



Teaching  
Regulation  
Agency

# **Mrs Esme Higgins: Professional conduct panel meeting outcome**

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

**July 2022**

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

<b>Teacher:</b>	Mrs Esme Higgins
<b>Teacher ref number:</b>	1044296
<b>Teacher date of birth:</b>	20 July 1991
<b>TRA reference:</b>	19435
<b>Date of determination:</b>	13 July 2022
<b>Former employer:</b>	Weavers Academy, Wellingborough

### **Introduction**

A professional conduct panel ('the panel') of the Teaching Regulation Agency ('the TRA') convened on 13 July 2022 by way of a virtual meeting to consider the case of Mrs Esme Higgins.

The panel members were Ms Susanne Staab (teacher panellist – in the chair), Mr Gamel Byles (teacher panellist) and Mr Martyn Stephens (lay panellist).

The legal adviser to the panel was Ms Abigail Hubert of Birketts LLP solicitors.

In advance of the meeting, after taking into consideration the public interest and the interests of justice, the TRA agreed to a request from Mrs Higgins that the allegations be considered without a hearing. Mrs Higgins provided a signed statement of agreed facts and admitted unacceptable professional conduct and/or conduct that may bring the profession into disrepute. The panel considered the case at a meeting without the attendance of the presenting officer, Mr Jacob Rickett of Capsticks solicitors, Mrs Higgins or any representative for Mrs Higgins.

The meeting took place in private by way of a virtual meeting.

## **Allegations**

The panel considered the allegations set out in the notice of meeting dated 30 June 2022.

It was alleged that Mrs Higgins was guilty of unacceptable professional conduct and/or conduct that may bring the profession into disrepute, in that whilst a PE teacher at Weavers Academy in the academic year 2018-2019, she:

1. Deliberately and/or negligently breached external examination codes and regulations in relation to one or more Year 11 BTEC pupils by;
  - a) failing to mark one or more pupil assignments;
  - b) failing to ensure that a sample of her pupils' work was internally verified and/or moderated by colleagues; and
  - c) completing the School's tracker document without having marked the majority of her pupils' work.
2. On 2 April 2019 told her head of department that she had lost a folder of pupil work when in fact the work had not been completed.
3. By her actions as set out in allegation 2, she was dishonest.

Mrs Higgins admitted the facts of allegations 1 to 3 and that her behaviour amounted to unacceptable professional conduct and/or conduct that may bring the profession into disrepute, as set out in the response to the notice of referral dated 4 January 2022 and in the statement of agreed facts signed by Mrs Higgins on 13 February 2022.

## **Preliminary applications**

There were no preliminary applications.

## **Summary of evidence**

### **Documents**

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

- Section 1: Chronology, anonymised pupil list and list of key people – pages 3 to 4
- Section 2: Notice of referral, response and notice of meeting – pages 5 to 14

- Section 3: Statement of agreed facts and presenting officer representations – pages 15 to 23
- Section 4: Teaching Regulation Agency documents – pages 24 to 570
- Section 5: Teacher documents – pages 571 to 572

The panel members confirmed that they had read all of the documents within the bundle, in advance of the meeting.

## **Statement of agreed facts**

The panel considered a statement of agreed facts which was signed by Mrs Higgins on 13 February 2022.

## **Decision and reasons**

The panel carefully considered the case and reached the following decision and reasons:

In advance of the meeting, the TRA agreed to a request from Mrs Higgins for the allegations to be considered without a hearing. The panel had the ability to direct that the case be considered at a hearing if required in the interests of justice or in the public interest. The panel did not determine that such a direction was necessary or appropriate in this case.

Mrs Higgins commenced employment at the Weavers Academy ('the School') as a teacher of PE from July 2013 and a Raising Standards Leader from September 2017.

On 3 July 2019, final marks for the sport BTEC course were submitted for the then Year 11 cohort. On 25 September 2019, concerns regarding the results were raised by the head of the department.

An initial fact-finding exercise was performed on 2 October 2019. A formal disciplinary investigation was later commenced on 18 October 2019.

Disciplinary investigation meetings took place on 23 October 2019. Mrs Higgins was suspended on 4 November 2019, following investigation interviews.

On 15 November 2019, a declaration of alleged malpractice and maladministration was submitted to the Joint Council for Qualification ('JCQ'). The matter was also referred to Pearson, the examination board.

On 23 January 2020, Mrs Higgins handed in her resignation to the School. Mrs Higgins' employment ended on 14 February 2020.

A referral was made to the TRA on 12 June 2020.

