



National College for  
Teaching & Leadership

# **Mr Joseph O’Connell: Professional conduct panel outcome**

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

**April 2017**

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

**Teacher:** Mr Joseph O’Connell  
**Teacher ref number:** 0650247  
**Teacher date of birth:** 10 October 1975  
**NCTL case reference:** 15393  
**Date of determination:** 20 April 2017  
**Former employer:** Brigidine School, Windsor

### **A. Introduction**

A professional conduct panel (“the panel”) of the National College for Teaching and Leadership (“the National College”) convened from 19 to 20 April 2017 at 53 to 55 Butts Road, Earlsdon Park, Coventry CV1 3BH to consider the case of Mr Joseph O’Connell.

The panel members were Mr Ryan Wilson (teacher panellist – in the chair), Dr Angela Brown (lay panellist) and Mr John Pemberton (former teacher panellist).

The legal adviser to the panel was Ms Patricia D’Souza of Eversheds Sutherland (International) LLP.

The presenting officer for the National College was Ms Kayleigh Brooks of Browne Jacobson LLP.

Mr Joseph O’Connell 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 30 January 2017.

It was alleged that Mr Joseph O'Connell was guilty of unacceptable professional conduct and/or conduct that may bring the profession into disrepute in that when completing an application form for Brigidine School Windsor around November 2012 and/or whilst employed as a Teacher at the Brigidine School Windsor, he:

1. Failed to disclose;
  - a. His employment at the Foxborough Primary School, between January 2011 and January 2012;
  - b. That he had previously been dismissed for gross misconduct whilst employed at the Foxborough Primary School;
2. Acted with a lack of professional integrity and/or dishonestly by;
  - a. Trying to conceal and/or hide his previous employment at Foxborough Primary School;
  - b. Trying to conceal and/or hide that he had been previously dismissed by the Foxborough Primary School for gross misconduct.

These allegations are not admitted.

## **C. Preliminary applications**

The panel has considered whether this hearing should continue in the absence of Mr O'Connell.

The panel has determined to exercise its discretion under Paragraph 4.29 of the Teacher misconduct: Disciplinary procedures for the teaching profession, (the "Procedures") to proceed with the hearing in the absence of Mr O'Connell.

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

In making its decision, the panel has noted that Mr O'Connell may waive his right to participate in the hearing. The panel has taken account of the various factors drawn to its attention from the case of R v Jones [2003] 1 AC1.

The presenting officer submitted that the address for Mr O'Connell included in the Notice of Proceedings is the last known address for Mr O'Connell. The trace report included in the bundle states that the tracing agent is unable to confirm Mr O'Connell's residency at the address included in the Notice of Proceedings and there were no current occupants noted. Previous addresses were located for Mr O'Connell but no further more recent addresses other than the one included in the Notice of the Proceedings have been located. The Notice of Proceedings was sent to the address specified by Mr O'Connell in his application to Brigidine School ("the School"). This is the same address stated by the School in the Notice of Referral form sent to the National College which is dated 1 July 2016. The panel is therefore satisfied that the National College has complied with the service requirements of paragraph 19 a to c of the Teachers' Disciplinary (England) Regulations 2012, (the "Regulations").

The panel had regard to a proof of delivery receipt, included in the bundle, which confirms that an item sent by the National College was delivered to Mr O'Connell's last known address on 31 January 2017. The presenting officer submitted that this item was the Notice of Proceedings. With the Notice of Proceedings being dated 30 January 2017 more than 8 weeks' notice of this hearing has been given. The presenting officer further submitted that on 2 February 2017 a further copy of the Notice of Proceedings was emailed to Mr O'Connell's email address (which was stated by him in his application to the School). The Panel noted that a further letter was sent by the National College to Mr O'Connell's last known address on 27 February 2017 which also enclosed the Notice of Proceedings. The panel considered that the National College had made extensive efforts to notify Mr O'Connell of these proceedings.

