



Teaching  
Regulation  
Agency

# **Mr Ross Povey: Professional conduct panel outcome**

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

**October 2024**

## Contents

Introduction	3
Allegations	4
Preliminary applications	4
As to whether disputed documents should be admitted	4
Application to admit additional documents	5
Application to admit statement of Mr Ross Povey	6
Summary of evidence	6
Documents	6
Witnesses	7
Decision and reasons	7
Findings of fact	10
Panel's recommendation to the Secretary of State	18
Decision and reasons on behalf of the Secretary of State	22

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

**Teacher:** Mr Ross Povey

**Teacher ref number:** 0213816

**Teacher date of birth:** 25 October 1975

**TRA reference:** 18695

**Date of determination:** 18 October 2024

**Former employer:** Harrop Fold School, Worsley, Manchester

### Introduction

A professional conduct panel (“the panel”) of the Teaching Regulation Agency (“the TRA”) convened on 7 to 11 and 14 to 18 October 2024 at Cheylesmore House, 5 Quinton Road, Coventry, CV1 2WT, to consider the case of Mr Ross Povey at a joint hearing with [REDACTED] (“Teacher A”) and [REDACTED] (“Teacher B”).

The panel members were Mr Paul Hawkins (lay panellist – in the chair), Mrs Shabana Robertson (lay panellist) and Miss Rachel Kruger (teacher panellist).

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

The presenting officer for the TRA was Mr Andrew Cullen of Browne Jacobson LLP solicitors.

Mr Ross Povey was not present and was not represented.

Teacher A was present and was represented by Mr Andrew Faux of counsel, instructed by Ms Emma Willis-Payne and Ms Lauren Hilton of the Association of School and College Leaders.

Teacher B was present and was represented by Mr Jonathan Storey of counsel, instructed by Ms Alicia Pimblett of the National Education Union.

The hearing took place in public and was recorded.

## **Allegations**

The panel considered the allegations set out in the notice of proceedings dated 25 June 2024.

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

1. He failed to maintain and/or ensure that staff maintained accurate records in respect of pupil attendance on one or more occasions, in that he:
  - a. caused and/or permitted and/or failed to prevent the 'off rolling' of one or more pupils;
  - b. caused and/or permitted and/or failed to prevent the amendment of one or more sets of pupil attendance data on SIMS to represent that one or more pupils attended School when he knew or ought to have known that in fact they had not;
  - c. failed to ensure that one or more pupils were recorded as having been sent home before the end of the School day;
2. In so doing 1 above, he failed to protect pupil(s) from the risk of potential harm.
3. His conduct as may be found proven at 1 above lacked integrity and/or was dishonest.

Mr Ross Povey made no admissions of the allegations or as to unacceptable professional conduct or conduct that may bring the profession into disrepute.

## **Preliminary applications**

### **As to whether disputed documents should be admitted**

In advance of the hearing, the panel received an agreed bundle of documents, which was limited to the notice of proceedings sent to each of the teachers concerned and statements and documents on behalf of the teachers. The panel was informed that there was a dispute between the parties as to the admissibility of some evidence which the TRA sought to rely upon. The panel was informed that, in accordance with paragraph 4.22 of Teacher misconduct: Disciplinary procedures for the teaching profession 2018 ("the Procedures"), a bundle of disputed documents had been prepared by the TRA and served on the other parties and the legal adviser.

In making submissions to the panel as to the admissibility of the disputed evidence, the parties agreed that a determination could be made by the panel without sight of the

bundle of disputed documents. The parties agreed that the dispute related to the admissibility of evidence concerning years prior to the period of the allegations. It was noted that, at an earlier Case Management Hearing (CMH), the TRA had stated that the allegations related to the 2017/18 academic year when Teacher A was employed [REDACTED] and Mr Ross Povey and Teacher B were both employed [REDACTED] at Harrop Fold School ("the School").

Whilst confirming that the allegations to be considered by the panel were confined to the 2017/18 academic year, Mr Cullen submitted that evidence concerning earlier periods of time was relevant for the purpose of rebutting evidence of Teacher A and Teacher B that they were not aware of earlier 'off-rolling' of pupils. In support of this submission, Mr Cullen directed the panel to parts of the statements of Teacher A and Teacher B in which reference was made to the period prior to the 2017/18 academic year.

Mr Faux and Mr Storey submitted that it was clear from the preparation of the bundle that the TRA had intended to rely on the disputed evidence before receiving the statements of Teacher A and Teacher B. It was further submitted that the only references in the statements of Teacher A and Teacher B to previous years were in respect of their lack of awareness of the practice of 'off-rolling' rather than assertions by them that there had been no 'off-rolling'. For these reasons, they submitted that the TRA could not rely on the disputed evidence as evidence in rebuttal.

