



Teaching
Regulation
Agency

Mr Andrew Cushing: Professional conduct panel outcome

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

July 2019

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

| | |
|-------------------------------|--|
| Teacher: | Mr Andrew Cushing |
| Teacher ref number: | 9443024 |
| Teacher date of birth: | 10 July 1958 |
| TRA reference: | 17566 |
| Date of determination: | 3 July 2019 |
| Former employer: | Orchard Manor School, Dawlish, Devon (formerly Ratcliffe School) |

A. Introduction

A professional conduct panel (“the panel”) of the Teaching Regulation Agency (“the TRA”) convened on 3 July 2019 at Cheylesmore House, 5 Quinton Road, Coventry, CV1 2WT to consider the case of Mr Andrew Cushing.

The panel members were Mr John Armstrong (lay panellist – in the chair), Mr Brian Hawkins (teacher panellist) and Ms Karen McArthur (lay panellist).

The legal adviser to the panel was Mr Delme Griffiths of Blake Morgan LLP solicitors.

The presenting officer for the TRA was Ms Holly Quirk of Browne Jacobson LLP solicitors.

Mr Cushing 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 3 May 2019 ("the Notice").

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

1. Failed to respond adequately or at all to an incident on or around 20 April 2018 in which Pupil F struck and/or kicked Pupil J in a classroom in which he was supervising, including that he:
 - (a) did not use any intervention and/or distraction and/or de-escalation strategies;
 - (b) did not call for support;
 - (c) did not check on Pupil J's welfare;
 - (d) did not report the incident on the school's 'Behaviour Watch' system and/or inform the school and/or inform Pupil J's parents of the incident;
 - (e) when asked about the incident by a colleague responded to the effect that he didn't know that anything had happened when in fact he had been present to witness it;
 - (f) when asked to provide details of the incident by the school responded in an e-mail to the effect that no one had any knowledge of the incident when in fact he had been present to witness it.
2. His conduct at Allegation 1(e) and/or 1(f) as may be found proven was dishonest and/or lacked integrity.

Whilst Mr Cushing had provided a response to the allegations at an earlier stage of the proceedings, he had not responded to the Notice of Proceedings. In those circumstances, all of the allegations were treated as being denied.

C. Preliminary applications

Application to proceed in the absence of Mr Cushing

The panel considered an application from the presenting officer to proceed in the absence of Mr Cushing.

The panel accepted the legal advice provided in relation to this application and took account of the various factors referred to it, as derived from the guidance set down in the

case of *R v Jones* [2003] 1 AC 1 (as considered and applied in subsequent cases, particularly *GMC v Adeogba*; *GMC v Visvardis* [2016] EWCA Civ 162).

The panel was satisfied that the Notice had been sent in accordance with Rules 4.11 and 4.12 of the Teacher Misconduct: Disciplinary Procedures for the Teaching Profession ("the Procedures") and that the requirements for service had been satisfied.

Mr Cushing had not responded to the Notice or to other correspondence sent to him following the Notice.

Mr Cushing had provided a response at the TRA investigation stage by way of a letter dated 15 November 2018, which was included within the hearing papers.

Accordingly, the panel was satisfied that Mr Cushing was, at the very least, aware of these proceedings in general terms.

Having regard to this earlier response and the totality of the correspondence sent to Mr Cushing by both recorded delivery and email, the panel was also satisfied that the TRA had made all reasonable efforts to bring the hearing to Mr Cushing's attention.

The panel went on to consider whether to proceed in Mr Cushing's absence or to adjourn, in accordance with Rule 4.29 of the Procedures.

The panel had regard to the fact that its discretion to continue in the absence of a teacher should be exercised with great caution and with close regard to the overall fairness of the proceedings. The panel has given careful consideration to the fact that Mr Cushing is not in attendance and will not be represented at this hearing, should it proceed, and the extent of the disadvantage to him as a consequence.

On balance, the panel has decided that the hearing should continue in the absence of Mr Cushing for the following reasons:

- Mr Cushing has not sought an adjournment and there is no medical evidence before the panel which indicated that Mr Cushing was unfit to attend the hearing due to ill-health.
- The panel was satisfied that Mr Cushing's absence was voluntary and he had waived his right to attend.
- The risk of reaching the wrong conclusion and the disadvantage to Mr Cushing in not being present are mitigated by the fact that he has at least provided some response to the allegations in this case.
- Given Mr Cushing's non-engagement, there was no indication that he might attend at a future date such that no purpose would be served by an adjournment.
- There is a public interest in hearings taking place within a reasonable time.