The panel is satisfied that the Notice of Proceedings complies with paragraphs 4.11 and 4.12 of the Procedures.

The presenting officer submitted that Mr O'Connell has failed to engage in these proceedings and he has provided no reasons for his absence today. The presenting officer further submitted that there is no evidence that an adjournment would make it more likely that Mr O'Connell would attend this hearing were it adjourned to a further date. The panel considers that it is more likely than not that Mr O'Connell has waived his right to be present at the hearing in the knowledge of when and where the hearing is taking place.

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

The panel has had regard to the extent of the disadvantage to Mr O'Connell in not being able to give his account of events, having regard to the nature of the evidence against him. The panel has the benefit of the notes of the School's investigation and disciplinary process included in the bundle and as a result is able to ascertain the lines of defence. The panel has some evidence addressing mitigation in the documents included in the bundle and is able to take this into account at the relevant stage. The panel has noted that all witnesses relied upon are to be called to give evidence and the panel can test that evidence in questioning those witnesses, considering such points as are favourable to Mr O'Connell, as are reasonably available on the evidence. The panel is also able to exercise vigilance in making its decision, taking into account the degree of risk of the panel reaching the wrong decision as a result of not having heard Mr O'Connell's account.

The panel also notes that there are witnesses present at the hearing who are prepared to give evidence, and that it would be inconvenient for them to return again.

The panel has had regard to the seriousness of this case, and the potential consequences for Mr O'Connell and has accepted that fairness to Mr O'Connell is of prime importance. However, it considers that it is more likely than not that Mr O'Connell has waived his right to appear. Therefore, by taking such measures referred to above to address that unfairness insofar as is possible; and taking account of the inconvenience an adjournment would cause to the witnesses; on balance, these are serious allegations and the public interest in this hearing proceeding within a reasonable time is in favour of this hearing continuing today.

## **D. Summary of evidence**

### **Documents**

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

Section 1: Chronology and anonymised pupil list – pages 1 to 5

Section 2: Notice of Proceedings and Response – pages 6 to 22

Section 3: National College's witness statements – pages 23 to 34

Section 4: National College's documents – pages 35 to 126

Section 5: Teacher documents – none received

The panel queried whether a certain page of the application form completed by Mr O'Connell for the School should be redacted. The presenting officer submitted that this application form goes to the heart of the allegations. The presenting officer submitted that

the bundle was sent to Mr O'Connell by her at an early stage in these proceedings and Mr O'Connell has not provided any comments relating to redaction. The presenting officer submitted that it is appropriate for the panel to have the full content of the application form in an unredacted form, however the presenting officer does not intend to draw the panel's attention to the page which is the subject of the query raised by the panel. The panel was content for the full copy of the application form to remain in the bundle.

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

## **Witnesses**

The panel heard oral evidence from:

- Witness A - The retired headteacher of Brigidine School Windsor
- Witness B – head of business affairs at the School.

## **E. Decision and reasons**

The panel announced its decision and reasons as follows:

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

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

Mr O'Connell was employed from 1 January 2013 at the Brigidine School in Windsor in a part-time role, and was later appointed to a full time junior teacher role at the School in May 2013 to commence from 1 September 2013. A parent of a pupil at the School notified a member of staff on 27 April 2015 that she was aware that Mr O'Connell had been dismissed from his previous role at Foxborough Primary School ("Foxborough"). The School made contact with Foxborough who confirmed, in May 2015, that Mr O'Connell had been employed there from 1 January 2011 and he was suspended and later dismissed on 16 January 2012 following four allegations of gross misconduct. The School conducted an investigative meeting on 22 May 2015 and Mr O'Connell was suspended on full pay whilst the investigation continued. A disciplinary hearing was held on 29 May 2015 and Mr O'Connell was dismissed for gross misconduct by the School.

