



National College for
Teaching & Leadership

Mr David Fitzgerald: Professional conduct panel outcome

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

October 2017

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

Teacher: Mr David Fitzgerald

Teacher ref number: 0976183

Teacher date of birth: 19 July 1987

NCTL case reference: 15703

Date of determination: 11 October 2017

Former employer: Greenacre Academy Trust (the “School”), Kent.

A. Introduction

A professional conduct panel (“the panel”) of the National College for Teaching and Leadership (“the National College”) convened on 9 October 2017 to 11 October 2017 at 53 to 55 Butts Road, Earlsdon Park, Coventry CV1 3BH to consider the case of Mr Fitzgerald.

The panel members were Dr Robert Cawley teacher panellist – in the chair, Mr Chris Rushton lay panellist and Ms Karen McArthur lay panellist.

The legal adviser to the panel was Mrs Natascha Gaut of Eversheds Sutherland (International) LLP solicitors.

The presenting officer for the National College was Ms Louisa Atkin of Browne Jacobson LLP solicitors.

Mr Fitzgerald was not present and was not represented.

The hearing took place in public and was recorded.

B. Allegations

The panel considered the allegation(s) set out in the Notice of Proceedings dated 12 June 2017.

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

Whilst employed as a teacher at the School, during the 2015/16 academic year;

1. in respect of the A452 Practical Investigation and/or the A453 Programming Project controlled assessment(s), you provided improper assistance to one or more pupils including by;

- a. commenting on and/or correcting their work;
- b. sharing resources with pupils on the student shared area.

2. you submitted marks to the Examining Board in respect of;

- a. Pupil A; and/or
- b. Pupil B; and/or
- c. Pupil C

which did not reflect the mark that pupil would have received for their own work in respect of the A452 Practical Investigation and/or the A453 Programming Project controlled assessment(s);

3. for the purposes of the sample requested by the Examining Board in relation to the A452 Practical Investigation and/or the A453 Programming Project controlled assessment(s), you falsified work for one or more pupils, including;

- a. Pupil A; and/or
- b. Pupil B;

4. your conduct was dishonest;

- a. in respect of 2a and/or 2b and/or 2c above, in that you deliberately submitted higher marks than the work of Pupil A and/or Pupil B and/or Pupil C deserved to the Examining Board;
- b. in respect of 3a and/or 3b above, in that you deliberately falsified work for the controlled assessments of Pupil A and/or Pupil B, intending that the same would justify the marks you have previously submitted to the Examining Board;

5. you acted dishonestly, in that you sought to conceal one or more aspects of your wrongdoing as set out above by;
 - a. submitting information to the Examining Board without involving/informing other members of staff;
 - b. declaring on the OCR Centre Authentication Form that pupils had completed their controlled assessment work under the required conditions, when you knew or should have known that was not the case.

In advance of the hearing, Mr Fitzgerald did not respond to the allegations and therefore the allegations have been taken to have not been admitted.

C. Preliminary applications

The panel considered whether this hearing should continue in the absence of Mr Fitzgerald.

After hearing submissions from the presenting officer and reviewing the additional documentation submitted by the presenting officer, the panel was satisfied that the National College had complied with the service requirements of regulation 19.a. to 19.c. of the Teacher's Disciplinary (England) Regulations 2012 (the "regulations"). The panel was also satisfied that the Notice of Proceedings complies with paragraphs 4.11 and 4.12 of the Teacher misconduct - Disciplinary procedures for the teaching profession ("the Procedures").

The panel determined to exercise its discretion under paragraph 4.28 of the Procedures to proceed with the hearing in the absence of the teacher.

In making its decision, the panel noted that the teacher may waive the right to participate in the hearing. The panel understood that its discretion to commence a hearing in the absence of the teacher has to be exercised with the utmost care and caution and that its discretion is a severely constrained one.

The panel had taken account of the various factors drawn to its attention from the case of *R V Jones* [2003] 1 AC1. The panel had reviewed the documentation provided by the presenting officer with regards to this application and paid particular attention to the trace report created on the 27 July 2017. The panel were satisfied that the presenting officer had attempted to correspond with Mr Fitzgerald through all available forms of communication such as emails, calls and letters, to all addresses found within the trace report. This was found evidenced within the documentation submitted by the presenting officer. Whilst Mr Fitzgerald did not respond to any of this communication the panel did note that a letter had been signed for on the 1 November 2016. The panel noted that the signature was not Mr Fitzgerald's. However, after reviewing all of the evidence highlighted above, the panel considered that Mr Fitzgerald had waived his right to be

present at the hearing in the knowledge of when and where the hearing was taking place. The panel considered that the NCTL took all reasonable steps open to it to confirm whether Mr Fitzgerald would be attending and whether he would be legally represented.

