



National College for  
Teaching & Leadership

# **Ms Alyson Smith: Professional conduct panel outcome**

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

**September 2016**

## Contents

A. Introduction	3
B. Allegations	4 - 5
C. Preliminary applications	5 - 7
D. Summary of evidence	7 - 8
Documents	7 - 8
Witnesses	8
E. Decision and reasons	8 - 20
Panel's recommendation to the Secretary of State	20 - 23
Decision and reasons on behalf of the Secretary of State	23 - 25

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

**Teacher:** Ms Alyson Smith  
**Teacher ref number:** 9946899  
**Teacher date of birth:** 7 May 1963  
**NCTL case reference:** 14514  
**Date of determination:** 14 September 2016  
**Former employer:** Phoenix Junior Academy, Chatham.

### **A. Introduction**

A professional conduct panel (“the panel”) of the National College for Teaching and Leadership (“the National College”) convened on 12 to 14 September at Study Inn Conference Centre, 175 Corporation Street, Coventry CV1 1GU to consider the case of Ms Alyson Smith.

The panel members were Mr Mark Tweedle (teacher panellist – in the chair), Ms Nicolé Jackson (lay panellist) and Mr Peter Cooper (teacher panellist).

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

The presenting officer for the National College was Mr Peter Lownds of counsel, instructed by Nabarro LLP solicitors.

Ms Smith was not present and was not represented.

The hearing took place in public and was recorded.

## B. Allegations

The panel considered the allegations set out in the Notice of Proceedings dated 17 March 2016.

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

Whilst employed at Phoenix Junior Academy, Chatham ("the School"), as the headteacher between June 2013 and August 2015:

In relation to the School's Key Stage 2 National Curriculum Assessments/Standard Assessment Tests ("SATs") which took place between Monday 11 May 2015 and Friday 15 May 2015, she:

1. Before the completion of the SATs tests:

- a. Asked and/or allowed members of school staff to leave one or more of the tests with her to look through,
- b. Reviewed one or more of the tests,
- c. Went through one or more of the questions included within one or more of the tests with the pupils using a flipchart;

2. During the SATs tests:

- a. Assisted one or more pupils inappropriately by either pointing to incorrect answers and/or reading through questions with the pupils and/or advising the pupils on how to correctly answer the questions,
- b. Asked and/or allowed members of school staff to read from the script, rather than use the CD provided with the tests;

3. Following the completion of the SATs tests:

- a. Asked and/or allowed members of school staff to leave one or more sets of the completed tests with her, thereby preventing the tests from being returned to the secure cupboard before dispatch to the Standards and Testing Agency,
- b. Asked members of school staff to lock her office door whilst she reviewed one or more sets of the tests,
- c. Reviewed one or more of the SATs tests,
- d. Placed one or more of the tests in her desk drawer,
- e. Noted and/or made a list and/or tally of the potential marks for pupils,

- f. Asked and/or allowed members of school staff to review/ mark the tests,
- g. On Wednesday 13 May 2015, asked and/or allowed members of school staff to remove one or more of the tests from the pile being sent to the Standards and Testing Agency because she considered that those pupils had not achieved a Level 3,
- h. On Wednesday 13 May 2015, asked and/or allowed members of school staff to register one or more pupils as "B" as she considered that the pupils had not answered enough questions correctly,
- i. Took one or more of the tests from a locked cupboard.

4. By her actions set out at allegations 1, 2 and 3 above she failed to comply with the Standards and Testing Agency's guidance:

- a. Key Stage 2 Test Administrators' Guide ("TAG") 2015,
- b. Key Stage 2 Assessment Reporting Arrangements ("ARA") 2015,

5. Her actions set out at paragraphs 1 and/or 2 and/or 3 and/or 4 above were dishonest.

There were no admissions of facts or of unacceptable professional conduct/conduct that may bring the profession into disrepute.

## **C. Preliminary applications**

### **Application to proceed in the absence of the teacher**

The presenting officer applied to proceed with the hearing in the absence of Ms Smith. After hearing submissions from the presenting officer and receiving legal advice, the Chair announced the decision of the panel as follows:

1. The panel is satisfied that the Notice of Proceedings has been sent to Ms Smith in accordance with Rule 4.11 and Ms Smith is aware that the hearing is taking place.
2. The panel has carefully considered the circumstances of Ms Smith's absence. In a letter to the National College from Ms Smith, two reasons were advanced for her not attending. The first was described by her as 'purely financial' and the second related to her health.
3. As to the finance, Ms Smith said in her letter that she is not able to afford the travel and accommodation expenses in attending the hearing. However, despite the potential for financial assistance being raised with her on behalf of the National College, Ms Smith responded by email dated 3 September 2016 saying that, even

with financial help, she would be unable to attend due to her anxiety and depression.

