement of Agreed Facts that Mr O’Brien failed to comply with both guidance documents, this allegation is found proven.

4 Whilst employed as the Headteacher at St Mary’s Roman Catholic Primary School, Poole (“the School”), his actions as set out at paragraph 1 above were dishonest.

Mr O’Brien has admitted this allegation in the Statement of Agreed Facts.

The Panel received and accepted advice from the Legal Adviser that if it was satisfied on a balance of probabilities that any of the facts of allegation 1 was proven, then there was a further requirement to consider two questions when deciding whether Mr O’Brien’s actions were dishonest. Firstly, is the Panel satisfied on the balance of probabilities that Mr O’Brien’s actions would be regarded as dishonest according to the standards of

ordinary, reasonable and honest people? If so, is the Panel satisfied on the balance of probabilities that Mr O'Brien himself must have realised that his actions would be regarded as dishonest by those standards. The Panel accepted that it is only if the answers to both those questions is yes, can the allegation of dishonesty be established in this case.

On the objective test, the Panel was satisfied that reasonable and honest people would consider it dishonest to alter pupils' scripts for assessment prior to their submission. The Panel went on to consider whether Mr O'Brien would have known that what he was doing was by those standards dishonest and the Panel considered that he should have known. Mr O'Brien may have been motivated by a wish to prevent those pupils who may have underperformed from being personally affected if they thought they had failed. Nevertheless, he would have known that he was acting in a way which ordinary people would have considered dishonest. The Panel considered that Mr O'Brien may have acted in an impulsive way, but acted deliberately given that he stated that he "focused on those less likely to do as well as they should".

This allegation is therefore found proven.

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

In considering the allegations that the Panel has found proven, the Panel has had regard to the definitions in The Teacher Misconduct – Prohibition of Teachers Advice, which we refer to as the 'Guidance'.

The Panel is satisfied that the conduct of Mr O'Brien in relation to the facts found proven, involved breaches of the Teachers' Standards. The Panel considers that by reference to Part Two, Mr O'Brien failed to uphold public trust in the profession and maintain high standards of ethics and behaviour. He also failed to have proper and professional regard for the ethos, policies and practices of the school in which he taught and failed to act within the frameworks which set out professional duties and responsibilities.

The Panel is satisfied that the conduct of Mr O'Brien fell significantly short of the standards expected of the profession. Mr O'Brien, an experienced professional and Head teacher abused the position of trust placed in him which resulted in the pupils' test results being annulled.

The Panel has also considered whether Mr O'Brien's conduct displayed behaviours associated with any of the offences listed on page 8 and 9 of the Guidance and we have found that the offence of serious dishonesty is relevant. The Guidance indicates that where behaviours associated with such an offence exist, a Panel is likely to conclude that an individual's conduct would amount to unacceptable professional conduct.

Accordingly, the Panel is satisfied that Mr O'Brien is guilty of unacceptable professional conduct.

The panel has taken into account how the teaching profession is viewed by others and considered the influence that teachers may have on pupils, parents and others in the community. The Panel has taken account of the uniquely influential role that teachers can hold in pupils' lives and that pupils must be able to view teachers as role models in the way they behave. Mr O'Brien's actions served as a poor example to pupils who should understand that cheating is wrong.

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

The Panel therefore finds that Mr O'Brien's actions constitute conduct that may bring the profession into disrepute.

Panel's recommendation to the Secretary of State

Given the Panel's findings in respect of unacceptable professional conduct and conduct that may bring the profession into disrepute, it is necessary for the Panel to go on to consider whether it would be appropriate to recommend the imposition of a Prohibition Order by the Secretary of State.

In considering whether to recommend to the Secretary of State that a Prohibition Order should be made, the Panel has to consider whether it is an appropriate and proportionate measure, and whether it is in the public interest to do so. Prohibition Orders should not be given in order to be punitive, or to show that blame has been apportioned, although they are likely to have punitive effect.

The Panel has considered the particular public interest considerations set out in the Guidance 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 and declaring and upholding proper standards of conduct.

In light of the Panel's findings against Mr O'Brien, the Panel considers that public confidence in the profession could be seriously weakened if conduct such as that found against Mr O'Brien was not treated with the utmost seriousness when regulating the conduct of the profession.

The Panel considered there was a strong public interest consideration in declaring proper standards of conduct in the profession given the breaches of Teachers' Standards.

Notwithstanding the 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 O'Brien.

In carrying out the balancing exercise, the Panel took further account of the Guidance, 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
- 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, particularly taking into account the nature and severity of the behaviour in this case.