There is no indication that an adjournment would result in Mr Fitzgerald attending the hearing.

The panel also had regard to the extent of the disadvantage to Mr Fitzgerald in not attending, and proceeded with extreme caution. The panel noted that all of the witnesses relied upon were called to give evidence and the panel would be able to test that evidence in questioning those witnesses, considering such points as are favourable to the teacher, as are reasonably available on the evidence. The panel will exercise its 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 the teacher's account.

The panel also noted that there are a number of witnesses who will be present at the hearing, who are prepared to give evidence, and that it would be inconvenient and potentially distressing for them to return again. Further there would be additional costs to the public purse in adjourning.

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

The panel also considered an application to admit additional documentation from the presenting officer, namely the bundle of correspondence/documents relevant to the proceeding in absence application, the signed witness statement of Witness A and the signed witness statement of Witness D. These documents were not served in accordance with the requirements of paragraph 4.20 of the Procedures, and as such the panel was required to decide whether those documents should be admitted under paragraph 4.25 of the Procedures at the discretion of the panel. The panel took into account the representations from the presenting officer and considered that the bundle of documentation relating to the proceeding in absence application was pertinent to the application. The panel also took into account the fact that Mr Fitzgerald would have been aware that the witnesses were being called and that the witness would be giving live evidence and therefore their evidence could be tested.

Under paragraph 4.18 of the Procedures, the panel may admit any evidence, where it is fair to do so, which may reasonably be considered to be relevant to the case. The panel were satisfied that the documents were relevant to the proceedings and these documents were added to the bundle and paginated as pages 15a to 15x, 23a to 23d and 23e to 23g

respectively. The panel also admitted, during the hearing, a clearer version of page 171 which was paginated as 171a.

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 2 to 6

Section 2: Notice of Proceedings and response – pages 8 to 15x

Section 3: NCTL witness statements – pages 17 to 23g

Section 4: NCTL documents – pages 25 to 652

In addition, and as explained above, the panel heard an application to admit additional documentation and agreed to accept the following: bundle of correspondence/documents relevant to any proceeding in absence application, signed witness statement of Witness A and the signed witness statement of Witness D. The panel also admitted a clearer copy of page 171. These documents were added to the bundle and paginated as pages 15a to 15x, 23a to 23d, 23e to 23g and 171a respectively.

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

Witnesses

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

- Witness A, acting deputy headteacher of the School
- Witness B, assistant headteacher of the School
- Witness C, head of faculty for ICT, computing and business at the School; and
- Witness D, a teacher at the School.

E. Decision and reasons

The panel announced its decision and reasons as follows:

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

The panel confirmed that it had read all the documents provided in the bundle in advance of the hearing.

Mr Fitzgerald commenced employment at the School in July 2010 as an ICT teacher. In September 2015 Mr Fitzgerald was appointed as head of computing.

The panel was informed that Mr Fitzgerald was on a support plan during the 2015/2016 academic year because he had arranged for the Year 11 computing classes to be taught the incorrect controlled assessment material. The mistake was discovered in February 2016 and an emergency action plan was put in place with the senior leadership team to rectify the problem.

On 18 March 2016, Mr Fitzgerald circulated a spreadsheet to his colleagues which detailed the current progress of pupils in computing. On 26 April 2016, Mr Fitzgerald met with the assistant head teacher of the school (Witness B) and the head of faculty for ICT (Witness C) to discuss the progress of the pupils in computing and to agree which pupils should receive further intervention.

On 6 May 2016, Mr Fitzgerald circulated updated results for the computing controlled assessments. The spreadsheet circulated by Mr Fitzgerald indicated that Pupils A, B and C were expected to achieve grades ranging between 'E' and 'U' in respect of the A452 and A453 units. The spreadsheet also contained predicted overall grades for every pupil in Mr Fitzgerald's group which stated that he felt that Pupil A and Pupil B would achieve a G grade and Pupil C, an E grade. This was in line with the senior leadership team's expectations of the pupils individual ability levels.