4. In relation to her health, the panel has carefully scrutinised the medical records submitted by Ms Smith. The records confirm symptoms of health issues (anxiety and depression). However, the panel noted that there is no medical evidence which indicates that Ms Smith is unable to attend the hearing because of those symptoms. The panel noted that, in an email dated 3 September 2016, Ms Smith said that she had visited a healthcare professional [redacted] the previous day and was advised that 'attending the hearing could hamper [her] recovery' but that the nurse stressed that it was still Ms Smith's decision. The panel noted that the healthcare professional clearly judged that Ms Smith was capable of making that decision and that Ms Smith had decided not to attend. The panel further noted that there was no evidence that Ms Smith had received independent professional advice from her GP or a consultant with regard to her ability to participate in these proceedings. The panel is not satisfied by the evidence presented that Ms Smith is unable to attend the hearing by reason of her ill health.
5. The panel noted that Ms Smith has confirmed in writing that she agrees to the hearing proceeding in her absence and that she looks forward to the matter being concluded on 12 September 2016. Taking all considerations into account, the panel is satisfied that Ms Smith has voluntarily waived her right to attend.
6. No application for an adjournment has been made and there is no indication that Ms Smith would attend at a later date were the hearing to be adjourned. In her correspondence, Ms Smith indicated that she was unable to predict when she might feel able to participate.
7. In terms of potential disadvantage, the panel recognises that it will not have the benefit of hearing from Ms Smith in person. However, the panel is able to test out the evidence presented in her absence. No adverse inferences will be drawn from Ms Smith's absence.
8. The panel has taken into account the fact that eight witnesses have been called to give oral evidence over a hearing that has been scheduled for four days.
9. The panel has also had regard to the public interest in these proceedings taking place reasonably promptly.

Taking all of these factors into account, the panel has decided to proceed with the hearing in the absence of Ms Smith.

## Application to admit additional documents

The panel agreed to admit an additional bundle of documents received from Ms Smith which included an email from Ms Smith in response to an email from Nabarro LLP Solicitors dated 1 September 2016. This bundle of documents also included copies of Ms Smith's medical records and seven pages of data records. Copies of these documents were sent to the members of the panel in advance of the hearing. These documents were added to Section 5 of the bundle at pages 501 to 526.

In support of his application to proceed in the absence of the teacher, the presenting officer provided the panel with a bundle of documents containing correspondence between the National College and Ms Smith. The panel agreed to admit these documents as NCTL documents, Bundle B, pages 1 to 48.

The presenting officer also provided the panel with a copy of a law report of the decision in **Rehman v The Bar Standards Board [2016] EWHC 1229**. The panel agreed to admit this document as an additional NCTL document as Bundle C pages 1 to 11.

## D. Summary of evidence

### Documents

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

Section 1: Chronology – page 2

Section 2: Notice of Proceedings – pages 4 to 10

Section 3: NCTL witness statements – pages 12 to 60

Section 4: NCTL documents – pages 62 to 497

Section 5: Teacher documents – pages 499 to 500

In addition, the panel agreed to accept the following:

- Additional teacher's documents which were added to section 5 of the bundle as pages 501 to 526.
- Service bundle produced by the presenting officer in support of the application to proceed in absence, which the panel designated as additional NCTL documents bundle B, pages 1 to 48
- A copy of the judgment in **Rehman v The Bar Standards Board [2016] EWHC 1229**, which the panel designated as an additional NCTL document, bundle C pages 1 to 11

The panel members confirmed that they had read all of the documents before commencing the substantive part of the hearing.

## **Witnesses**

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

Witness A, personal assistant to the headteacher at the School;

Witness B, teacher and SENCo at the School;

Witness C, teacher at the School;

Witness D, acting headteacher and former deputy headteacher at the School;

Witness E, deputy headteacher at the School;

Witness F, executive headteacher at the School;

Witness G, teacher at the School;

Witness H, teaching assistant at the School.

## **E. Decision and reasons**

The panel announced its decision and reasons as follows:

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

The panel confirms that it has read all the documents provided in the bundle in advance of the hearing.

Ms Alyson Smith became the headteacher at Phoenix Junior Academy ("the School") in June 2013. Immediately prior to this appointment, Ms Smith had been headteacher at a primary school in Dudley.

The School's Key Stage 2 SATs were completed between Monday 11 May 2015 and Thursday 14 May 2015. Medway Council provided training for the SATs exam week, and this training was held on 21 April 2015. Ms Smith and Witness E, deputy headteacher, attended this training.

Ms Smith was absent from the School from the afternoon of Thursday 14 May 2015 due to illness. Later that day, the two deputy headteachers contacted Witness F, executive headteacher, regarding concerns that they and other members of staff had about Ms Smith's conduct during SATs week, involving potential allegations of maladministration of the SATs. On Monday 18 May 2015, the deputy headteachers met with Witness F to



discuss those concerns. The following day, Witness F notified the Standards and Testing Agency ("STA") of the concerns and Witness F was instructed by the chair of governors to carry out a full investigation. A decision was subsequently made by the STA to annul the pupils' SATs results. As a consequence, the School had to notify this outcome to parents of the pupils concerned and the secondary schools that the pupils were going to.

