O v The Secretary of State for Education v National College for Teaching and Leadership

Case No: CO/3693/2013

High Court of Justice Queen's Bench Division Administrative Court at Leeds

17 January 2014

[2014] EWHC 22 (Admin)

2014 WL 16451

Before: Mr Stephen Morris QC (Sitting as a Deputy High Court Judge)

Date: Friday 17th January 2014

Representation

Alex Offer (instructed by Lester Morrill , Solicitors) for the Appellant.

Rory Dunlop (instructed by Angela Mitchell , Solicitor,) for the Respondent and the Interested Party.

Judgment

Mr Stephen Morris QC

Introduction

1 This is an appeal by Ms O (“the Appellant”), a teacher, pursuant to regulation 17 of the Teachers' Disciplinary (England) Regulations 2012 SI 2012 No 560 (“the Regulations”), against a prohibition order made on 7 March 2013 by the Secretary of State for Education (“the Secretary of State”) under s.141B of the Education Act 2002 (“the Prohibition Order”). By the Prohibition Order , the Secretary of State prohibited the Appellant indefinitely from carrying on teaching and thereby also barred her from seeking restoration of her eligibility to teach.

2 The Prohibition Order was made on the recommendation, and consequential upon the findings, of the Professional Conduct Panel (“the Panel”) of the Teaching Agency. The Teaching Agency has now merged with the National College for School Leadership to form the National College for Teaching and Leadership (“NCTL”). The Secretary of State is the named respondent to the appeal and the NCTL is named as an interested party. The NCTL is a government agency which operates on behalf of the Secretary of State and thus there is no material distinction between the respondent and the interested party. Accordingly, in this judgment, I refer to both parties as “the Respondent”.

3 Following an oral hearing, the Panel, by its decision announced on 6 March 2013 (“the Decision”) found that the Appellant had been guilty of unacceptable professional conduct and of conduct that might bring the teaching profession into disrepute. The basis of this finding were findings of fact that the Appellant had misconducted herself in the period between 2007 and 2010 in respect of four allegations (referred to as Particulars) as follows:

(1) an inappropriate relationship with a pupil — Pupil A — at the school at which she taught; involving conduct of a physical nature and conduct which was sexually motivated;

(2) an inappropriate relationship with another pupil at the school — Pupil B;

(3) failure to follow appropriate safeguarding procedures in relation to Pupil B;

(4) (b) failure to follow reasonable management instructions.

Particular (4)(a) was found not proven.

4 In this appeal, the Appellant challenges the findings on Particulars (1) and (2). The Appellant denies that she had an inappropriate relationship with either Pupil A or Pupil B. Particulars (3) and (4)(b) were and are admitted by the Appellant. In these respects the Appellant accepts that she made an error of judgment and a professional mistake.

5 In the course of argument, it became clear that the essential dispute on this appeal relates to Particular (1) concerning Pupil A. The Appellant contends that, if her challenge to Particular (1) is upheld, neither the admitted allegations nor Particular (2) are of such gravity as to justify the recommendation for a prohibition order. It is not possible to discern from the Panel's reasoning what conclusions the Panel would have come to if it had found only the admitted conduct and Particular (2) established. On the other hand, she accepts that if she is unsuccessful on Particular (1), but successful on Particular (2), nevertheless the Prohibition Order would remain justified and the appeal in relation to Particular (2) becomes academic. Thus, whilst formally part of the grounds of appeal, either way the challenge to Particular (2) will not affect the outcome of this appeal.

6 Accordingly, the Appellant's case on this appeal is that the Decision in respect of Pupil A is wrong and must be quashed, that it follows that the entire Prohibition Order itself must be quashed and that the case should be remitted for re-hearing by a differently constituted panel.

7 On Particular (1), the Panel concluded that it preferred the evidence of Pupil A, to that of the Appellant, because her evidence was consistent, detailed and credible. The Appellant contends, *first* , that the Panel was wrong to accept Pupil A's evidence over that of the Appellant, *secondly* , that the Panel failed to give adequate reasons for the Decision, and in particular for preferring Pupil A's evidence, and *thirdly* , that the Panel's conduct of the matter infringed the Appellant's rights under Article 6 ECHR , by failing to give effect to the principle of equality of arms.