## **Findings of fact**

The panel's findings of fact are as follows:

The panel has found the following particulars of the allegations against you proven, for these reasons:

**When completing an application form for Brigidine School Windsor around November 2012 and/or whilst employed as a Teacher at the Brigidine School Windsor, you:**

- 1. Failed to disclose;**
  - a. Your employment at the Foxborough Primary School, between January 2011 and January 2012;**
  - b. That you had previously been dismissed for gross misconduct whilst employed at the Foxborough Primary School;**

The panel had regard to Mr O'Connell's application to the School included in the bundle. It appears from his employment history that Mr O'Connell did not state where he had been working, or a reason for not working, between January 2011 and January 2012. A letter from Foxborough Primary School dated 22 May 2015 which is addressed to the School, included in the bundle, states that Mr O'Connell's employment at Foxborough started on 1 January 2011 and he was subsequently dismissed for gross misconduct on 16 January 2012.

The panel heard oral evidence from Witness A who is the former headteacher of the School and who conducted the interview with Mr O'Connell before he was appointed to the School. In his oral evidence, Witness A stated that it was important to check an applicant's working history and the reasons why an applicant had left a previous role so that the School could determine whether there are any reasons that might mean it would be inappropriate for them to be appointed to a role within the School. In his witness statement, Witness A confirmed that a Code A form, which is included in the bundle, was initiated and partially completed by him and two other members of staff. A Code A form is a series of "checks and balances" that the School is required to undertake before appointing someone to a role.

When questioned by the presenting officer, Witness A confirmed that the interview he conducted with Mr O'Connell was about 50 minutes long. In his witness statement, Witness A stated that during the interview with Mr O'Connell he questioned him about his previous history as Mr O'Connell had "gone in and out of teaching". There was one significant gap in the application form before Mr O'Connell was employed at a school from February 2012. When Witness A asked Mr O'Connell about this Mr O'Connell stated that he had been taking care of relatives. In his oral evidence, Witness A stated that Mr O'Connell's response relating to the gap in his employment history was satisfactory.

During this same interview, Witness A asked Mr O'Connell if there were any low points in his career he would like to tell the interview panel about and Mr O'Connell stated that there was nothing in particular. It was Witness A's oral evidence that this was an opportunity for Mr O'Connell to raise with him the fact that he had been dismissed from his previous role that he undertook between January 2011 and January 2012 at



Foxborough. Further, in his oral evidence, Witness A stated that had he been aware of the reasons for his dismissal, he would not have selected Mr O'Connell for interview.

In her oral evidence, Witness B stated that the then headteacher of the School had a conversation with Parent A relating to Mr O'Connell on 27 April 2015 and the headteacher relayed this conversation to Witness B later the same day. In her statement, Witness B indicated Foxborough was contacted for further information relating to the allegation that Mr O'Connell had been dismissed by this school for gross misconduct. A letter of response was received from Foxborough which is included in the bundle.

Further in her oral evidence, Witness B stated that when she was interviewing Mr O'Connell on 22 May 2015, Mr O'Connell noticed that she had a letter from Foxborough. Mr O'Connell subsequently admitted that he had worked at Foxborough. Mr O'Connell was not upset during this interview. He was calm, embarrassed and he did not deny that he had been dismissed from Foxborough for gross misconduct. In her statement, Witness B stated that Mr O'Connell said that he had been dismissed from Foxborough for "improper use of the internet" and that he had left any reference to Foxborough out of his application to the School as he knew "he would not get the job if he put it on the application form". He further stated that he did this "on the advice of the past headteacher of Foxborough school". Witness B's further oral evidence was that Mr O'Connell stated that he had an email from Foxborough confirming this, but this email was never produced to the School despite this being requested by the School. Witness B further stated to the panel that the School did not follow up with the former headteacher of Foxborough whether he had provided this advice to Mr O'Connell as Witness B was unclear of how to get a hold of this former headteacher.