On 21 May 2015, Ms Smith was suspended pending the investigation. Ms Smith was interviewed on 16 June 2015 as part of the investigation in the presence of her union representative and her responses were recorded. A disciplinary hearing was held on 12 August 2015. Although Ms Smith did not attend that hearing, a union representative appeared and made submissions on Ms Smith's behalf.

In considering this case, the panel has disregarded the findings made in the disciplinary investigation and proceedings. The panel has determined the case based on the evidence presented to the panel.

Although Ms Smith has not been present or represented at this hearing, the panel has considered the responses given by her during her disciplinary interview and the submissions presented on her behalf to the disciplinary hearing, in addition to the written material submitted by her to the National College.

## **Findings of fact**

The panel's findings of fact are as follows. The panel has heard evidence from eight witnesses called by the National College. The panel had the opportunity to test the evidence of each of these witnesses by questioning, including putting Ms Smith's account of events to them. The panel found each of the witnesses to be credible; their accounts were clear, consistent and candid.

### **Whilst employed at Phoenix Junior Academy, Chatham ("the School"), as the headteacher between June 2013 and August 2015:**

**In relation to the School's Key Stage 2 National Curriculum Assessments/Standard Assessment Tests ("SATs") which took place between Monday 11 May 2015 and Friday 15 May 2015, you:**

#### **1. Before the completion of the SATs tests:**

##### **a. Asked and/or allowed members of school staff to leave one or more of the tests with you to look through,**

The evidence given by both Witness B and Witness A is that on 11, 12 and 13 May 2015, Ms Smith asked them to leave an exam paper with her so that she could have a look through it. They said that requests were made in each case before the examinations had taken place. Witness D also gave evidence that he was present on 14 May 2015 when Ms Smith requested one of the exam papers.

The panel noted Ms Smith said in her disciplinary interview that on 11 and 13 May 2015 she had asked Witness B and Witness A to leave a paper with her but that this had been within a period of the one hour timescale allowed. Ms Smith said that she did not remember asking for a paper on the Tuesday. Ms Smith also said that, in relation to 11 May, she wanted to look through the passages in the paper.

The panel noted that the Key Stage 2 Test administrators guide states that test packs can only be opened up to one hour before the start of the test if a written translation is required for a maths test or a test paper needs to be adapted to meet the needs of an individual pupil. The panel noted that there is no evidence that either of these situations applied. The guidance is clear that test packs must not be opened early to allow teachers to familiarise themselves with the content of the test.

The panel finds 1a proved.

**b. Reviewed one or more of the tests,**

The evidence of Witness B and Witness A is that Ms Smith requested the exam papers in order that she could look through them. The panel also heard evidence from Witness H that, on 11 May 2015, prior to the Reading exam, Ms Smith gave her a piece of paper which Ms Smith ripped from her notebook, which contained the answers to the Reading paper. Witness C also gave evidence that on 12 May 2015, prior to the SPAG exam, Ms Smith produced a lined piece of paper which appeared to have the answers to the SPAG exam and that Ms Smith said that she had the answers to the SPAG paper but that she had not been able to work out the answers to the last two questions. Witness C said that she was then asked by Ms Smith to work out the answers to the last two questions. The panel is satisfied that Ms Smith must have reviewed the Reading and SPAG exam papers in order to formulate the answers. In addition, Witness G gave evidence that on 13 May 2015, prior to the Mental Maths exam, Ms Smith called him and another teacher, Individual A, into her office and expressed concern that the paper was too difficult. Witness G said that Ms Smith then instructed him to read the Maths paper to pupils instead of using the CD provided. Again the panel is satisfied that Ms Smith must have reviewed the exam paper in order to form a view of the difficulty of the exam.

The panel finds 1b proved.

**c. Went through one or more of the questions included within one or more of the tests with the pupils using a flipchart;**

The evidence of Witness B and Witness A is that, on 13 May 2015, as they entered the room where Ms Smith was invigilating to deliver the test papers for the Mental Maths exam, they saw that Ms Smith was going through two maths questions using a flipchart. Witness B said that she subsequently saw a spare copy of the exam paper after completion of the exam and noted that it contained similar questions to those on the flipchart that was being used by Ms Smith. Witness E said in her evidence that she was

shown the flipchart on 14 May 2015 and noted that two of the questions on the flipchart were very similar to those on the Mental Maths exam paper. The panel has seen and noted the similarity between the photograph taken by Witness E of a question on the flipchart and one of the questions on the SATs paper. The panel does not accept Ms Smith's explanation that the flipchart was only used by her after the examination had taken place as the panel prefers the evidence of Witness B and Witness A.

The panel finds 1c proved.