- There is a burden on all professionals who are subject to a regulatory regime to engage with their regulator.
- There is a witness present to give evidence to the panel who would be significantly inconvenienced were the hearing to be adjourned.

Having decided that it is appropriate to proceed, the panel would strive to ensure that the proceedings are as fair as possible in the circumstances, bearing in mind that Mr Cushing is neither present nor represented.

Application to admit additional documentation

The panel considered an application on behalf of the TRA to admit additional documentation comprising of:

1. Proofs of delivery in relation to correspondence sent to Mr Cushing; and
2. A signed witness statement of Individual A together with an Ofsted Report.

The panel had careful regard to the submissions made and accepted the legal advice provided.

In relation to item 1, the panel decided these documents ought to be admitted. They were relevant to its decision whether to proceed in the absence of Mr Cushing. There was also no prejudice to Mr Cushing, given the documents were not evidential in nature.

In relation to item 2, whilst these documents were included within the hearing bundle they had not been served strictly in accordance with the rules for the reasons set out by the presenting officer. However, they were provided to Mr Cushing approximately 3 weeks prior to the hearing. Mr Cushing had previously been provided with an unsigned copy of Individual A's statement. The panel concluded that these documents were relevant to the issues to be determined and in all the circumstances they ought to be admitted on the basis that it was fair to do so. There was no prejudice to Mr Cushing when he had been provided with the documents some time before the hearing and had raised no objection.

D. Summary of evidence

Documents

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

Section 1: Notice of Proceedings and Response – pages 2 to 10

Section 2: Teaching Regulation Agency witness statements – pages 12 to 13

Section 3: Teaching Regulation Agency documents – pages 15 to 144

Section 5: Teacher documents – page 146

In addition, as noted above the panel agreed to accept proofs of delivery which were added to the case papers, marked pages 10A to 10E.

Witnesses

The panel heard oral evidence from Individual A called by the presenting officer.

Mr Cushing did not attend to give oral evidence.

E. Decision and reasons

The panel announced its decision and reasons as follows:

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

The panel confirmed that it has read all the documents included in the hearing bundle in advance of the hearing and subsequently.

Introduction

At the relevant time for the purposes of these proceedings, Mr Cushing was employed as a teacher at the Orchard Manor school in Dawlish (previously called Ratcliffe School) ("the School").

Mr Cushing commenced work at the School in or around September 2017. His role was described within the papers as a:

"Class teacher for a small group of pupils with varied SEND. Providing core subject teaching and pastoral support"

On 22 April 2018, the headteacher of the School received an email from a parent of a pupil at the School, Pupil J. This reported that Pupil J had been attacked during the course of a lesson supervised by Mr Cushing on 20 April 2018.

This email was forwarded to Individual A, [REDACTED], who made enquiries with Mr Cushing and who interrogated the School's 'Behaviour Watch' system. The School's CCTV was subsequently reviewed by the headteacher.

This led to an investigation being commenced by the School, at the conclusion of which a disciplinary process was commenced.

Mr Cushing was subsequently referred to the TRA.

Evidence considered by the panel

The panel carefully considered all of the written, oral and video evidence presented and accepted the legal advice provided.

The panel heard oral evidence from Individual A. At the relevant time, Individual A was on secondment at the School. By the time of the incident on 20 April 2018, Individual A had worked with Mr Cushing, and had line management responsibilities for him, for approximately 6 weeks.

The panel considered that Individual A was an impressive and credible witness who gave clear evidence regarding her involvement in the initial enquiries that were undertaken following this incident being brought to the School's attention.

The panel was also referred to hearsay evidence from Pupil J and other individuals who were involved in the investigation but were not called to give evidence.

In the absence of hearing from these individuals and being unable to test their accounts and their credibility, this evidence was treated with due caution by the panel.

As he had not participated in these proceedings, the panel did not have the opportunity to hear from Mr Cushing in oral evidence. However, Mr Cushing had previously written to the TRA setting out, albeit in limited terms, his account of events.

In Mr Cushing's absence the panel treated all of the allegations as denied.

The panel confirms that it has not relied upon any findings made, or opinions expressed, during the earlier investigation and disciplinary process. The panel formed its own, independent view of the allegations based on the evidence presented.