Mr Fitzgerald met with Witness B and Witness C and it was agreed that a number of pupils would be targeted for additional intervention. Pupils A, B and C were not within this group.

At some point from the beginning to the middle of May, Mr Fitzgerald submitted the formal results sheet to the examination board (OCR) without the knowledge of any other member of staff within the faculty or the senior leadership team. This formal result sheet lists each pupil and their final score for each controlled assessment module before exam board moderation took place.

On May 15 2016 Witness C formally began his appointment as head of faculty for ICT, Computing and Business. Mr Fitzgerald handed in his notice having already secured a teaching post in another school to start in September 2016.

On 18 May 2016, Witness C emailed Mr Fitzgerald to enquire whether the examining body, OCR, had requested a sample for the computing class. Mr Fitzgerald stated that he had not received the sample request. The next day Witness C asked Mr Fitzgerald to 'keep him in the loop' regarding the sample request from OCR.

On 20 May 2016, the sample request was received by Mr Fitzgerald.

On 23 May 2016, Witness C was having a conversation with Witness D in the computer room and happened upon a spreadsheet on Witness D's computer screen. This appeared to show final controlled assessment grades sent to the examination board as part of a sample. Witness D confirmed that these were the results relating to the sample requested by the OCR moderator and that these had been sent directly to them by Mr Fitzgerald. Witness C expressed disbelief at Pupil A and Pupil B's grades. Witness C stated that he looked at Pupil A's network area and saw that there was no work in respect of units A452 or A453.

Mr Fitzgerald came into the room soon after and Witness C challenged Mr Fitzgerald about the fact that the computing results had been sent directly to the exam board without his knowledge and that the grades for Pupils A and B appeared to be much higher than had been indicated on the spreadsheet on the 6 May 2016. When challenged about the grades Mr Fitzgerald stated that the marks were correct for both Pupil A and Pupil B, and explained the discrepancy between the predicted grades shown on 6 May 2016 spreadsheet and the final grades submitted to the exam board by saying that he undertook extensive intervention with the pupils including after school, lunch time and holiday sessions.

Pupil C was not part of the sample but it later transpired during the School's investigation that his grades were also higher than the predicted grade indicated on the spreadsheet on 6 May 2016.

Witness C then arranged to speak to Witness B the next day to report his concerns.

On 24 May 2016, following discussions with Witness C, Witness B looked at the entire sample of work which included Pupil A and Pupil B's work prepared for the OCR moderator. Mr Fitzgerald had sent Pupil A and Pupil B's work at 2.24am on 24 May 2016 to Witness C, from his laptop, as it could not be found on the school network along with other pupils' work.

Following the discussion between Mr Fitzgerald and Witness B, Mr Fitzgerald was suspended on 25 May 2016 so that a full investigation could take place.

The School informed OCR that they believed that there were some discrepancies with the results for the Year 11 computing classes. OCR carried out a separate investigation when the sample had been submitted.

As a result of the outcomes of the investigations, Mr Fitzgerald's position at the School was terminated on 31 August 2016.

Findings of fact

Our findings of fact are as follows:

We have found the following particulars of the allegation(s) against you proven, for these reasons:

Whilst employed as a teacher at the School, during the 2015/16 academic year;

- 1. in respect of the A452 Practical Investigation and/or the A453 Programming Project controlled assessment(s), you provided improper assistance to one or more pupils including by;**
 - a. commenting on and/or correcting their work;**
 - b. sharing resources with pupils on the student shared area.**

With regard to part a. of allegation 1, the panel firstly took into account the OCR specification document found on page 130 of the bundle. The panel considered that this was a document that Mr Fitzgerald would have had access to being the subject lead and therefore would have understood the amount of assistance he was able to give to pupils. The document expressly states, found on page 131 of the bundle, "Teachers must not: comment on or correct the work...provide templates, model answers or feedback on drafts".

The panel then reviewed the interviews with Pupil's A, B and C included within the investigation report. Specifically, the panel focused on the following comments, "I got help from sir to word it properly. I got a lot of help from sir, he ran me through each bit of coding and worded it for me". When asked if Mr Fitzgerald had completed a section of work, Pupil C answered "sir made sure I did it right, he gave me a sheet with the answers on" (pages 218 and 219 respectively). With regard to Pupil A, the panel highlighted the following comment from his interview on page 226 of the bundle, "...sir gave me a document and told me to write it down and copy it".