After receiving legal advice, the panel considered the competing submissions in determining whether the disputed evidence should be admitted. The panel considered whether the disputed evidence was relevant to the matters to be determined by the panel and whether it would be fair to admit it. The panel concluded that the disputed evidence might reasonably be considered relevant. As to fairness, the panel carefully reviewed the statements of Teacher A and Teacher B. The panel noted that the TRA had stated at the CMH in September 2023 that the allegations related to the 2017/18 academic year. Given that the statements of Teacher A and Teacher B had been signed and submitted after the TRA had clarified the scope of the allegations at the CMH, the panel considered whether it would be fair to admit the disputed evidence.

After very careful consideration, given that the scope of the allegations as defined by the TRA was confined to the 2017/18 academic year, the panel was not satisfied that potential prejudice to the teachers in admitting the disputed evidence would be outweighed by any probative value of that evidence. Accordingly, the panel determined that the disputed evidence should not be admitted.

### **Application to admit additional documents**

On Day 4 of the hearing, Mr Cullen made an application to admit additional documents comprising appendices to the investigation report of Witness A, namely appendices numbered 10, 11 and 70. Mr Cullen explained that these documents had been served on

the parties, but had been inadvertently omitted from the bundle when it was redacted following the decision not to admit evidence relating to the period prior to the 2017/18 academic year. Mr Faux and Mr Storey confirmed that there were no objections to the admission of these documents. The panel determined that the documents should be admitted on the basis that the evidence was relevant, and it was not unfair to admit it.

## **Application to admit statement of Mr Ross Povey**

On Day 8 of the hearing, Mr Faux made an application to admit a redacted written statement of Mr Ross Povey dated 4 March 2019. Mr Cullen informed the panel that he had been communicating with Mr Ross Povey's representative in relation to the submission of written evidence on behalf of Mr Ross Povey. Mr Cullen said that Mr Ross Povey's representative had submitted a letter confirming the outcome of a disciplinary hearing in relation to Mr Ross Povey. However, this was inadmissible in line with the principle that regulatory panels should not be referred to findings of fact from previous disciplinary hearings. As an alternative, Mr Cullen said that Mr Ross Povey's representative had referred to a written statement which had been submitted at an earlier stage of the TRA's investigation. Having identified that statement, Mr Cullen said that he had provided Mr Faux and Mr Storey with a copy to enable them to consider whether there were any objections from them to the late admission of this evidence. Having seen the document, Mr Faux made an application for the admission of the statement as he felt that it was of assistance to his client's case. Mr Storey and Mr Cullen confirmed that they had no objection to the admission of the statement. After receiving legal advice, the panel determined that the statement should be admitted. The panel was satisfied that the document was relevant and that its admission would not cause unfairness to any party. The panel was particularly conscious that Mr Ross Povey had not attended the hearing and that it would assist the panel's determination of his case to have the benefit of his written evidence.

## **Summary of evidence**

### **Documents**

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

Section 1: Notices of proceedings – pages 5 to 16

Section 2: Teacher documents – pages 18 to 469

After making a determination regarding the bundle of disputed documents, the panel received an additional bundle of documents which included:

Section 1: TRA witness statements and documents – pages 6 to 501

The panel members confirmed that they had read all the documents within the agreed bundle in advance of the hearing. The panel read all the documents within the additional bundle on the second day of the scheduled hearing, which was set aside for that purpose.

On Day 4 of the hearing, the panel received and read the additional documents comprising the appendices 10, 11 and 70 to the report of Witness A.

On Day 8 of the hearing, the panel received and read a written statement of Mr Ross Povey dated 4 March 2019.

In the consideration of this case, the panel had regard to the Procedures.

## **Witnesses**

The panel heard oral evidence from TRA:

[REDACTED] Witness A

[REDACTED] Witness B

[REDACTED] Witness C

[REDACTED] Witness D

The panel heard oral evidence from:

Teacher A

[REDACTED] Witness E

[REDACTED] Witness F

[REDACTED] Witness G

[REDACTED] Witness H

Teacher B

[REDACTED] Witness I

## **Decision and reasons**

The panel announced its decision and reasons as follows:

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

The School was a community high school in Little Hulton. The School had previously been in special measures until December 2005. The School had a high level of behavioural issues to the extent that it required a school-based police officer to assist in controlling behaviour. [REDACTED]. The School had a substantial historical financial deficit. An Ofsted report in September 2010 stated that the new school building had significantly fewer pupils than it had been designed for, due to surplus places in the local authority. The report stated that the School was working hard to balance the budget. The School featured in a Channel 4 fly-on-the wall documentary called 'Educating Manchester' which was first broadcast in 2017, based on filming in the 2016/17 academic year. The filming continued in the 2017/18 academic year. Teacher A informed the panel that the School's involvement in the Channel 4 documentary [REDACTED] brought in revenue that was helping to reduce the School's financial deficit. [REDACTED]. This coincided with the governing body of the School adding [REDACTED] Mr Ross Povey and Teacher B [REDACTED]. The change in the leadership structure was initially agreed [REDACTED] it was agreed that Mr Ross Povey and Teacher B would still be [REDACTED] as it was envisaged that Teacher A would spend more time away from the School [REDACTED].

In January 2018 a query was raised by an adviser from the Connexions Service about a pupil that had been recorded by the School as being home educated. The Connexions Service receives data from schools to enable them to support pupils with the next stage of their careers with regard to work, further training or education. The Connexions adviser contacted Salford Council's Elective Home Education (EHE) coordinator to query the information that the pupil was being home educated. This was after making a home visit and being informed that the pupil was being educated at an alternative provision placement and not at home. The panel was informed that it is a legal requirement for schools to inform the local authority when a parent would like to home educate their child so that an assessment of the education provision can be carried out. The EHE coordinator checked the information from the School and noted that the pupil concerned had been recorded as home educated for a short period just before the time of the Pupil Level Annual School Census (PLASC) in January 2018 and then returned to the School roll a week or so later. The PLASC is an electronic collection of pupil and school level data provided by all schools in January, May and October each year. The January PLASC provides a record of all students 'on-roll' whose public examination results for that year are subsequently collected. Accordingly, pupils not on the roll at the date of the January PLASC do not count towards the School's examination results. Each school's results are, therefore, based on the achievements of the pupils recorded in the PLASC.

Initial investigations identified that 2 other pupils had also been taken off the School roll prior to the January PLASC and then returned to the School roll a short time later.



Teacher A was asked to look into the removal of these pupils and provide an explanation. The School's Board of Governors were not satisfied with the explanation provided and a decision was made to appoint Witness A, [REDACTED], to conduct an investigation. During the local investigation, it became apparent that other members of staff may have been involved in misconduct and a decision was made to expand the scope of the investigation to include Mr Ross Povey and Teacher B. During the course of the local investigation, numerous members of staff were interviewed, including Teacher A, Mr Ross Povey, Teacher B and Witness D. The panel heard that, on 20 June 2018, Teacher B and Witness D were suspended. Mr Ross Povey was suspended on 11 July 2018 and Teacher A on 12 July 2018.

The local investigation considered allegations that pupils had been unlawfully removed from the School's roll, that attendance data had been falsified and that some pupils had been unlawfully excluded. As a consequence of these alleged actions, the investigation considered whether there had been a failure to safeguard pupils.

At the outset of this hearing, it was established that the TRA's case was confined to events in the 2017/18 academic year. The hearing before this panel proceeded as a joint hearing of allegations against Teacher A, Teacher B and Mr Ross Povey. Each of them faced the same allegations. Mr Ross Povey did not attend and was not represented at this hearing. However, the panel considered a written statement submitted on his behalf. The panel heard oral evidence from 12 witnesses, including Teacher A and Teacher B. In addition, the panel considered a large volume of written statements and documents, including records of interviews with members of staff that were obtained during the local investigation. Whilst considering this evidence, the panel made its own determinations based on the totality of evidence presented at this hearing.

The panel acknowledged that extreme caution was required when considering the memories of witnesses. The panel adopted the approach of testing the oral evidence of witnesses, in the first instance, by reference to objective facts and, where available, contemporaneous documents. The panel avoided making any initial general assessment of the credibility of any witness by reference to their demeanour and confined its analysis to the specific allegations and consistency or lack of consistency with other evidence. In the absence of contemporaneous documents, the panel felt that it was able to attach some weight, where appropriate, to demeanour.

The panel noted that it was dealing with matters that were alleged to have taken place some years ago. The panel made allowances for the fact that, with the passage of time, memories can fade or change. Witnesses, whoever they may be, cannot be expected to remember with crystal clarity, events which occurred many years ago. From the point of view of Teacher A, Mr Ross Povey and Teacher B, the panel recognised that the longer the time since an alleged incident, the more difficult it may have been for them to answer the allegations. This was considered in their favour in deciding whether the allegations against them were proved on the balance of probabilities.

The panel also recognised that it was dealing with a large volume of hearsay evidence contained in written statements and records of interviews of witnesses not called to give oral evidence at this hearing. In some instances, it was not clear whether responses given by persons interviewed during the local investigation were based on what they had personally observed or what they had heard from others. The panel approached this evidence with a critical eye in assessing what weight, if any, could be attached to this evidence.