## **2. During the SATs tests:**

### **a. Assisted one or more pupils inappropriately by either pointing to incorrect answers and/or reading through questions with the pupils and/or advising the pupils on how to correctly answer the questions,**

The evidence of Witness H, teaching assistant, is that she invigilated examinations with Ms Smith on 11, 12 and 14 May 2015. She said that she repeatedly witnessed Ms Smith assisting pupils in these tests. This included Ms Smith pointing out mistakes, telling pupils to check answers, reading questions to pupils and confirming correct answers.

The panel found Witness H, in both her written and oral evidence, to have a clear and consistent recollection of the events. The panel noted Ms Smith's concerns regarding the reliability of Witness H's evidence, but has no doubt that she was an honest and credible witness.

The panel finds 2a proved.

### **b. Asked and/or allowed members of the school staff to assist one or more pupils inappropriately;**

Witness H said that she was repeatedly asked by Ms Smith to provide inappropriate assistance to exams that they invigilated together. She was told to help pupils and read questions out to them and to go through a question with a pupil.

Witness E also said in her oral evidence that Ms Smith kept mentioning extra support for pupils during SATs week in the SLT meetings. To the best of her recollection, Witness E said that Ms Smith said that they should look at the questions and point and say, 'read this again', or 'answer this again' if the pupil gave an incorrect answer.

The panel finds 2b proved.

### **c. Asked and/or allowed members of the School staff to read from the script, rather than use the CD provided with the tests;**

Witness E gave evidence that on 13 May 2015, Ms Smith asked all the teacher invigilators of the Mental Maths exam, which included her, not to use the CD provided by the STA and instead to read the questions to the pupils. Witness D confirmed in his oral

evidence that he was present when Ms Smith made this request. The panel heard evidence from Witness G, that on the same day, he was instructed by Ms Smith to read the Mental Maths exam to the pupils. The panel heard that, when the CD is used, pupils have to follow the times on the CD. The potential effect of not using the CD was that pupils could be given more time to complete each question.

Ms Smith's position, as presented to the disciplinary hearing, was that she did not instruct staff to read from the script, but did say that, if the CD was not working, they 'should read from the script and be scrupulous regarding timings'. Whilst noting this evidence, the panel preferred the evidence of Witness E and Witness G as to the instructions given by Ms Smith.

Paragraph 4.5.1 of the Key Stage 2 Test administrators guide requires schools to use the CD for the Mental Maths test unless there are exceptional circumstances such as a power cut (page 421). There was no evidence presented to indicate that it was necessary to read the script rather than play the CD.

The panel finds 2c proved.

### **3. Following the completion of the SATs tests:**

#### **a. Asked and/or allowed members of school staff to leave one or more sets of the completed tests with you, thereby preventing the tests from being returned to the secure cupboard before dispatch to the Standards and Testing Agency,**

Witness B and Witness A both said in their evidence that on 11 May 2015, after the second sitting of the Reading exam, they were in the process of locking the completed papers away when Ms Smith asked them to leave the papers out so that she could look at them. Witness B and Witness A said that on the following day, Ms Smith made the same request in relation to the SPAG exam papers.

At the disciplinary hearing, the submissions presented on Ms Smith's behalf were as follows: "I requested that they were left out, but never prevented them from being collated and sent. I wanted to check DFE number etc. It is totally wrong that I left them out to be marked or that I asked for the door to be locked. I was left alone, but did not ask to be left alone".

The panel noted that Ms Smith's explanation of the reason for requesting that the papers be left out was contradicted by Witness E. Witness E said in her evidence that, on 11 May 2015, she saw Ms Smith in her office marking completed SATs Reading exam papers. Witness E also noted that a piece of paper had been placed over the window leading into the office.

The panel preferred the evidence of Witness B, Witness A and Witness E to that of Ms Smith.

The panel finds 3a proved.

**b. Asked members of School staff to lock your office door whilst you reviewed one or more sets of the tests,**

Witness B and Witness A gave evidence that, on 11 May 2015, when Ms Smith asked them to leave the SATs Reading exam papers for her to look at, Ms Smith asked them to lock the office door. Witness A gave evidence that Ms Smith also asked her and Witness B to lock the door on 12 May 2015, although Witness B is unable to recall whether this request was made on that date.

The panel noted Ms Smith's submissions to the disciplinary hearing that she did not ask for the door to be locked and that, when locked, the door to the office could still be opened with a key fob. However, the panel also noted the evidence of Witness A that a limited number of senior staff had a fob that would allow them access.

Furthermore, Witness E said in her evidence that, when she saw Ms Smith in her office marking exam papers on 11 May 2015, she noted that a piece of paper had been placed over the window leading into the office.

The panel finds 3b proved.