The Panel was mindful of the fact that prior to these findings being made against him, Mr O'Brien was considered to be a person of good character with no criminal or disciplinary sanctions record against him. The Panel also had regard to the favourable inspection reports of 2005 and 2009 produced to the Panel demonstrating the efficacy of Mr O'Brien's leadership during those periods.

The Panel has noted Mr O'Brien's description of difficulties within the school as a result of staff turnover, which led him to have concerns about the pupils' performance. Mr O'Brien explained how his personal background had impacted on his actions, which he explains motivated him to protect the pupils from the emotional consequences that may follow if those pupils didn't achieve the results they desired. However, the Panel has not seen medical evidence to confirm that such factors would have influenced his decision making at the time. The Panel considered that Mr O'Brien had acted deliberately given his focus on pupils who were less likely to do well. Although there may have been difficulties in the school, and the Panel is sympathetic to the background issues described by Mr O'Brien, the Panel did not consider Mr O'Brien was acting under duress. Mr O'Brien, as Head teacher, was in a senior position and should not have allowed such matters to influence his actions.

The Panel noted the evidence produced by Mr O'Brien of steps he has taken to address underlying issues that he states motivated him to act as he did. The Panel also noted that Mr O'Brien admitted to his actions, although not immediately. The Panel did consider that Mr O'Brien has demonstrated remorse.

The Panel is of the view that Prohibition is both proportionate and appropriate. We have decided that the public interest considerations outweigh the interests of Mr O'Brien. Mr O'Brien was in a senior position and his actions were fundamentally in breach of what was expected of him. A Prohibition Order is required in order to uphold the standards

expected. Accordingly, the Panel makes a recommendation to the Secretary of State that a Prohibition Order should be imposed with immediate effect.

The Panel went on to consider whether or not it would be appropriate to decide to recommend that a review period of the order should be considered. The Panel were mindful that the Guidance 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 two years.

The Guidance indicates that there are behaviours that, if proven, would militate against a review period being recommended. One of these behaviours include fraud or serious dishonesty. The Panel viewed these allegations seriously given that his actions violated his integrity as a teacher; the misconduct relating so specifically to his role as a Head teacher. However, the Panel has taken account of Mr O'Brien's previous good history of teaching over a period of 38 years, the OFSTED reports which confirmed that the leadership and the management of the school were very good and the remorse expressed by Mr O'Brien. The Panel felt the findings indicated a situation in which a review period would be appropriate and as such decided that it would be proportionate in all the circumstances for the Prohibition Order to be recommended with provision Mr O'Brien to apply for it to be reviewed with a view to having it set aside after a period of 5 years.

Decision and reasons on behalf of the Secretary of State

I have carefully considered the findings and recommendations of the panel in this case.

Mr O'Brien has admitted and the panel have found proven all the allegations in respect of the amendment of Year 6 SATs papers (including that his actions were dishonest), failure to complete the statutory declaration and failure to comply with STA's guidance.

The panel were satisfied that Mr O'Brien's conduct represented a departure from the Teachers' Standards in that he failed to uphold public trust in the profession and maintain high standards of ethics and behaviour. He has also failed to have proper and professional regard to the ethos, policies and practices of the school and failed to act within the frameworks that set out professional duties and responsibilities. The panel took account of how the profession is viewed by others and the influential role that teachers hold in pupils lives. Mr O'Brien's actions served as a poor example to pupils who should understand that cheating is wrong.

The panel have found that Mr O'Brien's actions amount to unacceptable professional conduct and conduct that may bring the profession into disrepute.

In considering whether a prohibition order would be an appropriate and proportionate sanction they have considered the public interest considerations in this case, specifically the maintenance of public confidence in the profession and declaring and upholding proper standards of conduct.

The panel are mindful of the fact that previously Mr O'Brien was considered a person of good character with no criminal or disciplinary sanctions against him. They also took account of the favourable inspection reports that demonstrated the efficacy of his leadership over a sustained period. The panel have recommended that a prohibition order is an appropriate and proportionate sanction and I agree.

The panel have viewed the facts of this case very seriously. They have however taken account of Mr O'Brien's previous good history of teaching over a period of 38 years and have recommended that Mr O'Brien be allowed to apply to have the order set aside after a minimum period of 5 years has elapsed. I agree with this recommendation.

This means that Mr Maurice O'Brien 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 6 August 2019, 5 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 Maurice O'Brien remains barred from teaching indefinitely.

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

Mr Maurice O'Brien 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.

NAME OF DECISION MAKER: Paul Heathcote

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

Date: 30 July 2014

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