The panel was also conscious that evidence presented at this hearing contained some expressions of opinions which were not, or may not have been, based upon what the witnesses concerned observed. The panel accepted the legal advice that opinions of speculative nature, whether expressed by a witness for the TRA or a witness on behalf of one of the teachers should be disregarded.

## **Findings of fact**

The findings of fact are as follows:

**It was alleged that you are guilty of unacceptable professional conduct and/or conduct that may bring the profession into disrepute, in that:**

- 1. You failed to maintain and/or ensure that staff maintained accurate records in respect of pupil attendance on one or more occasions, in that you:**
  - a. caused and/or permitted and/or failed to prevent the ‘off rolling’ of one or more pupils;**

The evidence in support of this allegation related to 3 pupils, Pupils A, B and C. The panel was provided with the attendance records for each of these pupils for the 2017/18 academic year. These showed as follows:

- Pupil A was recorded as Code B – meaning educated off site (not dual registered) – for most of the academic year. In the period between 18 January 2018 and 23 January 2018 this changed to Code Z, for which the index of attendance codes stated, ‘Do not use’. From 24 January 2018, the recording reverted to Code B.
- Pupil B was recorded as Code O – meaning unauthorised absence – for most of the academic year. There was an entry for 4 January 2018 which indicated that Pupil B had been present in both the morning and afternoon. Between 5 January 2018 and 23 January 2018, Pupil B was recorded as Code Z before reverting to Code O from 24 January 2018.

- Pupil C was recorded as Code B for most of the academic year. As with Pupil A, in the period between 18 January 2018 and 23 January 2018 this changed to Code Z, before reverting to Code B from 24 January 2018.

Witness A gave evidence that these 3 pupils were treated as not on the School's roll at the date of the January 2018 PLASC and would not, therefore, count towards the School's public examination results that year.

The panel considered a chain of emails commencing with one dated 11 November 2017 from Teacher B to Witness D, Witness I and Ross Povey, in which Teacher B said, 'Just conscious that PLASC is approaching and wondered where we were up to with removing some of our worst performing Year 11s so that they don't count on results?'

That particular email contained a list of 12 pupils, including Pupils A, B and C. A subsequent email from Teacher B dated 14 December 2017 referred to a reduced list of 9 pupils, including Pupils A, B and C. That email, addressed to Witness D, Witness I, Ross Povey, Teacher A and Witness E, said: 'Further to discussions will all be off for PLASC? [Witness D] where are they all and can [Teacher A] liaise with Heads?'

On 11 January 2018, [REDACTED] ("Individual A") sent an email to Teacher B and Ross Povey in which she explained that she had been trying to get Pupil B removed from the School roll. That email stated that Individual A expected to get an email from the local authority to say that the pupil could not be removed from the register, but that Individual A believed that there was a case to remove him. Teacher B then sent an email to Mr Ross Povey on the same day in which she asked Mr Ross Povey if he was able to contact the local authority 'or should we just remove anyway? What do you think?'. Mr Ross Povey sent an email in response later that day in which he said, 'I think we should just remove him.' Teacher B sent an email to Witness D on the same day in which she said, 'Please can you make sure [Pupil B] is removed before PLASC. I know [Individual A] was not sure but Ross has given the green light'. In his written statement, Mr Ross Povey stated that his decision in relation to the removal of Pupil B from the roll was made in order to provoke a response from the local authority as he felt that the local authority had been extremely slow in taking necessary action in relation to Pupil B. However, the panel noted that Pupil B's removal from and reinstatement to the roll had the effect that Pupil B was not included in the PLASC return.

The panel noted that Pupil B was removed from the School roll in relation to PLASC, but subsequently returned to the roll after the local authority objected to his removal. The panel noted that the Education (Pupil Registration) (England) Regulations 2006 specified grounds on which a pupil should be deleted from the register. This included, at Regulation 8(h), where a pupil had been continuously absent from school for a period of not less than 20 days. However, one of the conditions for such a removal was that both the School and the local authority had failed, after reasonable enquiry, to ascertain where the child was. The panel concluded that compliance with this condition required the

School to receive confirmation that the local authority had failed to ascertain where the child was. The panel heard evidence that the School was advised by the local authority to return Pupil B to the roll, which is what then happened. The panel was satisfied that it had been inappropriate to remove Pupil B from the School roll.