## **Findings of fact**

The findings of fact are as follows:

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

- 1. Deliberately and/or negligently breached external examination codes and regulations in relation to one or more Year 11 BTEC pupils by;**
  - a) failing to mark one or more pupil assignments;**
  - b) failing to ensure that a sample of your pupils' work was internally verified and/or moderated by colleagues;**
  - c) completing the School's tracker document without having marked the majority of your pupils' work.**
  
- 2. On 2 April 2019 told your head of department that you had lost a folder of pupil work when in fact the work had not been completed.**

The panel noted that within the response to the notice of referral dated 4 January 2022 and in the statement of agreed facts signed by Mrs Higgins on 13 February 2022, Mrs Higgins admitted the facts of allegations 1(a), 1(b), 1(c) and 2. Further, Mrs Higgins admitted that her actions amounted to unacceptable professional conduct and/or conduct that may bring the profession into disrepute.

Notwithstanding this, the panel considered the evidence provided in the bundle and made a determination on the evidence available to it.

The panel considered the disciplinary report submitted as part of the bundle.

The panel had sight of marked pupils' work and were able to compare this with several examples of students' work contained within the bundle that had not been marked or, that had not been marked clearly by Mrs Higgins, which helped the panel come to its decision.

The panel also considered that Mrs Higgins was given extra time by the School to mark the pupils' work along with other offers of support and guidance from her head of department.

The panel also identified within the bundle that Mrs Higgins had received a number of email reminders from her head of department that her work needed to be internally verified by a specified deadline.

The panel further noted an email in the bundle from the head of department which explained that the School's tracker document had been completed but Mrs Higgins had not yet completed the majority of the marking required.

The panel also noted an email in the bundle from the head of department to her line managers, following a conversation with Mrs Higgins, in which Mrs Higgins claimed that she had lost a folder of pupil work despite it being sat on one of the desks in the PE office with no updated work in from Mrs Higgins.

Whilst the panel had regard to the document in the bundle at page 571 and 572 titled "teacher representations" submitted by Mrs Higgins, the panel noted that the statement of agreed facts was signed by Mrs Higgins after this earlier statement was given. The panel determined that the statement of agreed facts was stronger evidence.

The panel found allegations 1(a), 1(b), 1(c) and 2 proven.

### **3. By your actions as set out in allegation 2, were dishonest.**

The panel noted that within the response to the notice of referral dated 4 January 2022 and in the statement of agreed facts signed by Mrs Higgins on 13 February 2022, Mrs Higgins admitted the facts of allegation 3. Notwithstanding this, the panel made a determination on the evidence available to it.

In reaching this decision, the panel considered the case of *Ivey v Genting Casinos (UK) Ltd t/a Crockford* and considered all of the evidence before it.

The panel also considered the case of *Wingate & Anor v The Solicitors Regulation Authority* where the Court of Appeal held that "...Telling lies about things that matter or committing fraud or stealing are generally regarded as dishonest conduct." The panel considered Mrs Higgins lies were about an issue that did matter which assisted them in forming their opinion that Mrs Higgins was dishonest.

The panel also gave consideration as to whether Mrs Higgins may have believed that the pupils' work was in fact lost; however, given that the folder contained no updated pupil work within it, the panel were satisfied that Mrs Higgins was dishonest in telling her head of department that she had lost the folder.

The panel found allegation 3 proven.

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

Having found the allegations proved, the panel went on to consider whether the facts of those allegations amounted to unacceptable professional conduct and/or conduct that may bring the profession into disrepute.

In doing so, the panel had regard to the document Teacher Misconduct: The Prohibition of Teachers, which is referred to as 'the Advice'.

The panel was satisfied that the conduct of Mrs Higgins, in relation to the facts found proved, involved breaches of the Teachers' Standards. The panel considered that, by reference to Part 2, Mrs Higgins was 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; and
- Teachers must have an understanding of, and always act within, the statutory frameworks which set out their professional duties and responsibilities.

The panel was satisfied that the conduct of Mrs Higgins fell significantly short of the standards expected of the profession.

The panel also considered whether Mrs Higgins conduct displayed behaviours associated with any of the offences listed on pages 12 and 13 of the Advice. The panel found that none of these offences was relevant. The Advice indicates that where behaviours associated with such an offence exist, a panel is more likely to conclude that an individual's conduct would amount to unacceptable professional conduct.

Whilst the panel had regard to the fact that it was not clear from the bundle whether any pupils were affected by Mrs Higgins' conduct, the panel did consider that Mrs Higgins had failed to correctly follow the JCQ guidelines as well as the Schools' Non-Examination Assessment Policy 2018/19.

The panel noted that the bundle contained examples of Mrs Higgins being given ample support by the school and she was also given the opportunity to correct her behaviour by being awarded an extension to mark the pupils' work.