Findings of fact

Our findings of fact are as follows:

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

- 1. Failed to respond adequately or at all to an incident on or around 20 April 2018 in which Pupil F struck and/or kicked Pupil J in a classroom in which you were supervising, including that you:**

Prior to considering the sub-particulars of allegation 1, the panel considered it would be helpful to set out its findings that were relevant to each of allegations 1(a) to 1(f).

The panel read, and considered a CCTV video recording, of an incident that took place on 20 April 2018 between Pupil F and Pupil J in a computer suite at the School.

There was no dispute as to the fact that Mr Cushing was present throughout the incident and he was clearly visible in the recording. He had not challenged the fact that he was supervising the class at the time.

The panel was informed that the incident took place on a Friday afternoon, a time when pupils were able to choose their own activities. Individual A confirmed that this was not a time when teachers were expected to be actively teaching per se; it was about engagement and the pupils enjoying themselves. For example, the panel was informed that whilst in the computer suite, pupils would be allowed to play games.

In addition to Mr Cushing, Pupil F and Pupil J, several other pupils were present who were using computer equipment.

There was no audio for the recording which presented the panel with some difficulty when seeking to place what occurred in its proper context, particularly in the absence of hearing oral evidence from anyone who witnessed events first-hand.

In his letter to the TRA dated 15 November 2018, Mr Cushing provided the following, brief account of events:

"The incident concerned two pupils who were winding each other up. There is no audio with the CCTV and nobody in the class reacted to the event.

J had a reputation for seeking attention."

Part way through the CCTV recording, Pupil F could be clearly observed entering the room and sitting close to Mr Cushing. He appeared to be quite agitated, in that he was moving a table, rocking back and forth and knocking items from the table onto the floor. During the course of his disciplinary hearing on 24 July 2018, Mr Cushing is recorded as stating:

"Pupil F entered the room and started talking to him about being stressed out and that he hates everything. Pupil F did his usual stuff, rocking the table, throwing things on the floor. [Mr Cushing] got a feeling that Pupil F was ready to do something."

Mr Cushing went on to provide an account of why, in his view, Pupil J was "*winding up*" the class and Pupil F in particular.

After a few minutes, Pupil F moves across towards Pupil J and physical contact then occurred.

This physical contact could be appropriately described as an assault. Pupil F proceeded to strike Pupil J to the head with what appear to be his fists, on at least 9 occasions in quick succession.

Pupils in the vicinity appeared to look up as this occurred, though they did not otherwise appear to react. Mr Cushing can be seen in the background. Whilst it was not clear from the recording if it was witnessed in its entirety by Mr Cushing, he could be clearly seen looking up during the course of Pupil F striking Pupil J. In any event, the notes of Mr Cushing's investigation interview on 15 June 2018 record that he did witness this happen. In response to a question about what his thoughts were at this stage, Mr Cushing is recorded as stating:

"Having seen that, my thoughts we are going to have major problems here – I cannot get rid of the pupils, cannot ring for support, I am on my own ..."

After this occurred, Mr Cushing could be observed on the recording getting up and moving towards a corner of the room, not directly towards the pupils. Mr Cushing did not immediately engage with either pupil. When he did subsequently move towards them, and was stood close to Pupil J and Pupil F, a secondary incident occurred whereby Pupil F appeared to kick out at Pupil J, though it was not clear from the video recording if actual contact was made.

The panel concluded that both parts to this incident were observed by Mr Cushing, having regard to the CCTV footage and the admissions made in his earlier accounts provided during the course of the School's investigation.

The panel was also referred to evidence in relation to Pupil F's specific circumstances. He was a pupil in Mr Cushing's class such that the panel was satisfied it was more likely than not that Mr Cushing would have had a clear understanding of Pupil F and his particular needs. The panel was provided with Pupil F's behaviour plan and risk assessment, which were carefully considered. Individual A stated that Pupil F had a higher profile than other pupils due to the specific nature of his needs. There had also been prior instances of violent behaviour by Pupil F towards his peers. During the course of the hearing the panel also took careful note of the content of Pupil F's 'Behaviour Watch' log.

As an experienced teacher, who had received specific training, with direct knowledge of Pupil F's needs, the panel concluded that Mr Cushing was particularly well placed to know how to deal and engage with Pupil F and to address, and challenge, unacceptable behaviour.

Having considered all of the evidence, the panel concurred with the account provided by Mr Cushing during the course of his disciplinary hearing on 24 July 2018, which records him stating that he *"got a feeling that F was ready to do something"*.