Taking all the available evidence into account, the panel determined that it was more likely than not that Mr O'Connell had failed to disclose either in his application form dated 1 November 2012 or during his interview or whilst he was a teacher at the School that he had been employed at Foxborough Primary School, between January 2011 and January 2012. The panel also determined, on the balance of probabilities, that Mr O'Connell failed to disclose that he had previously been dismissed for gross misconduct from Foxborough. The panel therefore finds allegations 1.a. and 1.b. proven.

**2. Acted with a lack of professional integrity and/or dishonestly by;**

**a. Trying to conceal and/or hide your previous employment at Foxborough Primary School;**

**b. Trying to conceal and/or hide that you had been previously dismissed by the Foxborough Primary School for gross misconduct.**

In her closing submissions, the presenting officer referred the panel to the declaration included on the School's application form which Mr O'Connell completed on 1 November 2012. In signing the declaration Mr O'Connell, as the applicant, was confirming that the information he had given on the application was true and correct to the best of his

knowledge and that he understood that providing false information is an offence which could result in any application being rejected or summary dismissal.

When questioned by the panel, Witness A's oral evidence was that he took a "dim view" of Mr O'Connell's conduct and he would not have appointed Mr O'Connell to the junior school teacher role if he had been aware of his dismissal from Foxborough for gross misconduct. Witness A considers that Mr O'Connell's conduct was "unforgiveable" as it would have been obvious to Mr O'Connell that he should disclose his reasons for leaving Foxborough in his application. If Mr O'Connell had revealed this during his interview, when given the opportunity to describe a low point in his career, then Witness A would have had the chance to probe the reasons for his dismissal.

When questioned further by the panel, Witness B stated that in her initial investigative interview with Mr O'Connell on 22 May 2015, Witness B formed an understanding that Mr O'Connell had admitted to deliberately withholding important information. She felt that there may be a possible case of "misrepresentation" which would need to be investigated further in a disciplinary process. In her oral evidence, Witness B stated that the School's application form asks applicants to reveal details of all previous employment or periods of unemployment and the applicant must sign a declaration to confirm that the information provided is accurate. It was Witness B's opinion that Mr O'Connell had admitted to withholding information relating to his employment and dismissal from Foxborough.

Taking all the evidence into account, the panel was satisfied, on the balance of probabilities, that Mr O'Connell both tried to conceal and/or hide his previous employment at Foxborough and that he had been previously dismissed for gross misconduct from this same school. The panel therefore found the sub-particulars of allegations 2.a. and 2.b. proven.

#### The stem of allegation 2 in respect of integrity

The presenting officer drew the panel's attention to the case of *Newell-Austin v Solicitors Regulation Authority* [2017] EWHC 411 (Admin) ("the Newell-Austin case"). Both the presenting officer and legal advisor referred to the following principles which the Court ruled apply when considering whether a practitioner has acted without integrity:

"1) Integrity connotes moral soundness, rectitude and steady adherence to an ethical code.

2) ...Lack of integrity is capable of being identified as present or not by an informed tribunal by reference to the facts of a particular case.

3) Lack of integrity and dishonesty are not synonymous. A person may lack integrity even though not established as being dishonest..."

The legal advisor also advised the panel that the judge further stated in the *Newell-Austin* case that "by contrast with the test of dishonesty, the test of "lack of integrity" is an

objective test alone... There is no requirement that a [professional] must “subjectively” realise that his conduct lacks integrity.”

However, the legal advisor also drew the panel’s attention to a more recent case by the name of *Malins v Solicitors Regulation Authority* [2017] EWHC 835 (Admin) (“the Malins case”) in which the judge ruled that “In my judgment,...the legal and dictionary definitions of the words honesty and integrity are aligned and that they are synonyms. It means that dishonesty and integrity are antonyms...Want of integrity and dishonesty are not only the same thing but must be proved to the same standard, in my judgment.” The legal advisor advised that this latter judgment suggests that integrity has to be proved to the same standard as dishonesty i.e. by way of an objective and subjective test. The legal advisor further advised the panel that the Malins case does not overrule the Newell-Austin case as they are both decisions of the High Court and effectively sit alongside each other. Therefore, it is a matter for the panel to determine which features of the test for integrity should apply to this case i.e. whether it is purely an objective test or both an objective and subjective test.