**c. Reviewed one or more of the SATs tests,**

Witness B and Witness E both gave evidence that on 11 May 2015 they witnessed Ms Smith in her office with completed Reading test papers. Witness B said that, at the end of the day on 11 May, she and Witness A went into the office and saw Ms Smith sitting at the conference table with the pile of completed exam papers and a lined piece of paper with a number of tally marks. Witness B said that, in her presence, Ms Smith pointed to the papers and said, "things are not looking too bad". Witness E also gave evidence that, on 11 May 2015 she saw Ms Smith in her office marking completed Reading exam papers. Witness B and Witness A both said that they also witnessed Ms Smith marking the completed Maths exam papers on 14 May 2015.

Witness B, Witness D, Witness C and Witness E all gave evidence that they were present at SLT meetings on 12 and 14 May when Ms Smith had with her a piece of paper containing a list of pupil names and scores and referred to how pupils had performed. Witness G gave similar evidence about the SLT meeting on 14 May 2015.

In her submissions to the disciplinary hearing, Ms Smith said, "I have never kept a note of students' potential marks. This would be pointless and useless. I did look at a few papers and discussed the results with Witness F on the Tuesday. I could only work out a raw score. Witness F reminded me not to mark the papers'. In her oral evidence, Witness F denied that she had this conversation with Ms Smith.

The panel noted that Ms Smith's submission to the disciplinary hearing was a partial admission that she had reviewed some of the papers. In any event, the panel is satisfied by the direct evidence of Witness B, Witness E and Witness A that they witnessed Ms Smith reviewing the papers. The panel also accepted the evidence of the other named witnesses as to what Ms Smith said at the SLT meetings on 12 and 14 May 2015.

The panel finds 3c proved.

**d. Placed one or more of the tests in your desk drawer,**

Witness B and Witness A gave evidence that, when checking and collating the SPAG exam papers, they noted that two papers were missing. They said that they asked Ms Smith about this and Ms Smith then produced the papers from her desk drawer.

During her disciplinary interview, Ms Smith was asked if she had the two missing papers in her drawer. She initially responded, "I cannot recollect". When her union representative asked, "Yes or no?", Ms Smith responded, "I really do not think so". After a break in the interview, Ms Smith said that at no point did she put anything in her drawer.

The panel considered that Ms Smith's responses during the disciplinary interview were inconsistent. In any event, the panel preferred the evidence of Witness B and Witness A.

The panel finds 3d proved.

**e. Noted and/or made a list and/or tally of the potential marks for pupils,**

In the panel's reasons in relation to 3c, the panel has referred to a number of witnesses who observed Ms Smith with a piece of paper containing the names of pupils and scores, which Ms Smith commented on.

The panel has carefully considered the data tables (pages 517 to 524), which Ms Smith described in her email as 'a copy of the data [she] had on all the children'. Ms Smith further stated that this was 'a self made document and only [she] had a copy'. Ms Smith added that she had shown a copy of this document to Witness F at her disciplinary interview. The record of her interview records the following response from Ms Smith:

'Everyone had the same information - (Ms Smith had a typed sheet with her at this meeting which she said was the document she had with her at the SLT/MLT meeting) and it was a document that everyone had discussed, prior to SATs, those children who needed to convert for progress and those children who were looking for attainment. Mrs Smith reiterated that this was the document that she had at the SLT/MLT meeting that Thursday morning'.

Witness B said that when she saw Ms Smith in her office at the end of the day on 11 May 2015, Ms Smith had with her a lined piece of paper with a number of tally marks on it (bar and gate format).



Witness C, who was at the SLT meetings on 12 and 14 May 2015, described seeing Ms Smith with a two sided piece of lined paper which appeared to contain tallies of names and scores.

Witness G also gave evidence that, at the meeting on 14 May 2015, he saw Ms Smith reading from a handwritten A4 piece of paper which contained a list of names and scores based on the previous day's Mental Maths exam paper.

Witness D said that he witnessed Ms Smith at the SLT meetings reading from a piece of paper with scribbling on that looked like grids and numbers and making a comment "child X needs to do Y to get Z level".

All of these witnesses were shown the data tables at pages 517 to 524, but all said that these were not the pages that they referred to in their evidence.

The panel is satisfied, on the balance of probabilities, that the documents at pages 517 to 524 were not the documents seen by the witnesses. The panel is also satisfied that Ms Smith did make a list or tally of the potential marks for pupils as a result of her review of the completed exam papers.

The panel finds 3e proved.

**f. Asked and/or allowed members of school staff to review/mark the tests,**

Witness E said in her evidence that she was instructed by Ms Smith to mark completed SPAG papers after the exam on Tuesday 12 May 2015. Witness E said in her oral evidence that she reluctantly complied with this instruction as she was fearful of the consequences of refusing.

In her submissions to the disciplinary hearing, Ms Smith denied giving these instructions to Witness E and asserted that Witness E's evidence should not be relied upon.

The panel is satisfied that Witness E was a credible witness and that her evidence was clear, consistent and candid. The panel preferred Witness E's evidence to that of Ms Smith.