The panel also considered Part 1 of the Teachers' Standards. The panel noted that Mrs Higgins was not a junior member of staff, she was a Raising Standards Leader and she should have been aware that marking is an integral part of any teacher's role. The panel



further noted that Mrs Higgins, being an experienced teacher, should know where and when to obtain support; and despite this being offered, she did not take this up.

The panel also recognised that the bundle contained evidence that suggested that the School had not been subject to external moderation in the previous year due to the good practice that it had shown over the previous three years. Mrs Higgins' actions suggested to the panel that she did not have due regard for the ethos of high aspirations and outcomes within the department.

Accordingly, the panel was satisfied that Mrs Higgins was guilty of unacceptable professional conduct.

The panel took into account the way 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 also took account of the uniquely influential role that teachers can hold in pupils' lives and the fact that pupils must be able to view teachers as role models in the way they behave.

The panel noted the potential seriousness of a teacher not marking work correctly, or at all, and the impact that this may have on pupils and subsequently the way parents and others in the community view the profession.

The panel considered that teachers are guardians of the internal examination process and if a teacher does not follow the JCQ examination guidelines this may affect the trust of pupils and parents in the examination process.

The panel determined that the findings of misconduct were serious and the conduct displayed would be likely to have a negative impact on Mrs Higgins' status as a teacher, potentially damaging the public perception.

The panel therefore found that Mrs Higgins' actions constituted conduct that may bring the profession into disrepute.

Having found the facts of particulars 1(a), 1(b), 1(c), 2 and 3 proved, the panel further found that Mrs Higgins' conduct amounted 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 was 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 had to consider whether it would be an appropriate and proportionate measure, and whether it would be 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 had regard to the particular public interest considerations set out in the Advice and, having done so, 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 that prohibition strikes the right balance between the rights of the teacher and the public interest, if they are in conflict.

In the light of the panel's findings against Mrs Higgins which involved breaching internal and external examination policies and regulations and being dishonest, there was a strong public interest consideration in that the public confidence in the profession could be seriously weakened if conduct such as that found against Mrs Higgins was not treated with the utmost seriousness when regulating the conduct of the profession.

The panel decided that a strong public interest consideration in declaring proper standards of conduct in the profession was also present as the conduct found against Mrs Higgins was outside that which could reasonably be tolerated.

The panel considered the serious consequences Mrs Higgins' misconduct may have had on pupils and the fact that the conduct fell short of the high standards expected of teachers.

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

In carrying out the balancing exercise, the panel had regard to the public interest considerations both in favour of, and against, prohibition as well as the interests of Mrs Higgins. 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 proved. 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 or a lack of integrity, including the deliberate concealment of their actions or purposeful destruction of evidence, especially where these behaviours have been repeated or had serious consequences, or involved the coercion of another person to act in a way contrary to their own interests;
- collusion or concealment including:

- lying to prevent the identification of wrongdoing;
- deliberate action in serious contravention of requirements for the conduct of an examination or assessment leading to an externally awarded qualification or national assessment (or deliberate collusion in or deliberate concealment of such action) particularly where the action had, or realistically had the potential to have, a significant impact on the outcome of the examination assessment;

Even though some of the behaviour found proved in this case indicated that a prohibition order would be appropriate, the panel went on to consider the mitigating factors. Mitigating factors may indicate that a prohibition order would not be appropriate or proportionate.

There was no evidence that Mrs Higgins' actions were not deliberate. The panel also noted that there was no evidence to suggest that Mrs Higgins was acting under extreme duress.

Limited evidence was submitted that attested to Mrs Higgins' previous history as a teacher or which showed that Mrs Higgins demonstrated exceptionally high standards in both personal and professional conduct or had contributed significantly to the education sector.

The panel noted that a positive reference was contained within the bundle which said that Mrs Higgins had previously planned, taught, marked and moderated work at KS4 for the BTEC course however, this was relevant to the time of Mrs Higgins' application for employment at the School which was in 2013. The panel further noted that no additional references, since the misconduct occurred, had been provided for them to consider.

The panel took into account the document in the bundle at page 571 and 572 titled "teacher representations" made by Mrs Higgins; in particular, the fact that she had the largest BTEC cohort and was not offered any additional support. However, the panel noted that there was evidence within the bundle where Mrs Higgins had been offered help, support and guidance by her head of department and the School, including being provided with extra time to complete her marking.

The panel noted that although Mrs Higgins initially sought to deny her misconduct she subsequently signed the statement of agreed facts. The panel concluded that this suggested that Mrs Higgins must have had some insight into her actions. However, the panel noted that there was no evidence in the bundle to help establish whether Mrs Higgins was remorseful.