Whilst the panel was informed that there had been a previous incident involving Pupil F and Pupil J, there was no evidence that Mr Cushing was made aware of this.

The panel considered that the incident could properly be described as being serious in nature. Pupil F was described as being of much bigger stature than Pupil J, and this was

apparent from the CCTV video recording. The notes of an interview conducted with Pupil J record him stating "*he felt dizzy and had white spots and it hurt*". Given the evidence, the panel was satisfied that Pupil J would have suffered some degree of harm. Mr Cushing is recorded as describing the striking of Pupil J as being merely a 'slap'. The panel did not consider this perspective was an accurate categorisation of the incident.

The panel went on to consider each of allegations 1(a) to 1(f).

(a) did not use any intervention and/or distraction and/or de-escalation strategies

The panel was referred to the School's policies in relation to the appropriate response to incidents of this type.

Individual A also provided a helpful explanation as to how she would expect staff to respond to such an incident.

As noted above, the panel was satisfied that Pupil F was in an agitated state, and in the absence of any intervention or distraction on the part of a supervising teacher, escalation could reasonably be expected.

In those circumstances, it was incumbent on Mr Cushing to be proactive and seek to engage with Pupil F.

However, despite being sat in very close proximity to him, it was clear that Mr Cushing did not do so at all.

As Individual A observed, Mr Cushing could have deployed various strategies to seek to control the situation, such as distraction techniques, the use of humour and perhaps seeking to bring someone else into the room as a 'fresh face'.

Mr Cushing did none of these things. To the contrary, the recording indicated that he was completely disengaged from the group he was charged with supervising. He could be clearly observed persistently looking downwards, rather than at or towards the pupils present.

The panel recognised that Mr Cushing could not have anticipated an incident as violent as that which occurred. However, the panel considered that Mr Cushing's response to the initial assault was certainly inadequate. He clearly witnessed the incident as it developed, and was likely to have heard it given the severity of what occurred.

Having witnessed Pupil F repeatedly strike Pupil J, Mr Cushing should have intervened, sought to distract Pupil F, or sought to de-escalate matters with a view to, in particular, keeping Pupil J safe.

As noted above, in actual fact Mr Cushing did none of these things.

Mr Cushing had suggested that the approach he took was one of 'passive intervention'. The panel considered that such an approach, even if consciously taken by Mr Cushing, was plainly inadequate.

Some form of proactive intervention was required, and/or Mr Cushing should have attempted to distract Pupil F or in some way de-escalate matters.

However, when Mr Cushing eventually approached the two pupils, he did not appear to engage with the incident other than, at best on his account, to move a computer and ask Pupil F to calm down. Pupil F was thereby able to kick out at Pupil J, although it was unclear if contact was made. Mr Cushing should have taken steps to ensure the attack was not repeated and failed to do so.

The panel considered this was a dereliction of duty on the part of Mr Cushing.

To further exacerbate matters, after this second assault, or attempted assault, Mr Cushing still did not respond adequately. Another attempt at physical contact could clearly have occurred as a consequence. That there was no further contact with Pupil J was not down to Mr Cushing's actions but simply the fact that Pupil F moved away.

For these reasons, the panel was satisfied that Mr Cushing did not respond adequately to the incident on 20 April 2018 in that he did not use any intervention, distraction or de-escalation strategies when he ought to have done. Mr Cushing's response, such as it was, was plainly inadequate.

The panel found allegation 1(a) proven on that basis.

(b) did not call for support

The panel was informed that the School utilised a system whereby teaching staff were provided with radios to be utilised when support was required.

Individual A provided an account of the School's practice in this regard.

In addition, Individual A confirmed that the computer suite where the incident took place was fitted with an alarm system.

Whilst Mr Cushing had made reference to what he perceived to be a lack of support generally, he had not suggested that he did call for support in response to this incident. No member of staff had reported that they had been asked to get involved.

In the circumstances and given the nature of the incident, the panel considered that it was incumbent on Mr Cushing to seek support.

The panel therefore concluded that Mr Cushing did not call for support when he should have done. It was also satisfied that, by failing to call for support, Mr Cushing had failed to respond adequately to this incident.

It therefore found allegation 1(b) proven.

(c) did not check on Pupil J's welfare

On behalf of the TRA it was submitted that, following this incident, Mr Cushing should have checked with Pupil J to make sure he had safeguarded his welfare.