The Factual background

The persons involved

8 In view of the sensitive nature of the allegations made, anonymity orders have been made. In this judgment, the parties and other matters are referred to by way of appropriate abbreviation so as to prevent the identification of the Appellant and the complainants.

9 The Appellant is now aged 35; she was 29 at the time of events in 2007. In September 2002 she was employed as a newly qualified French teacher at a high school (“the School”). In September 2007 she was promoted to Head of Year. In late 2007, she had a female partner.

10 Pupil A was a pupil at the School. She was born in 1991 and, in the course of the events in 2007, she had her 16th birthday. She was 21 by the time of the Panel hearing. Pupil B was another female pupil at the School of similar age. JP was a male pupil of similar age.

11 Other relevant staff at the School were as follows: EC, who was Co-Head Teacher from September 2007 and then became head teacher from April 2009. I refer to EC as “the Head”. FJW was the deputy head teacher from 2009 onwards who carried out the School investigation, referred to below. AH was the School Safeguarding Officer. JG and AS were other teachers at the School.

The main allegations in outline

12 It is alleged that the Appellant had an inappropriate relationship with Pupil A towards the end of 2007. This had started in the course of a school trip to France, on which the Appellant was one of three supervising teachers and continued on return to the School in October and November 2007. The existence of this alleged relationship was first raised with the School by Pupil A's

mother in May 2009. It is also alleged that the Appellant had an inappropriate relationship with Pupil B by communicating with her personally by email, MSN and on music websites and that she failed to report a safeguarding matter relating to Pupil B.

13 During the police and school investigations, the Appellant accepted she had given lifts home to Pupil A, but denied she had engaged in any form of inappropriate relationship with Pupils A or B. The Appellant's case was, and is, that Pupil A is an attention seeker and troubled teenager with a known history of making up stories. On the other hand, the Appellant accepted she should have reported the safeguarding matter relating to Pupil B.

The Relevant Events

October and November 2007

14 In October 2007 the Appellant led a school trip to France. Pupil A, who was 15 at the time, was on that trip. The other teachers on the trip were JG and another, male, teacher, HG. A number of events were said to have occurred in the course of that trip which amount to evidence of an inappropriate relationship between the Appellant and Pupil A. It is not disputed that, on one occasion, they sat together on the coach and communicated by written notes (although they gave different accounts of what those notes said). They sat next to each other on a fairground ride. On the last evening on the trip, in a hotel in Paris, the Appellant went into Pupil A's bathroom when Pupil A was there, after a report of a problem with the shower. Thereafter Appellant spent some time in Pupil A's bedroom, allegedly allowing Pupil A and her room-mates to style her hair. Other contact of a personal nature is said to have taken place at the Eiffel Tower and on the ferry home.

15 On their return to England, and in October and November 2007, the Appellant began to give Pupil A extra lessons in French after the end of the school day. Whilst how many such lessons there were and who else attended are disputed, it is not in dispute that on more than one occasion it was just Pupil A and the Appellant in the classroom, nor that, after lessons, the Appellant took Pupil A home in her car. Pupil A alleged that on a number of occasions during these lessons, she went into a store cupboard (at times also referred to as a “store room”) with the Appellant where they hugged, kissed and were sexually intimate. In particular Pupil A described two such encounters in a store cupboard, the first of which took place the day after her 16th birthday and the second of which happened when she missed an English lesson shortly after lunchtime. The Appellant denies that these encounters took place.

16 At around this time, in November 2007, the Appellant noticed that Pupil A was on a website — the “Black Eyed Peas” website — on a computer at the School. Pupil A was not allowed access to such websites. On that website, there were two photographs of Pupil A, one in a bra and one in a basque and Pupil A was receiving explicit sexual communications from men. The Appellant then joined the website herself. Communication through the website itself took place between the Appellant and Pupil A (although whether the Appellant herself sent messages was disputed). The Appellant says that she informed AH of the pictures, leaving her a written note. AH had no memory of receiving such a note. Pupil A also alleged that two of the photos of her posted on the website were printed off in the School library at the behest of the Appellant.