The presenting officer submitted that Mr O’Connell’s explanation that he was advised not to reveal details relating to his employment and dismissal from Foxborough by the former headteacher is not relevant to the objective test relating to integrity.

Taking all the evidence into account, the panel determined that the objective test relating to the allegation of integrity was met. A reasonable person would consider that Mr O’Connell, as a member of the teaching profession, should provide a clear and accurate employment history. This should also include explanations for any period not worked and reasons for leaving a particular role.

The presenting officer submitted that if the panel consider that the subjective test must be satisfied in order to establish integrity then, in her submission, Mr O’Connell’s signing of the declaration on the application form for the School and his comments in the investigative interview with Witness B, demonstrates that he was subjectively aware that he was acting with a lack of professional integrity. The presenting officer further submitted that Mr O’Connell knew if he revealed the fact of his previous dismissal for gross misconduct it would have been unlikely that he would have been appointed. The panel was persuaded by the presenting officer’s submissions. Therefore, the panel found that the subjective test for integrity was also met.

The panel therefore determined that Mr O’Connell acted with a lack of professional integrity in the application form, interview process and whilst working at the School, in that he concealed or hid the fact of his previous employment at Foxborough and that he had previously been dismissed for gross misconduct from Foxborough.

### The stem of allegation 2 in respect of dishonesty

The legal advisor advised the panel that it is required to have regard to a two-stage test consisting of objective and subjective limbs that was first set out in the case of *R v Ghosh / Twinsectra Limited v Yardley and Others*. Unfortunately, the objective limb of the test and whether the standard to be applied is the standard of 'reasonable and honest members of the profession' or 'reasonable and honest people' is now the subject of uncertainty as a result of conflicting case law. The legal advisor advised the panel to first consider whether there is any evidence that the standard of reasonable and honest teachers differs in any way from the standard of reasonable and honest people when considering the objective test.

If the panel finds that the objective test is met, it must go on to determine whether it is more likely than not that Mr O'Connell realised that what he was doing was, by those standards, dishonest, i.e. the subjective test. Only if the answer to both of these questions is 'yes' can an allegation of dishonesty be established by the panel.

The *Twinsectra* case also made clear that a person should not escape a finding of dishonesty because he sets his own standards of dishonesty and does not regard as dishonest what he knows would offend the normally accepted standards of honest conduct.

The panel considered that there is no evidence in this case that the standard of reasonable and honest teachers differs in any way from the standard of reasonable and honest people. In the panel's view, both reasonable and honest teachers and people would regard Mr O'Connell's concealing or hiding the fact of his previous employment at Foxborough, and that he had been previously dismissed for gross misconduct, as dishonest. The objective test was therefore met.

The panel also considered that the subjective test was met. The declaration on the application form completed by Mr O'Connell clearly stated that providing false information could lead to an application being rejected or summary dismissal. In addition, section 5 of this form states that all applicants must supply a full history in chronological order with start and end dates of all activities, employment, self-employment and any periods of unemployment and reasons for leaving each role. The panel was persuaded by the presenting officer's submission that Mr O'Connell deliberately chose not to reveal relevant information relating to Foxborough as he knew he would not be appointed to the School if he did so.

The panel considered it was more likely than not, Mr O'Connell would have been aware that he was required to reveal his full employment history and reasons for leaving each role, both in the application and interview process and whilst he was a teacher at the

School. In the panel's view, Mr O'Connell took a conscious decision to conceal or hide this information and therefore the allegation of dishonesty is found proven.

As the panel finds that Mr O'Connell has acted with a lack of professional integrity and dishonesty, the stem of allegation 2 and the entirety of allegations 2.a. and 2.b. are found proven.