The panel also reviewed the statement of Witness C which detailed that on discussing the work of both Pupil A and Pupil B with Mr Fitzgerald, he had confirmed that, "...he had given both pupils a considerable amount of time and support and said that he had acted as their scribe" (page 23 of the bundle).

The panel has therefore found this part of the allegation proven.

With regard to part b. of allegation 1, the panel again reviewed the interviews found within the School's investigation report. Within these the panel found a great weight of evidence which demonstrated that the pupils had accessed the code needed for the assessment from the shared network drive which all pupils could log on to. The panel also took into account the evidence of Witness D. Witness D explained how the Year 11 computing pupils would have the same login for all assessments and general work on school computers which meant they could access a number of resources such as documents and the internet at all times of their assessment.

Witness D explained that the resources provided by Mr Fitzgerald were in fact a step by step guide on how to complete the controlled assessment, using the scenario provided by OCR for that module for that year. Witness D explained that if Mr Fitzgerald wanted to provide such assistance, it should have taken the form of generic examples not related to the specific scenario provided by OCR for that year.

The documents found at page 320 - 321 of the bundle demonstrated the coding file which was found on the shared network area. The panel further reviewed the documentation found at pages 383 - 415 and 454 - 467 of the bundle which detailed an exemplar for the controlled assessment A452. This was also found on the network shared area. The panel paid particular attention to these documents as both provided the answers to this class for the controlled assessments.

The panel concluded that this part of the allegation had also been found proven as the resources shared with the pupils, and in particular the exemplar, was going outside the parameters detailed within the OCR specification and therefore resulted in an inappropriate amount of assistance.

2. you submitted marks to the Examining Board in respect of;

- a. Pupil A; and/or**
- b. Pupil B; and/or**
- c. Pupil C**

which did not reflect the mark that pupil would have received for their own work in respect of the A452 Practical Investigation and/or the A453 Programming Project controlled assessment(s);

The panel heard live evidence with regards to the academic ability of Pupils A, B and C. It was stated by all witnesses present at the hearing that these pupils were all in bottom sets and were classified as low ability students. Witness B did differentiate between Pupils A/B and C in her live evidence in that she explained that whilst all of these pupils were bottom set students A and B struggled with behaviour and generally lacked motivation whereas Pupil C was more motivated and had more parental support. Pupils A and B were also on a reduced timetable. Despite this distinction all witnesses confirmed that these pupils would not be expected to receive high marks.

The panel also reviewed the document found on page 167 of the bundle which detailed the estimated grades for these pupils in May 2016 (the document was attached to the email dated 6 May 2016) this evidenced that all three pupils were expected to get low final grades for computing. The panel then compared this to the information which was submitted to OCR on the sample grade spreadsheet viewed by Witness D. When questioned by Witness C about the grades contained within this documentation Witness D confirmed that "these marks were the ones sent off to OCR by David Fitzgerald". This

document, located at page 171 and 171a of the bundle, demonstrated that Pupils A and B had been awarded significantly higher grades by Mr Fitzgerald.

The panel therefore found that this allegation had been proven in its entirety.

3. for the purposes of the sample requested by the Examining Board in relation to the A452 Practical Investigation and/or the A453 Programming Project controlled assessment(s), you falsified work for one or more pupils, including;

a. Pupil A; and/or

b. Pupil B;

The panel has found this allegation to be proven due to the evidence contained within the pupil's interviews found within the investigation report. The pupils were presented with transcripts of their work that had been produced by Mr Fitzgerald to the senior leadership team on 24 May 2016.

More specifically, when Pupil A was asked by Witness A whether this was his work he responded "no I don't think so", and when asked had he seen this work before he answered "no". The panel also noted that during this interview Pupil A confirmed that he only completed "a bit of work on A452" and "didn't do any work on A453" (page 227 of the bundle).

The panel also reviewed the interview transcript of Pupil B. When asked by Witness A to read his work, Pupil B struggled to articulate the content and stated "this isn't my work, I didn't do this". When asked about the A453 controlled assessment Pupil B answered "No, I didn't do any work on A453 at all, it was too hard".