During the course of his initial meeting with the headteacher of the School on 26 February 2018, Mr Cushing suggested that he "*probably asked Pupil J if he was ok*".

The panel considered this was clearly equivocal on the part of Mr Cushing, and was also contradicted by Pupil J's account given on the same date. Pupil J was recorded as stating that Mr Cushing did not talk to him or ask if he was okay.

The panel concluded that Pupil J's account was corroborated by the CCTV recording which showed no specific interaction with Pupil J prior to his leaving the room.

It was also apparent that Mr Cushing did not subsequently speak with Pupil J as, having been asked to investigate matters initially, Mr Cushing confirmed that he did not approach Pupil J.

The panel accordingly concluded that it was more likely than not that Mr Cushing failed to check on Pupil J's welfare. Given the nature of what had occurred, he plainly should have done. This was a violent act. Even in the absence of physical marks, it was sufficiently serious as to warrant due enquiry into the wellbeing of Pupil J.

The panel was also satisfied that, by failing to check on Pupil J's welfare, Mr Cushing had failed to respond adequately to this incident.

The panel therefore found allegation 1(c) proven.

(d) did not report the incident on the school's 'Behaviour Watch' system and/or inform the school and/or inform Pupil J's parents of the incident

Individual A provided the following account of the School's use of its 'Behaviour Watch' system:

"The system allows certain types of behaviours to be tagged and searched for and staff are also able to copy Individual A into logs to make [her] aware of concerns immediately. The expectation is that staff will log significant incidents so that the information is recorded and can be followed up on if necessary.... If one pupil strikes another I would expect this to be recorded on Behaviour Watch."

An excerpt from Pupil F's behaviour log was included within the papers and Individual A confirmed this evidenced typical examples of behaviour that ought to be recorded.

In her oral evidence, Individual A confirmed that, following a serious incident of this type, the expectation upon staff was that they should report the matter to a colleague, or to the School's senior leadership team. As it may not be practical to make an instant recording on the system, this should be done as soon as possible thereafter so that a robust log of the incident was created. This also allowed the School to identify trends. In relation to this specific incident, Individual A further stated that a written record was important to allow the School to monitor Pupil F's behaviour and to seek to manage future situations.

Individual A also confirmed that parents are notified of any incident where there has been damage caused at the School or where violence of some kind has been occasioned.

Individual A confirmed that staff received training on how to use the 'Behaviour Watch' system and there were opportunities for staff to look at examples of good practice and to familiarise themselves with the standard of reporting required.

The panel was satisfied that, in relation to a serious incident of this type, there was a duty on Mr Cushing to record it on the system. However, Individual A confirmed that, following notification to her of the incident, she checked the system and found no record of it. This was not challenged by Mr Cushing. In his letter dated 15 November 2018, Mr Cushing accepted that, *"on reflection I should have logged the incident on Behaviour Watch"*. The panel agreed. Mr Cushing also took no other steps to inform the School.

The panel also considered that Mr Cushing should have taken steps to ensure that Pupil J's parents were informed. Pupil J's account was that he was adversely affected by what occurred, which the panel accepted. The panel also accepted Individual A's suggestion that, in response to an incident of this type, steps should be taken to ensure both parents were involved, if only to say that an investigation would take place. This was a safeguarding issue and ought to have been dealt with as such.

Mr Cushing did not contact Pupil J's parents. It was clear from the email from Pupil J's mother that they were notified by Pupil J and felt obliged to raise the matter with the School.

The panel accordingly concluded that Mr Cushing did not report the incident on the school's 'Behaviour Watch' system; did not otherwise notify the School; and did not notify Pupil J's parents, when he should have done so. By not doing so, Mr Cushing failed to respond adequately to this incident and the panel therefore found allegation 1(d) proven.

- (e) when asked about the incident by a colleague responded to the effect that you didn't know that anything had happened when in fact you had been present to witness it**

Individual A gave evidence that she spoke with Mr Cushing about this incident on 23 April 2018. She stated:

"... he told me he didn't know anything about it and that he was surprised that an issue had been raised. He told me that Pupil J was a fantasist. I asked him to find out what had happened."

Mr Cushing did not challenge Individual A's evidence, which was accepted by the panel.

The panel found that Mr Cushing was present in the room when the incident occurred, but stated to Individual A, when asked, that he was unaware that anything had happened.

By so acting, Mr Cushing failed to respond adequately to this incident.

The panel therefore found allegation 1(e) proven.