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

Having found all of the allegations to have been proven, the panel has gone on to consider whether the facts of those proven allegations amount to unacceptable professional conduct and/or conduct that may bring the profession into disrepute.

In doing so, the panel has had regard to the document Teacher misconduct: The prohibition of teachers, which the panel refers to as "the Advice".

The panel is satisfied that the conduct of Mr O'Connell in relation to the facts found proven, involved breaches of the Teachers' Standards. The panel considers that by reference to Part Two, Mr O'Connell 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.

The panel is satisfied that the conduct of Mr O'Connell fell significantly short of the standards expected of the profession. He exercised a lack of professional integrity and acted dishonestly when he deliberately failed to reveal the fact of his employment at Foxborough and that he had been dismissed for gross misconduct from this school.

The panel has also considered whether Mr O'Connell's conduct displayed behaviours associated with any of the offences listed on pages 8 and 9 of the Advice. The panel has found that Mr O'Connell undertook a course of conduct where he tried to conceal or hide the fact of his employment and dismissal at Foxborough. The panel considers that 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.

Accordingly, the panel is satisfied that Mr O'Connell 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.

The panel find that Mr O'Connell's actions were not examples of behaviour expected of a role model and that they potentially damaged the public's perception of the teaching profession. Therefore, this constitutes conduct that may bring the profession into disrepute.

Having found the facts of particulars 1.a. to 1.b. and 2.a. to 2.b. of the allegations proved, the panel further finds that Mr O'Connell's conduct amounts to both unacceptable professional conduct and conduct that may bring the profession into disrepute.

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

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

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

The panel has considered the particular public interest considerations set out in the Advice and having done so has found a number of them to be relevant in this case.

The presenting officer submitted that Mr O'Connell's failure to provide an honest account of his previous employment history and the fact of his dismissal for gross misconduct, is in the presenting officer's submission a risk to the protection of pupils. The panel did not agree.

The panel considered that the maintenance of public confidence in the profession, declaring and upholding proper standards of conduct and the interest of retaining Mr O'Connell in the profession were relevant in this case.

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

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

The panel considered that there was a public interest consideration in retaining Mr O'Connell in the profession, since no doubt has been cast upon his abilities as an educator, and it is the panel's opinion that he could make a valuable contribution to the profession.

In view of 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'Connell.

In carrying out the balancing exercise, the panel has considered the public interest considerations both in favour of and against prohibition as well as the interests of Mr O'Connell. 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;
- 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 considered there was no evidence that Mr O'Connell's actions were not deliberate or that Mr O'Connell was acting under any form of duress. In fact, the panel found Mr O'Connell's actions to be calculated, in that he deliberately concealed the fact of his dismissal.

The presenting officer submitted that there are no previous disciplinary orders relating to Mr O'Connell.

Although there were no character statements included in the bundle relating to Mr O'Connell's previous teaching history or capabilities, Witness A's oral evidence was that Mr O'Connell was full of life and energetic and an "extraordinarily talented" teacher. Witness A further stated, in oral evidence, that the teacher that conducted a lesson observation at the application stage, who was an outstanding teacher herself, had told Witness A that she had never seen such a "good" teacher. This teacher was "staggered" that the children Mr O'Connell taught in this lesson observation understood a complex mathematical issue relating to probability. The children enjoyed his teaching. Witness A further stated that Mr O'Connell volunteered to undertake extra school activities such as sports days, assemblies and drama.

Further in his oral evidence, Witness A stated that he regularly watched Mr O'Connell's lessons and was impressed at his ability to enable and encourage children, lacking in

confidence, to conduct proficient oral presentations. As far as Witness A was aware, Mr O'Connell was well regarded by staff and pupils responded well to his teaching.

When questioned by the panel, Witness B stated in oral evidence that she had no knowledge of Mr O'Connell's teaching capabilities.