The panel took into account the live evidence from Witness A which explained that the School's ICT team during the investigation had checked the systems and had not been able to locate these pupils' work. The panel also had regard to the fact then when asked about this work and why it was not on the system Mr Fitzgerald answered that he "sometimes cut the work, not intentionally and put it on my computer" (page 211 of the bundle) and when asked "the night before controlled assessment sample was due you spent hours deleting files and pulling together the work?" he answered "yes I would" (page 212 of the bundle). The panel concluded on the balance of probabilities that Mr Fitzgerald had created this work himself.

The panel found that the above was overwhelming evidence that this work was not produced by either pupil and had indeed been falsified.

4. your conduct was dishonest;

- a. in respect of 2a and/or 2b and/or 2c above, in that you deliberately submitted higher marks than the work of Pupil A and/or Pupil B and/or Pupil C deserved to the Examining Board;**
- b. in respect of 3a and/or 3b above, in that you deliberately falsified work for the controlled assessments of Pupil A and/or Pupil B, intending that the same would justify the marks you had previously submitted to the Examining Board;**

The panel went on to consider whether Mr Fitzgerald's actions were dishonest. The panel received advice that there was a further requirement to consider two questions when deciding whether Mr Fitzgerald's actions were dishonest.

The panel was advised that the first limb of the traditional test to which the panels are referred is "whether the panel is satisfied on the balance of probabilities that Mr Fitzgerald's actions would be regarded as dishonest according to the standards of the ordinary and reasonable people".

The panel was also informed of judicial comment in a case which was of persuasive authority, which stated that the question the panel should ask itself was whether, according to the standard of the reasonable and honest professional what Mr Fitzgerald had done was dishonest. If so, is the panel satisfied that Mr Fitzgerald himself must have realised that his actions would have been regarded as dishonest by those standards? The panel accepted that only if the answer to both of these questions was yes, can the allegation of dishonesty be established.

On the objective test, the panel was satisfied that both reasonable and honest people and reasonable and honest teachers would consider it dishonest for a teacher to complete a form and input higher grades than the pupils had achieved.

The panel went onto consider whether Mr Fitzgerald would have known that what he was doing was, by those standards, dishonest. It considered that he must have known that his actions would offend the normally accepted standard of honest conduct. The panel also considered, with regard to part a of the allegation, the fact that Mr Fitzgerald would have filled this form in by hand. The panel decided that there was no way that he could have confused the grades and incorrectly inputted an A grade instead of a U grade. The panel also considered the fact that at no point had Mr Fitzgerald, when questioned about this at a later date, admitted that this was a mistake and in fact when questioned he made arguments for why those grades were correct and were possible. The panel felt that this was particularly dishonest as if this was a mistake at that time he could have owned up to his behaviour but instead he continued to deny any wrongdoing and stated that the grades were received through him giving the pupils "a lot of support" (page 206 of the bundle).

With regard to part b of the allegation the panel considered that Mr Fitzgerald did falsify these documents in an attempt to justify the marks that had been previously submitted by him. The panel found the fact of submitting the grades in part a was dishonest. Mr Fitzgerald then went further to create the work which compounded that dishonesty. The panel also determined that this behaviour would have been viewed as dishonest by reasonable and honest people and reasonable and honest teachers and had no doubt that Mr Fitzgerald would have known that this behaviour was dishonest.

The panel therefore found this allegation proven.

- 5. you acted dishonestly, in that you sought to conceal one or more aspects of your wrongdoing as set out above by;**
 - a. submitting information to the Examining Board without involving/informing other members of staff;**
 - b. declaring on the OCR Centre Authentication Form that pupils had completed their controlled assessment work under the required conditions, when you knew or should have known that was not the case.**

The panel considered the evidence in both the bundle and that which was given during live evidence. The panel heard from three separate witnesses that there was an expectation that Mr Fitzgerald should have informed other members of staff prior to submitting the grades to OCR. The evidence presented to the panel was ambiguous in respect of the process Mr Fitzgerald was supposed to follow to meet that expectation.

However, the panel concluded that even though no process of approval was evidenced to them, Mr Fitzgerald acted without oversight to allow him to conceal his dishonesty.

The panel concluded that both the objective and subjective tests had been satisfied. The panel considered that this behaviour would have been considered dishonest by honest people and reasonable and honest teachers. The panel also concluded that Mr Fitzgerald would have known what he was doing was wrong as this was evidenced by the fact he had not informed anyone of his actions and the panel concluded, as detailed above, that this was to enable him to cover up his actions.