(f) when asked to provide details of the incident by the school responded in an e-mail to the effect that no one had any knowledge of the incident when in fact you had been present to witness it

Individual A gave evidence that, at approximately 12:40pm on 23 April 2018, she e-mailed Mr Cushing to tell him that she had not been able to find any record of the incident and asking to meet with him to discuss it.

The panel was presented with a copy of this email which clearly set out the background to the request.

Mr Cushing's email sent in response, which was also included in evidence, stated that he had made enquiries but that "*nobody knows anything about it*".

On the basis of this email and having found that Mr Cushing had witnessed the incident, the panel concluded that he had denied knowledge of the incident as alleged and, by doing so, had failed to respond adequately to it.

The panel therefore found allegation 1(f) proven.

2. Your conduct at Allegation 1(e) and/or 1(f) as may be found proven was dishonest and/or lacked integrity.

Having found the facts of allegations 1(e) and 1(f) proven, the panel went on to consider whether Mr Cushing's conduct was dishonest and/or lacked integrity.

In relation to dishonesty, the panel first considered the actual state of knowledge or belief of Mr Cushing as to the facts, before considering whether his conduct was dishonest by the standards of ordinary decent people.

Mr Cushing had not specifically responded to this allegation such that his position was unknown.

On behalf of the TRA, it was submitted that this was a significant incident and he should have disclosed it when specifically asked.

The notes of Mr Cushing's investigatory interview record that, when asked why he had not notified Individual A, he responded stating that he "*did not think this was relevant*". On behalf of the TRA it was submitted that this was indicative of Mr Cushing being dishonest.

The panel agreed. Mr Cushing had been specifically and directly asked about the incident by Individual A and there was no scope for misunderstanding what was required of him. Having witnessed the incident, the responses he provided were plainly false. He had adequate opportunity to provide a full and honest account but did not do so. This obstructed the School's initial investigation into the parental complaint.

The panel also took account of the fact that Mr Cushing appeared to change his position only once he had been shown the CCTV footage. He moved from suggesting that he knew nothing of the incident to providing an explanation, albeit one that tried to minimise its severity.

The panel therefore concluded that Mr Cushing had positively and deliberately misled Individual A. This amounted to a deception and was dishonest by the standards of ordinary decent people. This information was plainly material to the School's investigation, which Mr Cushing would or ought to have appreciated.

In relation to integrity, the panel accepted the legal advice provided in relation to the meaning of lack of integrity as recently considered by the Court of Appeal in *Wingate v SRA*; *SRA v Mallins* [2018] EWCA Civ 366. In particular, the panel recognised that professional integrity denotes adherence to the standards of the profession.

The panel considered whether, by his actions, Mr Cushing had failed to adhere to the ethical and professional standards of the profession.

Given the panel's conclusions and findings regarding his conduct in allegations 1(e) and 1(f), the panel was satisfied that Mr Cushing had failed to adhere to these standards.

The panel noted that Mr Cushing's role at the School was to support pupils with additional learning needs and he was also in a position of trust. It was apparent, as noted above, that Mr Cushing had been provided with training during his time at the School. The panel was referred to the School's policies, of which Mr Cushing would, or should, have been aware.

By failing to provide honest answers in response to direct questions asked of him, the panel was satisfied that Mr Cushing lacked integrity. In this respect, Mr Cushing had failed to meet the standards expected of him. He ought to have realised and appreciated that it was imperative that he give full and proper disclosure of what happened.

On that basis, having found the facts of allegation 1(e) and 1(f) proven, the panel also concluded that Mr Cushing's conduct was dishonest and lacked integrity in relation to both allegations and it found allegation 2 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 went on to consider whether the facts of those proven 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 Mr Cushing in relation to the facts found proven, involved breaches of the Teachers’ Standards. The panel considered that by reference to Part Two, Mr Cushing 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, by
 - having regard for the need to safeguard pupils’ well-being, in accordance with statutory provisions;
- Teachers must have proper and professional regard for the ethos, policies and practices of the school in which they teach ...;
- Teachers must have an understanding of, and always act within, the statutory frameworks which set out their professional duties and responsibilities.

The panel also considered whether Mr Cushing'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 was satisfied that the conduct of Mr Cushing amounted to misconduct of a serious nature which fell significantly short of the standard expected of the profession. The panel's findings were such that he had failed to act appropriately in relation to a serious safeguarding incident. He had also failed to take appropriate steps to protect Pupil J's wellbeing. When asked about what had occurred, Mr Cushing acted dishonestly and without integrity.