As regards Pupils A and C, the panel noted that they were both removed from the School's roll on 17 January 2018 with the stated reason being 'EHE', meaning that they were being educated at home. They were then returned to the roll on 25 January 2018, after the EHE coordinator had queried why one of them had been marked as EHE, despite not being referred to her as required.

The panel was concerned to note that, despite being returned to the roll after being removed, the attendance record for each of the 3 pupils was not corrected, with the consequence that the pupils were treated as off roll at the date of the PLASC.

In considering this allegation, the panel had regard to the Ofsted definition of 'Off-rolling', namely: 'the practice of removing a learner from the provider's roll without a formal, permanent exclusion or by encouraging a parent to remove their child, when the removal is primarily in the interests of the provider rather than in the best interests of the learner. Off-rolling in these circumstances is a form of gaming.'

In considering whether the removal of Pupils A, B and C from the School's register amounted to 'Off-rolling' within the scope of this definition, the panel concluded that the removal from the roll was not in the best interests of any of these pupils. The panel was satisfied that the removal of these pupils from the roll was likely to have a positive effect, however marginal, on the School's performance data, including GCSE results and meeting the minimum floor standards for schools. Accordingly, the panel concluded that the School's actions in removing the pupils amounted to 'Off-rolling'.

The panel noted that there was no evidence of Teacher A's direct involvement in the decision to 'Off-roll' the pupils concerned. However, in his written statement, he accepted that he had failed to prevent the 'Off-rolling'.

The panel found allegation 1.a. proved on the basis that Mr Ross Povey had failed to ensure that staff maintained accurate records in respect of pupil attendance in that he had failed to prevent the 'Off-rolling' of these pupils.

**b. caused and/or permitted and/or failed to prevent the amendment of one or more sets of pupil attendance data on SIMS to represent that one or more pupils attended School when you knew or ought to have known that in fact they had not;**

Witness A gave evidence that, during the course of his investigation, data was obtained from SIMS, the School's management information system, which showed that on 18 May 2018 around 600 register marks originally made between 1 January 2018 and 30 April

2018 were changed. The TRA's case was that the timing of these amendments coincided with the May census and had the effect of presenting the School's attendance figures as higher than they actually were. The panel noted that the May census provided the figures for the School's overall percentage attendance for the year. The parties agreed that the date of the May census was 17 May 2018 and that the submission date for the census was 22 May 2018. The panel noted that all of the amendments that were made prior to the submission of the census changed the original mark to indicate that the pupil concerned was present. The original marks were predominantly unauthorised absences. Although the panel did not have any detailed evidence about the individual amendments made, the panel considered it implausible that all of the amendments made on one day immediately prior to submission of the May census were genuine corrections. This conclusion was supported by responses given by several members of staff when interviewed as part of the local investigation.

The panel noted that, when interviewed as part of the local investigation, Individual A, [REDACTED], confirmed that alternative providers sent daily attendance figures to the School regarding the pupils concerned. Individual A was asked why the School's attendance figure of Pupil C was recorded as 99% whereas the alternative provider had calculated this as 70%. Individual A was also asked why the School's attendance figure for Pupil A was 90%, whereas the correct figure was 45%. The panel noted that this question related to the incorrect recording of data rather than amendment of data as referred to in 1.a. However, Individual A's response was to say that 'we have been asked to make it [attendance] look better'. She said that [REDACTED] ("Individual B") had told her that the attendance percentage was 92%, but that Teacher A wanted it to be 94%.

Individual B, [REDACTED], said that the national target figure for attendance was normally around 93 or 94% but that, when she initially ran the census, the figure was around 92 to 93%. Individual B referred to speaking to Teacher B about this figure to ask for advice and said that Teacher B told her to do what she would normally do.

This account was confirmed by Teacher B who said that Individual B had spoken to her about the attendance figures in May 2018. Teacher B said that Individual B told her that she was working with the attendance figure that was due to be submitted, but there was an issue with the figure, and she had not been able to contact Teacher A. Teacher B said that she asked her what the attendance figure was, and Individual B had told her that the figure was 92.6%. Teacher B said that she told Individual B to put it at 92.6%, but Individual B responded that the figure needed to be closer to the national average. Teacher B said that she became suspicious at that point and that she immediately spoke to [REDACTED] ("Individual C"), who had recently taken the lead on attendance, and was reassured that attendance was being tracked with great accuracy.

In her interview, [REDACTED] ("Individual D"), [REDACTED], said that attendance figures had been changed in the context of the census and that the pupils whose marks were changed did not include pupils who might be fast tracked to court. The panel

believed this to be a reference to avoiding the scrutiny of a pupil's attendance figures that might be exercised by a court. Individual D also referred to Teacher A saying to them, "Come on ladies, let's get this sorted".