The panel first considered whether it would be proportionate to conclude this case with no recommendation of prohibition, considering whether the publication of the findings made by the panel is sufficient. The panel is of the view that, applying the standard of the ordinary intelligent citizen, recommending no prohibition order is not a proportionate and appropriate response. Recommending that publication of adverse findings is sufficient in the case would unacceptably compromise the public interest considerations present in this case, despite the severity of consequences for Mr O'Connell of prohibition.

The panel is of the view that prohibition is both proportionate and appropriate. The panel has decided that the public interest considerations outweigh the interests of Mr O'Connell. Covering up the fact he had been employed at Foxborough and dismissed for gross misconduct was the 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 decide to recommend that a review period of the order should be considered. The panel was mindful that the Advice states that a prohibition order applies for life, but there may be circumstances in any given case that may make it appropriate to allow a teacher to apply to have the prohibition order reviewed after a specified period of time that may not be less than 2 years.

The Advice indicates that there are behaviours that, if proven, would militate against a review period being recommended. One of these behaviours includes serious dishonesty. Even though the panel has found that serious dishonesty was relevant in this case, the panel does not consider that this should render it inappropriate for it to consider recommending a review period in this case. Witness A's oral evidence relating to Mr O'Connell's teaching capability was a significant factor in the panel's decision relating to this.

The panel found Witness B's oral evidence relating to Mr O'Connell's demeanour and manner in the initial investigative interview she conducted with Mr O'Connell credible. Mr O'Connell was calm and embarrassed about his conduct and he openly admitted to Witness B that he had worked previously at Foxborough. The panel noted from the record of the disciplinary hearing on 29 May 2015, included in the bundle, that Mr O'Connell's representative submitted that Mr O'Connell was "mortified" about the situation and he "had a moment of weakness". It was also noted by the panel that the record of Mr O'Connell's interview with Witness B on 22 May 2015, reflects Mr O'Connell stating that he "did not mean to mislead". The record of this interview also reflects



Witness B stating that Mr O'Connell's continued co-operation and patience was appreciated. The panel considered that this was evidence that Mr O'Connell co-operated with the School's investigation. This, in the panel's view, was evidence that Mr O'Connell had demonstrated some insight and remorse relating to his conduct.

The panel also considered that Mr O'Connell's actions amounted to an overall single incident of dishonesty that was not, in the panel's view, repeated. Therefore, taking all available evidence into account, the panel felt its findings indicated a situation in which a review period would be appropriate. As such the panel decided that it would be proportionate in all the circumstances for the prohibition order to be recommended with provision for a review period.

Although the panel found Mr O'Connell's conduct to have been unacceptable and serious, the fact that Mr O'Connell was regarded as an "extraordinary" and "talented" teacher lead the panel to conclude that the public interest would be served if Mr O'Connell were permitted the opportunity to be able to apply to set aside a prohibition order within a period of three years, if he so wished. The panel considered this was a sufficient period of time during which Mr O'Connell may be able to demonstrate further insight over his inappropriate conduct and remediation.

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

I have given very careful consideration to this case and to the recommendation of the panel in respect of sanction and review period.

In considering this case I have given very careful attention to the advice that is published by the Secretary of State concerning the prohibition of teachers.

In this case the panel has found the allegations proven and found that those proven facts amount to unacceptable professional conduct and conduct that may bring the profession into disrepute. The panel has made a recommendation to the Secretary of State that Mr O'Connell should be the subject of a prohibition order, with a review period of three years.

In particular the panel has found that Mr O'Connell 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.

The panel is satisfied that the conduct of Mr O'Connell fell significantly short of the standards expected of the profession. He exercised a lack of professional integrity and

acted dishonestly when he deliberately failed to reveal the fact of his employment at Foxborough and that he had been dismissed for gross misconduct from this school.