The panel finds 3f proved.

**g. On Wednesday 13 May 2015, asked and/or allowed members of school staff to remove one or more of the tests from the pile being sent to the Standards and Testing Agency because you considered that those pupils had not achieved a Level 3,**

Witness B said that on 13 May 2015 she collected the second set of Mental Maths exam papers and went to lock them away when Ms Smith asked her to leave the papers out so that she could look at them. When she later went to the office to seal the papers, Witness

B said that she was asked by Ms Smith to remove two papers from the pile as the pupils had not achieved Level 3. Witness E also witnessed this request.

The panel finds 3g proved.

**h. On Wednesday 13 May 2015, asked and/or allowed members of school staff to register one or more pupils as "B" as you considered that the pupils had not answered enough questions correctly,**

Witness A gave evidence that, under instructions from Ms Smith, she and Witness B registered two Mental Maths exam papers as "B" on the form as Ms Smith said that the pupils had not answered enough of the questions. Witness B's evidence confirmed Witness A's account.

Witness E was also a witness to this instruction by Ms Smith. Witness E added that placing "B" next to a pupil's name on the STA exam sheet meant that the pupil was 'working below' and that they did not sit the exam. She said that the School would normally notify the STA beforehand about this, but she did not believe that Ms Smith had given this notification.

The panel finds 3h proved.

**i. Took one or more of the tests from a locked cupboard.**

Witness A and Witness B said that they went to the cupboard in Ms Smith's office on the afternoon of 12 May 2015 to get the SPAG papers for the afternoon exam. As part of the security arrangements, Witness B was the sole key holder for this store cupboard which was being used only for SATs examination papers, all other contents having been removed. They found that the door to the secure cupboard was open, although the lock was still in the locked position. Witness A said that she asked Ms Smith, who was in the office at the time, why the cupboard was open and Ms Smith responded, "I pulled the handle and the cupboard opened, so you could not have locked it properly". Witness A then noted that on Ms Smith's desk were the completed morning's set of SPAG papers, which Ms Smith was looking through. Witness A confirmed in her evidence that she had definitely locked the cupboard.

Witness E gave evidence that, having been alerted to the matter; she checked the cupboard and noted that the lock was still in the locked position, although there was no evidence of damage. Witness E said that it appeared that the door had been 'yanked open'.

In her disciplinary interview, Ms Smith said that, 'the secure cupboard holding the papers had come undone' and that there was a 'dodgy catch'. The panel noted that there was no need for Ms Smith to access the secure examination store.

The panel finds 3i proved.



#### 4. By your actions set out at allegations 1, 2 and 3 above you failed to comply with the Standards and Testing Agency's guidance:

##### a. Key Stage 2 Test Administrators' Guide ("TAG") 2015,

The panel is satisfied that Ms Smith failed to comply with a substantial part of the guidance contained in the TAG, including those elements identified below. Whilst not an exhaustive list, there were deficiencies identified in the following:

##### **Preparing test materials –**

- 'Test packs can be opened up to 1 hour before the start of a particular test, but only if: a written translation is needed for a mathematics test or a test paper needs to be adapted to meet an individual pupil's needs'.

##### **Packing test scripts for marking**

- 'You are responsible for making sure your school's test scripts are collated, packed and sealed correctly, as soon as possible on the day of each test'.
- 'Any individual left alone with test materials is vulnerable to allegations of maladministration. Make sure that test scripts:
  - are collected and collated by more than one person
  - aren't left with any individual at any point'.
- **Headteacher's declaration form**

'Where possible you need to confirm that the tests have been administered in accordance with the statutory requirements as set out in the key stage 2 "Assessment and reporting arrangements".'

The panel is also satisfied that Ms Smith failed to comply with the following parts of TAG under the heading 'Guidance for test administrators'

- **Opening test packs**

'You must not open the test packs early to familiarise yourself with the test content. This can lead to allegations of maladministration and the annulment of pupils' results'.

- **At the start of a test**

'Once the test pack has been opened, you must not:

- discuss the content of the test papers with anyone

- use question-specific information to prepare pupils for the test'.
  - **Completed test scripts storage**
- 'Test scripts (the test papers containing pupils' answers) are:
- collected from the test room immediately after the test and stored securely in a locked cupboard
  - packaged as soon as possible after the test and stored securely in a locked cupboard, waiting for collection'.

The panel finds 4a proved.

#### **b. Key Stage 2 Assessment Reporting Arrangements ("ARA") 2015,**

The panel is satisfied that Ms Smith failed to comply with a substantial part of the guidance contained in the ARA, including those elements identified below. Whilst not an exhaustive list, there were deficiencies identified in the following:

**'Headteachers** – All headteachers at participating schools have a duty to ensure that:

- the requirements of the ARA are implemented in their school;
- teachers and other staff comply with the assessment and reporting arrangements'.