[REDACTED] ("Individual E") said in her interview, "[Individual B] is the [REDACTED]. At census she will say, '[Teacher A] wants attendance at 94.3%'. [Individual B] says, 'it's still not there'".

In his evidence at this hearing, Teacher A said that he did not get involved in the procedures for recording attendance at the School, but that the feedback he was getting from the local authority was that the attendance figures were good. It was pointed out that the local authority's view of the attendance figures could only have been based on the data provided by the School. The panel concluded that Teacher A considered the annual attendance figure, for which he had previously received positive feedback, to be an important metric that needed to be maintained.

The panel was satisfied by the totality of evidence presented that the amendments to the pupil attendance data on 18 May 2018 were made for the purpose of presenting an attendance figure that was higher than actually achieved by the School. Teacher A acknowledged in his evidence that he would have signed off the May census.

As to the potential responsibility of Mr Ross Povey, the panel noted that pupil attendance was in his area of responsibility. However, there was no evidence of any direct involvement by Mr Ross Povey in causing the amendments to be made. The panel concluded that the evidence of Teacher A's involvement in causing the amendments of pupil attendance data in SIMS to be made, superseded any responsibility for the amendments on the part of Mr Ross Povey.

The panel found 1.b. not proved.

**c. failed to ensure that one of more pupils were recorded as having been sent home before the end of the School day;**

The panel heard that the School had a 'no exclusions' policy. Teacher A explained that he was strongly against pupils being labelled as having been excluded, which ran the risk of them struggling to turn things around. In his written statement for this hearing and in his oral evidence, Teacher A accepted that pupils were sent home during the school day. However, he said that the context in which this happened was that there were many pupils at the School who struggled with mental health issues. Teacher A said that, as a school, they made the decision that these pupils were genuinely not mentally well enough to be in school and needed to take some time to get themselves in a good place to return to school. He said that the pupils would not need to be out of school for longer than necessary and would return as soon as possible, which would usually be the

following morning, but could take a couple of days. Teacher A said that he felt that this was acting in the best interests of the pupils concerned.

The panel considered the DfE guidance document entitled, 'Exclusion from maintained schools, academies and pupil referral units in England (2017)'. Paragraph 13 of this guidance stated: "Informal" or "unofficial" exclusions, such as sending pupils home "to cool off" are unlawful, regardless of whether they occur with the agreement of parents and carers. Any exclusion of a pupil, even for a short period of time, must be formally recorded'.

In his oral evidence, Teacher A said that he believed that sending pupils home was appropriate to give them the chance to 'settle down'. He referred to a pupil that might be having a 'meltdown', for example, punching a wall. However, the panel felt that Teacher A was unable to clearly explain why such an incident was not a behavioural issue or how providing a pupil with the opportunity to 'settle down' differed from allowing them to 'cool off'.

The panel also noted that, [REDACTED], Teacher A wrote a letter [REDACTED], annexed to which was a document setting out his response to allegations. In that document, he said, 'It is true that if a student is behaving particularly poorly, we talk to parents about how to deal with the situation. With their agreement, occasionally the student may go home an hour early, for example. We have found this approach to be highly effective – for the school, the pupil and their families – with a view to avoiding potential safeguarding issues. We have not coded these as formal exclusions, as it is always done in agreement with the parents'.

The panel noted that, in this response, Teacher A referred to students being sent home for poor behaviour and no mention was made of mental health issues. The panel also noted that the reference to agreement with parents disregarded the exclusion guidance, which stated that such informal exclusions are unlawful regardless of whether they occur with the agreement of parents.

The panel recognised that allegation 1.c. was concerned with the recording of pupils being sent home rather than the unlawful nature of the exclusion itself. However, the guidance was clear that sending pupils home as described by Teacher A, is an exclusion. Appropriate recording of pupils sent home in the manner described by Teacher A required formal recording as an exclusion by use of Code E on the attendance register. Teacher A acknowledged in his written statement for this hearing that the School did not formally record the pupils as 'sent home' to avoid exclusions.

The panel heard conflicting evidence about the nature and frequency of pupils being sent home. At one extreme, it was said that pupils were regularly sent home, including by being pushed out of a fire exit without parents being contacted. At the other extreme, reference was made to a very exceptional practice of sending pupils home at or just

before the end of the school day after their parents had been contacted. [REDACTED] (“Individual F”), who was employed by the School [REDACTED], said in his interview that sometimes pupils were sent home first and then parents were spoken to. Witness F, who was called to give evidence on behalf of Teacher A, referred to an occasion when he saw Witness D send a pupil home out of a fire exit.