Accordingly, the panel was satisfied that Mr Cushing was guilty of unacceptable professional conduct.

In relation to whether Mr Cushing's conduct may bring the profession into disrepute, the panel took 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 took 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 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 concluded that Mr Cushing's actions constituted conduct that may bring the profession into disrepute.

Having found the facts of all of the allegations proven, the panel therefore further found that Mr Cushing's 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, the panel considered 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 considered whether it was an appropriate and proportionate measure, and whether it was 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 noted 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.

In light of the panel's findings against Mr Cushing, which involved a failure to take appropriate action in response to a safeguarding incident, a lack of integrity and dishonesty, there was a strong public interest consideration in respect of the protection of pupils and other members of the public.

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

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

The panel did not consider that there was a strong public interest consideration in retaining Mr Cushing in the profession in the absence of hearing from him. It was clear that he was an experienced teacher and the panel was presented with positive evidence

of his practice. It was clear from the evidence that Mr Cushing had made a valuable contribution to the School. However, he had not engaged with the regulatory process. His future intentions were also unknown. Nevertheless, the panel did recognise that, since no doubt had been cast upon his abilities as an educator, he may well be able to make a valuable contribution to the profession in the future should he wish to continue his career in teaching.

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 Cushing.

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 Mr Cushing.

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 were relevant in this case were:

- 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 considered whether or not there were sufficient mitigating factors to militate against the appropriateness and proportionality of a prohibition order, particularly taking into account the nature and severity of the behaviour in this case.

In light of the panel's findings, it considered that the following mitigating factors were present in this case:

- Mr Cushing had an otherwise unblemished record in the context of a long career in education. There was no evidence that Mr Cushing had been subject to any previous regulatory or disciplinary proceedings. There was no evidence of any prior complaints in relation to his conduct.
- The panel was presented with positive evidence of Mr Cushing's character and teaching practice, as noted above. Individual A stated he was well-liked within the School and referred to the fact that he had taken on a highly challenging group of pupils as a nurture group, and had built observably good relationships.

Weighed against this, the aggravating features in this case were that:

- Mr Cushing's actions were deliberate and he was not acting under duress.
- Mr Cushing had demonstrated no insight into his failings or shown regret or remorse. To the contrary, he had initially denied any knowledge of events and even when he subsequently changed his account of the incident, he sought to underplay its seriousness.
- Mr Cushing had engaged with the TRA to only a very limited extent. He had not attended the hearing to give evidence.
- The panel concluded that Mr Cushing had behaved dishonestly and lacked integrity, which was a serious matter.
- Mr Cushing had also failed to take appropriate steps to safeguard a pupil, which was a serious matter. Not only did he fail to act appropriately in response to a serious incident, he failed to check on Pupil J's welfare and did not notify the School or Pupil J's parents.
- Mr Cushing's actions amounted to a clear breach of the Teachers' Standards.

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.

Having carefully considered the circumstances of this case and taking into account the mitigating evidence present, the panel was of the view that, applying the standard of the ordinary intelligent citizen, recommending no prohibition order would not be a proportionate and appropriate response. Recommending that the publication of adverse findings would be sufficient in this case would unacceptably compromise the public interest considerations present, despite the severity of the consequences for Mr Cushing of prohibition.

The panel was of the view that prohibition would be both proportionate and appropriate. The panel decided that the public interest considerations outweighed the interests of Mr Cushing. The panel's findings in relation to Mr Cushing's dishonesty and lack of integrity were a significant factor in forming that opinion as was the complete lack of insight, regret and remorse shown by Mr Cushing.

The panel therefore 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 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 the recommendation of a review period. These behaviours include serious dishonesty. In the circumstances of this case, the panel did consider that Mr Cushing's conduct could properly be categorised as serious dishonesty. The panel had found that Mr Cushing had deceived the School and the dishonesty was maintained. Mr Cushing only admitted his knowledge of the incident having been shown the CCTV footage.

However, having considered the mitigating features set out above, the panel concluded that its findings indicated a situation in which a review period would be appropriate. Whilst the dishonesty was maintained for a time, that time was relatively short-lived. Most saliently, this appeared to be a one-off aberration in the context of a long and unblemished career. Mr Cushing worked in a challenging environment and it was clear that Pupil F had specific and challenging needs. It was also clear that Mr Cushing had already been punished for his actions. For these reasons, the panel decided that it would be proportionate in all the circumstances for the prohibition order to be recommended with provisions for a review period, notwithstanding its findings.