**'KS2 tests** – All headteachers must:

- keep the test materials secure and treat them as confidential before, during and after the test period.
- ensure that their test administrators.... administer the tests according to the published procedures'.

The panel finds 4b proved.

#### **5. Your actions set out at paragraphs 1 and/or 2 and/or 3 and/or 4 above were dishonest.**

The panel considered whether the actions of Ms Smith found proved in paragraphs 1, 2, 3 and 4 were dishonest by the standards of reasonable and honest people and, if so, whether it is more likely than not that Ms Smith realised that what she was doing was dishonest by those standards. In the context of this case, the panel does not consider that there is a difference between the standards of reasonable and honest people and the standards of reasonable and honest teachers.

The panel is satisfied that Ms Smith's actions in paragraphs 1,2, 3 and 4, were carried out with the intention of securing higher results in the SATs examinations than the pupils

would achieve had the examinations been conducted appropriately. The panel is in no doubt that these actions were dishonest according to the standards of reasonable and honest people. The panel is also satisfied that Ms Smith must have appreciated that her conduct was dishonest by those standards. In coming to this view, the panel has taken into account the fact that this was Ms Smith's second appointment as a headteacher and she had previous experience of conducting SATs examinations. Furthermore, Ms Smith had undertaken training organised by Medway Council which had been provided less than three weeks before SATs exam week. The panel is satisfied that Ms Smith was aware of the examination requirements and that she deliberately disregarded those requirements.

The panel finds allegation 5 proved based on the actions in paragraphs 1, 2, 3 and 4.

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

Having found allegations 1, 2, 3, 4 and 5 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 Ms Smith in relation to the facts found proven, involved breaches of the Teachers’ Standards. The panel considers that by reference to Part Two, Ms Smith is in breach of the following standards:

- Teachers uphold public trust in the profession and maintain high standards of ethics and behaviour, within and outside school.
- Teachers must have proper and professional regard for the ethos, policies and practices of the school in which they teach, and maintain high standards in their own attendance and punctuality.
- Teachers must have an understanding of, and always act within, the statutory frameworks which set out their professional duties and responsibilities.

The panel is satisfied that the conduct of Ms Smith amounted to serious misconduct and fell significantly short of the standards expected of the profession.

The panel has also considered whether Ms Smith's conduct displayed behaviours associated with any of the offences listed on pages 8 and 9 of the Advice. The panel has found that the offence of fraud or serious dishonesty is relevant. The Advice indicates that where behaviours associated with such an offence exist, a panel is likely to conclude that an individual's conduct would amount to unacceptable professional conduct.

The panel considers that the dishonesty in this case was serious as Ms Smith implemented a sustained and systematic plan to subvert the integrity of a national public examination and directed others to assist her. The allocation of pupil groups and invigilators, the daily changing of pupil groups based on Ms Smith's marking and review of each of their SATs papers, the coaching of pupils based on prior knowledge of the examination papers and the additional assistance provided during the examinations, all facilitated targeted intervention to inappropriately increase the proportion of pupils achieving level 4. This was enhanced by Ms Smith's attempts to conceal two pupils' SATs papers which Ms Smith deemed to have fallen below the required standard.

Accordingly, the panel is satisfied that Ms Smith is guilty of unacceptable professional conduct.

As to conduct that may bring the profession into disrepute, 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. In addition, headteachers are role models for other members of the profession.

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

The panel therefore finds that Ms Smith's actions also constitute conduct that may bring the profession into disrepute.

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

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

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

The panel has considered the particular public interest considerations set out in the Advice and having done so has found a number of them to be relevant in this case, namely: the protection of pupils and other members of the public, the maintenance of public confidence in the profession and declaring and upholding proper standards of conduct.

In light of the panel's findings against Ms Smith there is a strong public interest consideration in respect of the protection of pupils and others. A whole cohort of pupils, who had spent many hours preparing for their SATs exams had their results annulled. This would have caused significant disappointment, concern and distress to pupils and had the potential to disadvantage their future education. Members of staff working at the School were either instructed or put under pressure to breach their own professional obligations. In oral evidence, teachers and others talked of their distress at being put in this situation.

Similarly, the panel considers that public confidence in the profession could be seriously weakened if conduct such as that found against Ms Smith were not treated with the utmost seriousness when regulating the conduct of the profession. The outcomes of public examinations serve many purposes, including informing future educational progression for pupils and holding schools to account for their performance. The public expects teachers to maintain the integrity of the public examination system.

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 Ms Smith was outside that which could reasonably be tolerated.

Notwithstanding 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 Ms Smith.

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 Ms Smith. 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;
- misconduct seriously affecting the education and/or well-being of pupils, and particularly where there is a continuing risk;
- abuse of position of trust;
- dishonesty especially where there have been serious consequences, and/or it has been repeated and/or covered up;
- deliberate behaviour that undermines pupils, the profession, the school or colleagues;

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.