With regard to part b of this allegation the panel had regard to the evidence of Witness C. On Page 20 of the bundle Witness C stated that he made available to Mr Fitzgerald both the OCR specification and the department's welcome pack (the documents can be found on pages 130 and 100 respectively). The panel understood that from these documents Mr Fitzgerald would have had a good understanding of what a controlled assessment was and the necessary conditions it should have been performed under. The panel were also directed to pages 578 and 579 bundle where the centre authentication forms can be found. The fact that these have been completed by Mr Fitzgerald is not in dispute.

The panel found that Mr Fitzgerald put his signature to the official OCR forms and in doing so confirmed that the controlled assessments had been undertaken in accordance with the specification. The panel has already concluded that Mr Fitzgerald's previous behaviours were dishonest in nature and by signing these forms in that context he perpetuated that dishonesty. Therefore the panel concluded that both the objective and subjective tests of dishonesty had been proven.

The panel therefore found this allegation proven.

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 Fitzgerald in relation to the facts found proven, involved breaches of the Teachers' Standards. The panel considers that by reference to Part Two, Mr Fitzgerald 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.
- 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 Mr Fitzgerald fell significantly short of the standards expected of the profession.

The panel has also considered whether Mr Fitzgerald'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 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 took into consideration the presenting officers submissions that these allegations, if found proven, should be reviewed together as they are all part of one incident. The panel noted that the behaviour associated with this event displayed serious dishonesty and Mr Fitzgerald has not admitted to this.

The panel concluded that Mr Fitzgerald's actions undermined the integrity of the exam system and ultimately the integrity of the teaching profession. Mr Fitzgerald's behaviour,

as outlined in the allegations, and the consequences that it had on the pupils was harmful.

Accordingly, the panel is satisfied that Mr Fitzgerald 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 also took into account the witness statement of Witness A, specifically the section which detailed how this course of events had affected the Year 11 computing pupils of the School. By virtue of the way it affected their final grades in computing and because they had to take part in an investigation during their exams. This situation would have also affected the School's reputation with parents and the OCR exam board.

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

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

Panel's recommendation to the Secretary of State

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

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

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

In light of the panel's findings against Mr Fitzgerald which involved serious dishonesty, there is a strong public interest consideration in declaring proper standards of conduct in

the profession as the conduct found against Mr Fitzgerald was outside that which could be reasonably tolerated.

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

The panel considered the fact that there may be a public interest consideration in retaining the teacher in the profession as they had heard evidence that computing was a hard subject area to teach and finding teachers with the knowledge and experience of that possessed by Mr Fitzgerald was difficult. However, the panel felt that whilst Mr Fitzgerald had been depicted in oral evidence as a nice man he had not been portrayed as a teacher with qualities that would make him invaluable to the teaching profession. For example a number of the witnesses during live evidence had detailed that Mr Fitzgerald was laid back to the point of being lazy, reactive rather than proactive and was always looking for the shortest route possible when achieving the end result in completing tasks. The panel also noted from the oral evidence that Mr Fitzgerald's leadership skills with regard to this subject area were lacking.

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

In carrying out the balancing exercise, the panel took into account the public interest considerations both in favour of and against prohibition as well as the interests of Mr Fitzgerald. 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; and
- dishonesty especially where there have been serious consequences, and/or it has been repeated and/or covered up.

Even though there were behaviours that would point to the appropriateness of a prohibition order, the panel went on to consider whether or not there were sufficient mitigating factors to militate against the appropriateness and proportionality of the imposition of a prohibition order, particularly taking into account the nature and severity of the behaviour in this case. There was no evidence presented, bar Mr Fitzgerald's response to the School's first investigation, to suggest that Mr Fitzgerald's actions were not deliberate or that Mr Fitzgerald was acting under duress, and, in fact, the panel found the teacher's actions to be calculated and motivated.

Although the panel heard live evidence of Mr Fitzgerald's easy going and laid back nature. The panel noted that no references had been provided from any colleagues that can confirm his abilities as a teacher. The panel was also mindful that with regards to dishonesty this incident did seem to be out of character and it was not informed during the proceedings that Mr Fitzgerald had been the subject to previous disciplinary proceedings/warnings.