For these reasons, the panel concluded that a review period of 2 years was proportionate in all the circumstances. This properly reflected the seriousness of the conduct found proven and took account of Mr Cushing's prior good history. It also recognised that prohibition orders should not be imposed simply to be punitive. The panel considered that a period of 2 years and would enable Mr Cushing to reflect on his actions and gain insight into the nature and effect of his conduct.

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 Mr Cushing should be the subject of a prohibition order, with a review period of two years.

In particular, the panel has found that Mr Cushing 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, by
 - having regard for the need to safeguard pupils' well-being, in accordance with statutory provisions;
- Teachers must have proper and professional regard for the ethos, policies and practices of the school in which they teach ...;
- Teachers must have an understanding of, and always act within, the statutory frameworks which set out their professional duties and responsibilities.

The panel also considered whether Mr Cushing's conduct displayed behaviours associated with any of the offences listed on pages 8 and 9 of the Advice and has found that the "offence of serious dishonesty is relevant."

The panel finds that the conduct of Mr Cushing fell significantly short of the standards expected of the profession.

The findings of misconduct are particularly serious as they include a findings in which Mr Cushing, failed to act appropriately in relation to a serious safeguarding incident and 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 Mr Cushing, and the impact that will have on him, is proportionate and in the public interest.

In this case, I have considered the extent to which a prohibition order would protect children. The panel note, "In light of the panel's findings against Mr Cushing, which involved a failure to take appropriate action in response to a safeguarding incident, a lack of integrity and dishonesty, there was a strong public interest consideration in respect of the protection of pupils and other members of the public." 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, "Mr Cushing had demonstrated no insight into his failings or shown regret or remorse. To the contrary, he had initially denied any knowledge of events and even when he subsequently changed his account of the incident, he sought to underplay its seriousness." In my judgement, the lack of insight and remorse means that there is some

risk of the repetition of this behaviour and this puts at risk future pupils' safety. 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, "there was a strong public interest consideration in declaring proper standards of conduct in the profession. The conduct found against Mr Cushing was outside that which could reasonably be tolerated." I am particularly mindful of the finding of failure to safeguard and 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 Mr Cushing himself. The panel say, "It was clear that he was an experienced teacher and the panel was presented with positive evidence of his practice. It was clear from the evidence that Mr Cushing had made a valuable contribution to the School. However, he had not engaged with the regulatory process. His future intentions were also unknown. Nevertheless, the panel did recognise that, since no doubt had been cast upon his abilities as an educator, he may well be able to make a valuable contribution to the profession in the future should he wish to continue his career in teaching."

A prohibition order would prevent Mr Cushing from teaching. 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 the lack of insight or remorse. The panel has said, "The panel's findings in relation to Mr Cushing's dishonesty and lack of integrity were a significant factor in forming that opinion as was the complete lack of insight, regret and remorse shown by Mr Cushing."

I have given less weight in my consideration of sanction therefore, to the contribution that Mr Cushing 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 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 intended aims of a prohibition order.

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 have considered the panel's comments, "this appeared to be a one-off aberration in the context of a long and unblemished career. Mr Cushing worked in a challenging environment and it was clear that Pupil F had specific and challenging needs. It was also clear that Mr Cushing had already been punished for his actions. For these reasons, the panel decided that it would be proportionate in all the circumstances for the prohibition order to be recommended with provisions for a review period, notwithstanding its findings."

The panel has also said that a 2 year review period, "properly reflected the seriousness of the conduct found proven and took account of Mr Cushing's prior good history. It also recognised that prohibition orders should not be imposed simply to be punitive. The panel considered that a period of 2 years and would enable Mr Cushing to reflect on his actions and gain insight into the nature and effect of his conduct."

I have considered whether a 2 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. Whilst I acknowledge that the behaviour found proven is serious, I agree with the panel that in light of the circumstances in this case and the fact that this appears to be a one off incident a two-year review period is sufficient to achieve the aim of maintaining public confidence in the profession.

This means that Mr Andrew Cushing 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 8 July 2021, 2 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 Cushing remains prohibited from teaching indefinitely.

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

Mr Cushing 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 'Dawn Dandy', with a stylized, sweeping flourish at the end.

Decision maker: Dawn Dandy

Date: 8 July 2019

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