Ms Smith did have a previously good history and, according to Witness F, was considered to be an effective headteacher. Witness F said that she had no specific concerns about Ms Smith prior to this investigation. In Witness F's view, pupil achievement had improved during Ms Smith's tenure.

The panel accepts that, during the SATs week, Ms Smith was suffering from a physical health problem [redacted], but the consistent evidence of witnesses was that Ms Smith did not appear to be acting out of character. Although some witnesses described Ms Smith's behaviour as erratic during SATs week, they said that this behaviour was no different from normal. The panel noted that the School was facing an imminent Ofsted inspection and that the SATs outcomes would impact on the Ofsted judgment. However, this is no different to the pressure faced by headteachers and teachers in the normal course of their duties.

There was no evidence to suggest that Ms Smith was acting under duress, and in fact the panel found the teacher's actions to be calculated and dishonest.

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 Ms Smith. The sustained and serious dishonesty of Ms Smith through the entire SATs process and its impact on pupils, parents, staff and the community is a significant factor in forming that opinion. Accordingly, the panel makes a recommendation to the Secretary of State that a prohibition order should be imposed with immediate effect.

The panel went on to consider whether or not it would be appropriate to recommend that a review period of the order should be considered. The panel was mindful that the Advice 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. These behaviours include serious dishonesty. During the investigation and disciplinary interview, Ms Smith did not admit her wrongdoing and described herself as a 'victim', blaming other members of staff for maladministration and, in doing so, sought to attack their character. Whilst Ms Smith made unreserved apologies in a letter received shortly before the hearing, the panel is of the view that Ms Smith showed limited insight into the impact of her actions throughout the investigation and continues to do so.

The panel is of the view that its findings indicate that it would be proportionate in all the circumstances for the prohibition order to be recommended without provision for a review period.

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

I have given very careful consideration to this case and to the recommendations made by the panel in respect of both sanction and review period.

The panel have found all of the allegations proven, and that Ms Smith is guilty of unprofessional conduct and conduct that may bring the profession into disrepute.

This is a serious case in which the panel has found dishonesty in relation to SATs exams. A whole cohort of pupils who had spent many hours preparing for their SATs exams had their results annulled.

The panel has found that Ms Smith is in breach of the following standards:

- Teachers uphold public trust in the profession and maintain high standards of ethics and behaviour, within and outside school;
- Teachers must have proper and professional regard for the ethos, policies and practices of the school in which they teach, and maintain high standards in their own attendance and punctuality;
- Teachers must have an understanding of, and always act within, the statutory frameworks which set out their professional duties and responsibilities.

I agree with the panel that the conduct of Ms Smith amounted to serious misconduct. I am satisfied that the conduct of Ms Smith fell significantly short of the standards expected of the profession.

I have taken into account the guidance published by the Secretary of State. That guidance 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;
- misconduct seriously affecting the education and/or well-being of pupils, and particularly where there is a continuing risk;
- abuse of position of trust;
- dishonesty especially where there have been serious consequences, and/or it has been repeated and/or covered up;

- deliberate behaviour that undermines pupils, the profession, the school or colleagues.

I have considered the public interest considerations in this case. I have balanced the public interest and the interests of the teacher. I have also taken into account the need to be proportionate.

I have taken into account the mitigating factors considered by the panel. I note that the panel considers that Ms Smith's actions were calculated and dishonest, and there was no evidence to suggest that Ms Smith was acting under duress.

I support the recommendation of the panel and agree that Ms Smith should be given a prohibition order for her dishonest conduct. The sustained and serious dishonesty of Ms Smith throughout the entire SATs process and its impact on pupils, parents, staff and the community is a significant factor in forming that opinion.

I have also considered carefully the matter of a review period. This was a very serious case of exam maladministration. Ms Smith's conduct would have caused significant disappointment, concern and distress to pupils and had the potential to disadvantage their future education. The panel found that teachers and others talked of their distress at being put in this situation.

This was serious dishonesty in a school setting. Ms Smith implemented a sustained and systematic plan to subvert the integrity of a national public examination and directed others to assist her. The panel is of the view that Ms Smith showed limited insight into the impact of her actions and continues to do so.

Taking into account the guidance and all other matters, I support the recommendation of the panel that there should be no review period.

**This means that Ms Smith is prohibited from teaching indefinitely and cannot teach in any school, sixth form college, relevant youth accommodation or children's home in England.** Furthermore, in view of the seriousness of the allegations found proved against her, I have decided that Ms Smith shall not be entitled to apply for restoration of her eligibility to teach.

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

Ms Smith has a right of appeal to the Queen's Bench Division of the High Court within 28 days from the date she is given notice of this order.

A handwritten signature in black ink, appearing to be 'J. D.', written in a cursive style.



**Decision maker: Jayne Millions**

**Date: 19 September 2016**

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