The panel has also considered whether Mr O'Connell's conduct displayed behaviours associated with any of the offences listed on pages 8 and 9 of the Advice. The panel has found that Mr O'Connell undertook a course of conduct where he tried to conceal or hide the fact of his employment and dismissal at Foxborough. The panel considers that 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.

I have to determine whether the imposition of a prohibition order is proportionate and in the public interest. In considering that for this case I have considered the overall aim of a prohibition order which is to protect pupils and to maintain public confidence in the profession. I have considered the extent to which a prohibition order in this case would achieve that aim taking into account the impact that it will have on the individual teacher. I have also asked myself whether or not a less intrusive measure, such as the published finding of unacceptable professional conduct and conduct that may bring the profession into disrepute, would itself be sufficient to achieve the overall aim. I have to consider whether the consequences of such a publication are themselves sufficient. I have considered therefore whether or not prohibiting Mr O'Connell, and the impact that will have on him, is proportionate.

In this case I have considered the extent to which a prohibition order would protect children. The panel has stated clearly that they do not consider this case involves risk to children. I agree. I have gone on to consider the extent to which a prohibition order would maintain public confidence in the profession. The panel has said that it "considered that the maintenance of public confidence in the profession, declaring and upholding proper standards of conduct and the interest of retaining Mr O'Connell in the profession were relevant in this case."

The panel observe, "The panel considered that there was a public interest consideration in retaining Mr O'Connell in the profession, since no doubt has been cast upon his abilities as an educator, and it is the panel's opinion that he could make a valuable contribution to the profession."

The panel also considers the behaviours in this case. 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;

I am particularly mindful of the finding of dishonesty in this case and the impact that such a finding has on the reputation of the profession.

I have considered that the public has a high expectation of professional standards of all teachers and that failure to impose a prohibition order might be regarded by the public as a failure to uphold those high standards. In weighing these considerations I have considered the matter from the point of view of an “ordinary intelligent and well-informed citizen.”

I have considered whether the publication of a finding of unacceptable professional conduct, in the absence of a prohibition order, can itself be regarded by such a person as being a proportionate response to the misconduct that has been found proven in this case.

I have also considered the impact of a prohibition order on Mr O’Connell himself. I have noted the panel’s comments on Mr O’Connell. A prohibition order would also clearly deprive the public of his contribution to the profession for the period that it is in force.

In this case I have placed considerable weight on the panel’s comments concerning his dishonesty. The panel has said, “ Covering up the fact he had been employed at Foxborough and dismissed for gross misconduct was the significant factor in forming that opinion.”

In my view, having weighed up all these factors it is necessary to impose a prohibition order in order to maintain public confidence in the profession. A published decision does not in my view satisfy the public interest requirement concerning public confidence in the profession.

For these reasons I have concluded that a prohibition order is proportionate and in the public interest in order to achieve one of the aims which a prohibition order is intended to achieve.

I have gone on to consider the matter of a review period. In this case the panel has recommended a 3 year review period.

I have considered the panel’s comments: “The panel considered that this was evidence that Mr O’Connell co-operated with the School’s investigation. This, in the panel’s view, was evidence that Mr O’Connell had demonstrated some insight and remorse relating to his conduct. “

The panel also considered that Mr O’Connell’s actions amounted to an overall single incident of dishonesty that was not, in the panel’s view, repeated.

The panel has also said that a 3 year review period would be “a sufficient period of time during which Mr O’Connell may be able to demonstrate further insight over his inappropriate conduct and remediation.”

I have considered whether a 3 year review period reflects the seriousness of the findings and is a proportionate period to achieve the aim of maintaining public confidence in the profession. In this case, weighing his contribution as a teacher and the level of dishonesty, I support that recommendation and believe that a two year review period is not sufficient to achieve the aim of maintaining public confidence in the profession.

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

**This means that Mr Joseph O'Connell 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 5 May 2020, 3 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 Joseph O'Connell remains prohibited from teaching indefinitely.

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

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



**Decision maker: Alan Meyrick**

**Date: 28 April 2017**

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