The panel also considered an email from Individual C, [REDACTED], dated 14 June 2018. This was addressed to Teacher B and Mr Ross Povey. It stated, “I am concerned that pupils are being sent home on account of their behaviour. I know that sometimes we have to do this as a last resort (... stoned the other day) but we have to follow the correct procedure and we have to let parents know. We also have to record it on the register for safeguarding, and this isn’t always happening. I had suggested that if anyone is sent home, whoever is sending them needs to let me or ...know so we can address any gaps in the registers. Is it OK to tell people that this is now what needs to happen’. The panel felt that this email suggested that sending pupils home due to poor behaviour was not an infrequent occurrence.

In the record of Mr Ross Povey’s second interview as part of the local investigation, Mr Ross Povey said that if he was dealing with a child that was having a significant breakdown the child might be sent home. However, he said it would be with parental agreement. He also said that, to his knowledge, no child was sent home without the parent’s knowledge.

During the same interview, Mr Ross Povey said that he was not aware of the statutory obligations in relation to exclusions. However, the panel noted that pupil exclusion was in Mr Ross Povey’s area of responsibility as operational headteacher.

The panel found allegation 1.c. proved on the basis that Mr Ross Povey failed to ensure that accurate records were maintained in respect of pupil attendance in that he failed to ensure that pupils being sent home was recorded in the appropriate manner.

## **2. In so doing 1 above, you failed to protect pupil(s) from the risk of potential harm.**

The panel considered whether the conduct found proved against Mr Ross Povey in allegation 1.a. and c. involved a failure to protect pupils from the risk of potential harm.

In relation to 1.a., although the panel was satisfied that it was inappropriate for Pupil B to be removed from the School’s roll, Pupil B was returned to the roll a short while later when the local authority stated that he should not have been removed. In these circumstances, the panel was not satisfied that the Pupil B was exposed to the risk of harm.

In relation to 1.c., the panel was satisfied that there were safeguarding concerns, including risks for the pupil not in school, in the local community (e.g. gang involvement)



as described by Teacher A, arising from the practice of sending pupils home without appropriately recording them as excluded. The School register should provide an accurate picture of each pupil's status at all times.

The panel found allegation 2 proved in relation to the conduct in 1.c.

### **3. Your conduct as may be found proven at 1 above lacked integrity and/or was dishonest.**

In determining whether the conduct found proved in allegation 1.a. and c. lacked integrity, the panel recognised that integrity connotes adherence to the ethical standards of the profession. Integrity is a useful shorthand to express the higher standards which society expects. The panel acknowledged that it must not set unrealistically high standards. The duty of integrity does not require professional people to be paragons of virtue.

In determining whether the conduct found proved in allegation 1.a. and c. was dishonest, the panel first considered (subjectively) the actual state of Mr Ross Povey's knowledge or belief as to the facts before applying the (objective) standards of ordinary decent people.

In relation to allegations 1.a. and 1.c., the panel concluded that the conduct of Mr Ross Povey lacked integrity but was not dishonest.

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

Having found allegations 1.a. and c., 2 and 3 proved, 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 Ross Povey, in relation to the facts found proved, involved breaches of the Teachers' Standards. The panel considered that, by reference to Part 2, Mr Ross Povey 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, 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 Ross Povey's conduct displayed behaviours associated with any of the offences listed on pages 10 and 11 of the Advice. 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 found that none of these offences was relevant.

The panel was satisfied that the conduct of Mr Ross Povey amounted to misconduct of a serious nature which fell significantly short of the standards expected of the profession.

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

In relation to whether Mr Ross Povey's actions amounted to conduct that may bring the profession into disrepute, the panel took into account the way the teaching profession is viewed by others. It 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 that they behave.

The panel therefore found that Mr Ross Povey's actions constituted 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 safeguarding and wellbeing of pupils, the protection of other members of the public, the maintenance of public confidence in the profession and declaring and upholding proper standards of conduct.

In the light of the panel's findings against Mr Ross Povey, there was a strong public interest consideration in respect of the safeguarding and wellbeing of pupils, given the finding of failing to protect pupils from the risk of potential harm.

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

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

In addition to the public interest considerations set out above, the panel went on to consider whether there was a public interest in retaining Mr Ross Povey. The panel did not receive any relevant evidence from or on behalf of Mr Ross Povey to enable the panel to consider if there was a public interest in retaining him in the profession.

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 Ross Povey.

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 Ross Povey. 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 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 safeguarding and well-being of pupils, and particularly where there is a continuing risk;
- lack of integrity;
- deliberate action to off-roll pupils from a school's roll without a formal, permanent exclusion or by encouraging a parent to remove their child, when the removal is primarily in the best interests of the school rather than those of the pupils;
- knowingly manipulating a school's attendance or admission registers, or data to benefit and/or enhance a school's attendance and/or exam results.