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 would be sufficient.

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

The panel was of the view that prohibition was both proportionate and appropriate. The panel decided that the public interest considerations outweighed the interests of Mrs Higgins. The potential repercussions and impact on pupils for failing to comply with examination guidelines was a significant factor in forming that opinion. Accordingly, the panel made a recommendation to the Secretary of State that a prohibition order should be imposed with immediate effect.

The panel went on to consider whether or not it would be appropriate to recommend that a review period of the order should be considered. The panel was mindful that the Advice 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 two years.

The Advice indicates that there are behaviours that, if proved, would militate against the recommendation of a review period. The panel found that Mrs Higgins was not responsible for any such behaviours.

The Advice also indicates that there are behaviours that, if proved, would have greater relevance and weigh in favour of a longer review period. The panel considered that, although Mrs Higgins had been dishonest, her actions were not at the most serious end of the spectrum and so she was not responsible for any such behaviours.

The panel decided that the findings indicated a situation in which a review period would be appropriate and, as such, decided that it would be proportionate in all the circumstances for the prohibition order to be recommended with provisions for a two year 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 both sanction and review period.

In considering this case, I have also given very careful attention to the Advice that the Secretary of State has published concerning the prohibition of teachers.

In this case, the panel has found all of 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 Mrs Higgins should be the subject of a prohibition order, with a review period of two years.

In particular, the panel has found that Mrs Higgins 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; and
- Teachers must have an understanding of, and always act within, the statutory frameworks which set out their professional duties and responsibilities.

The panel was also “satisfied that the conduct of Mrs Higgins fell significantly short of the standards expected of the profession.”

The findings of misconduct are serious as they include a finding of dishonesty.

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 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 Mrs Higgins, and the impact that will have on the teacher, is proportionate and in the public interest.

In this case, I have considered the extent to which a prohibition order would protect children/safeguard pupils. The panel has observed, “The panel noted the potential seriousness of a teacher not marking work correctly, or at all, and the impact that this may have on pupils and subsequently the way parents and others in the community view the profession.” A prohibition order would therefore prevent such a risk from being present in the future.

I have also taken into account the panel’s comments on insight and remorse, which the panel sets out as follows, “The panel concluded that this suggested that Mrs Higgins

must have had some insight into her actions. However, the panel noted that there was no evidence in the bundle to help establish whether Mrs Higgins was remorseful.”

In my judgement, the lack of full insight and remorse means that there is some risk of the repetition of this behaviour, and this puts at risk the future wellbeing of pupils and trust in the examination system. 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, “The panel determined that the findings of misconduct were serious and the conduct displayed would be likely to have a negative impact on Mrs Higgins’ 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 the public might regard a failure to impose a prohibition order 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 Mrs Higgins herself. The panel comment “Limited evidence was submitted that attested to Mrs Higgins’ previous history as a teacher or which showed that Mrs Higgins demonstrated exceptionally high standards in both personal and professional conduct or had contributed significantly to the education sector.

The panel noted that a positive reference was contained within the bundle which said that Mrs Higgins had previously planned, taught, marked and moderated work at KS4 for the BTEC course however, this was relevant to the time of Mrs Higgins’ application for employment at the School which was in 2013. The panel further noted that no additional references, since the misconduct occurred, had been provided for them to consider.”

A prohibition order would prevent Mrs Higgins from teaching and would also clearly deprive the public of her 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, “The panel was of the view that prohibition was both proportionate and appropriate. The panel decided that the public interest considerations outweighed the interests of Mrs Higgins. The

potential repercussions and impact on pupils for failing to comply with examination guidelines was a significant factor in forming that opinion.”

I have given less weight in my consideration of sanction therefore, to the contribution that Mrs Higgins 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, in light of the circumstances in this case, that is not backed up by full 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

I have gone on to consider the matter of a review period. In this case, the panel has recommended a 2 year review period.

I consider that a 2 year review period is proportionate and in the public interest.

**This means that Mrs Esme Higgins is prohibited from teaching indefinitely and cannot teach in any school, sixth form college, relevant youth accommodation or children’s home in England.** She may apply for the prohibition order to be set aside, but not until 2024, 2 years from the date of this order at the earliest. This is not an automatic right to have the prohibition order removed. If she does apply, a panel will meet to consider whether the prohibition order should be set aside. Without a successful application, Mrs Esme Higgins remains prohibited from teaching indefinitely.

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

Mrs Esme Higgins has a right of appeal to the Queen’s Bench Division of the High Court within 28 days from the date she is given notice of this order.



**Decision maker: Alan Meyrick**

**Date: 15 July 2022**

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