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

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

The panel is of the view that prohibition is both proportionate and appropriate. The panel has decided that the public interest considerations outweigh the interests of Mr Fitzgerald. The serious dishonesty and the effect that this had on the pupils and the School was a significant factor in forming that opinion. Accordingly, the panel makes a recommendation to the Secretary of State that a prohibition order should be imposed with immediate effect.

The panel went on to consider whether or not it would be appropriate 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. These behaviours include serious dishonesty. The panel has found that Mr Fitzgerald's behaviours demonstrated serious dishonesty and this dishonesty resulted in harm to the cohort of computing pupils.

The panel also concluded that Mr Fitzgerald had not admitted the dishonesty, had not accepted the consequences of his own conduct and had showed no remorse. The panel also took into account that Mr Fitzgerald did not engage with these proceedings or with the second investigation conducted by the School on behalf of the OCR exam board.

The panel therefore concluded the findings indicated a situation in which a review period would not be appropriate and as such decided 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 recommendation of the panel in respect of sanction and review period.

In considering this case, I have also 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 Fitzgerald should be the subject of a prohibition order, and that the prohibition order should be imposed without any provision for a review period.

In particular the panel has found that Mr Fitzgerald 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.
- 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 Mr Fitzgerald fell significantly short of the standards expected of the profession.

The panel has also considered whether Mr Fitzgerald'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 serious dishonesty is relevant.

The findings of misconduct are particularly serious as they include a finding of serious dishonesty on the part of a teacher who was Head of Computing at the school.

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 Fitzgerald, 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 observed “Mr Fitzgerald’s behaviour, as outlined in the allegations, and the consequences that it had on the pupils was harmful.”

A prohibition order would therefore prevent such a risk of harm from being present.

I have also taken into account the panel’s comments on insight and remorse which the panel sets out as follows, “Mr Fitzgerald had not admitted the dishonesty, had not accepted the consequences of his own conduct and had showed no remorse.”

The panel has also commented “in fact, the panel found the teacher’s actions to be calculated and motivated.”

In my judgement the lack of overall insight means that there is some risk of the repetition of this behaviour and this risks future pupils’ examination work from being harmed. I have therefore given this element considerable weight in reaching my decision.

I have gone on to consider the extent to which a prohibition order would maintain public confidence in the profession. The panel observe, “findings of misconduct are serious and the conduct displayed would likely have a negative impact on the individual’s status as a teacher, potentially damaging the public perception.”

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 had to consider 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 had to consider the matter from the point of view of an “ordinary intelligent and well-informed citizen.”

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

I have also considered the impact of a prohibition order on Mr Fitzgerald himself. I have noted the panel’s comments on teachers of computing. I have also noted the wider comments of the panel on Mr Fitzgerald’s teaching based on the evidence it heard.

A prohibition order would prevent Mr Fitzgerald from teaching and would also clearly deprive the public of his contribution to the profession for the period that it is in force.

In this case I have placed considerable weight on the panel's comments concerning the lack of insight or remorse. The panel has said, "Mr Fitzgerald's behaviours demonstrated serious dishonesty and this dishonesty resulted in harm to the cohort of computing pupils."

I have given less weight in my consideration of sanction therefore, to the contribution that Mr Fitzgerald has made to the profession. In my view it is necessary to impose a prohibition order in order to maintain public confidence in the profession. A published decision that is not backed up by remorse or insight does not in my view satisfy the public interest requirement concerning public confidence in the profession.

For these reasons I have concluded that a prohibition order is proportionate and in the public interest in order to achieve the 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 that the prohibition order should be without provision for a review period.

I have considered the panel's comments concerning, "serious dishonesty and the effect that this had on the pupils and the School" and that the "dishonesty resulted in harm to the cohort of computing pupils."

The panel has also said that a prohibition order with no review period is appropriate and proportionate, I agree.

I have considered whether allowing for no 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, there are three factors that in my view mean that a two year review period is not sufficient to achieve the aim of maintaining public confidence in the profession. These elements are; the lack of insight; the deliberate nature of the behaviour and the impact that it had on pupils.

I consider therefore that a prohibition order with no review period is required to satisfy the maintenance of public confidence in the profession.

This means that Mr David Fitzgerald 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 him, I have decided that Mr David Fitzgerald shall not be entitled to apply for restoration of his eligibility to teach.

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

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

A handwritten signature in black ink, appearing to read 'Alan Meyrick', with a checkmark at the end.

Decision maker: Alan Meyrick

Date: 13 October 2017

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