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 some evidence that Mr Ross Povey's actions were deliberate.

There was no evidence to suggest that he was acting under duress.

The panel was informed that he did have a previously good history, and he was not previously subject to disciplinary proceedings.

The panel had regard to the delay in this case being heard as a mitigating factor, albeit not a decisive one, in Mr Ross Povey's favour. In doing so, the panel had regard to the judgment in *Selvarajan v GMC* [2008] EWHC 182. in which Blake J said:

'It is common sense that the longer the threat of erasure has been hanging over the head of a professional person terminating their ability to practise their vocation, and with it the extinction of their means of earning a living livelihood and the deprivation of their practice, the more severe the sanction will be and the more punitive it will appear to be to the recipient, even if in disciplinary proceedings the purpose of the sanction is not intended to be punitive'.

Mr Ross Povey did not attend this hearing, was not represented and did not provide any character references or evidence in mitigation. As a consequence, the panel was also unable to assess the risk of future repetition of this conduct.

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 would be sufficient would unacceptably compromise the public interest considerations present in this case, despite the severity of the consequences for Mr Ross Povey 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 Mr Ross Povey. 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 for it to decide to recommend a review period of the order. 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 certain types of case where, if relevant, the public interest will have greater relevance and weigh in favour of not offering a review period.

None of the listed characteristics were engaged by the panel's findings.

The Advice also indicates that where a case involves certain other characteristics, it is likely that the public interest will have greater relevance and weigh in favour of a longer period before a review is considered appropriate. None of the listed characteristics were engaged by the panel's findings.

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 review after a period of 2 years.

## 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 some of the allegations proven and found that those proven facts amount to unacceptable professional conduct and/or conduct that may bring the profession into disrepute.

In this case, the panel has also found some of the allegations not proven. I have therefore put those matters entirely from my mind.

The panel has made a recommendation to the Secretary of State that Mr Ross Povey should be the subject of a prohibition order, with a review period of 2 years.

In particular, the panel has found that Mr Povey 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 finds that the conduct of Mr Povey fell significantly short of the standards expected of the profession.

The findings of misconduct are serious as they include failing to protect pupils from risk of harm and acting in a way which lacked integrity.

I have to determine whether the imposition of a prohibition order is proportionate and in the public interest. In assessing 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 Povey, 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 and safeguard pupils. The panel has observed that: "In the light of the panel's findings against Mr Ross Povey, there was a strong public interest consideration in respect of the safeguarding and wellbeing of pupils, given the finding of failing to protect pupils from the risk of potential harm. 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 it sets out as follows, "Mr Ross Povey did not attend this hearing, was not represented and did not provide any character references or evidence in mitigation. As a consequence, the panel was also unable to assess the risk of future repetition of this conduct." In my judgement, the lack of evidence presented to the panel regarding Mr Povey's insight into and remorse for his conduct means that there is some risk of the repetition of this behaviour and this puts at risk the future wellbeing of pupils. 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 observes that: "Similarly, the panel considered that public confidence in the profession could be seriously weakened if conduct such as that found against Mr Ross Povey were not treated with the utmost seriousness when regulating the conduct of the profession." I am particularly mindful of the finding of conduct lacking in integrity in this case and the impact that such a finding may have 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 and conduct that may bring the profession into disrepute, 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 Povey himself. The panel records that, while Mr Povey had a good history prior to these events, no evidence was presented to it regarding his character or contribution to the education sector.

A prohibition order would prevent Mr Povey 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 serious nature of the misconduct found and the lack of evidence that Mr Povey has attained full insight into his behaviour.

I have given less weight in my consideration of sanction therefore, to the contribution that Mr Povey 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 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 concluding comments:

"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 review after a period of 2 years."

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. In this case, factors mean that I agree with the panel that a 2 year review period is sufficient to achieve the aim of maintaining public confidence in the profession. These elements are the serious nature of the misconduct found and the risk of repetition created by the lack of evidence as to Mr Povey's insight.

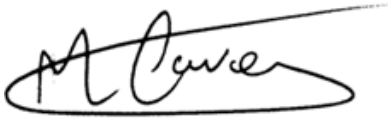
I consider therefore that a 2 year review period is required to satisfy the maintenance of public confidence in the profession.

**This means that Mr Ross Povey 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 30 October 2026, 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 Povey remains prohibited from teaching indefinitely.



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

Mr Povey has a right of appeal to 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 'M. Cavey', enclosed within a hand-drawn oval border.

**Decision maker: Marc Cavey**

**Date: 23 October 2024**

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