17 At some point, around the end of November 2007, the Appellant was driving Pupil A home, when they stopped off at a Tesco supermarket. It is not in dispute that both the Appellant and Pupil A spent at least 10 minutes in the toilets at the supermarket. Pupil A alleges that this was a sexual encounter. The Appellant denies this and says that Pupil A was upset and locked herself in the cubicle, which the Appellant then persuaded her to leave. It is not clear whether this incident took place before or after 22 November 2007. The Appellant did not formally report this incident to the Head or to AH. She says she mentioned it to AS instead.

18 In a note dated 22 November 2007 the Appellant informed the Head that Pupil B had been to see her and reported concerns about what Pupil A had said to Pupil B. Pupil A had told Pupil B that the Appellant had told her, Pupil A, that she loved her and liked her sexually. The Appellant denied these rumours to the Head. In the Note, the Appellant said that Pupil B had made reference to a shower incident at the hotel in France. The Appellant also informed the Head of an incident where Pupil A had missed an English lesson as she was upset and referred to the fact that she had been giving Pupil A extra French lessons and had been taking her home afterwards.

19 As a result, on 27 November 2007, the Head spoke to Pupil A about the rumours of an affair with the Appellant. Pupil A denied these rumours. At around this date, the Head also spoke to the Appellant and advised her not to be alone with Pupil A and not to give her any more lifts home. The Head's evidence to the Panel was that she told the Appellant to report any concerns if the rumours persisted or if she had anything else concerning her. At around the same time, the Appellant asked that Pupil A be removed from her class, and the Head also informed Pupil A's parents of what had been reported.

May 2009: Complaint to the School

20 In early May 2009, Pupil A's mother discovered that Pupil A had described herself as bisexual in a profile on a website. She asked Pupil A about this. Pupil A responded that she had had sexual encounters with the Appellant. Pupil A's mother immediately informed the School and on 7 May 2009 the parents met with the Head. On 8 May 2009, the Appellant was formally suspended pending an investigation and told not to contact any colleagues, pupils or their families.

The Investigations into the Appellant's conduct

May 2009 to May 2010: Police investigation

21 Between May 2009 and May 2010 there was a police investigation into the matters raised by Pupil A's parents. The police interviewed Pupil A, Pupil B, the Appellant and others. On 15 May 2009, Pupil A was interviewed. There is a summary of the taped interview. On 3 June 2009, Pupil B was interviewed. On 10 June 2009 the Appellant was interviewed by the police. There are four transcripts of this interview. On 14 July 2009, the police interviewed Pupil A's mother. The file was passed to the CPS.

22 During that investigation, the matters which form the basis of Particulars (2), (3) and (4) emerged. *First* the Appellant had been told by Pupil B that she was receiving sexually suggestive text messages from the father of another pupil at the School. The Appellant had failed to pass that information on to the School. *Secondly* , the Appellant had communicated with Pupil B during the period of her suspension. In the course of her interview, she accepted she had been having communications with pupil B. *Thirdly* , on around 22 May 2009, the Appellant had communicated with the daughter of her teacher colleague, AS, during the period of her suspension.

23 The file was passed to the CPS. In May 2010 the CPS decided not to charge the Appellant with any offence. A CPS lawyer recorded that this was because there were “serious credibility issues” and that the allegation might be the product of a fantasist trying to shock her overbearing mother. However the police officer in charge of the investigation said that she and her colleague were not happy about the decision and wanted to go to appeal. She indicated that she believed Pupil A's account.

The School investigation

24 Once the criminal investigation was closed, the School then conducted its own investigation. This was led by FJW. At the first “pre-disciplinary meeting” on 2 July 2010 FJW interviewed the Appellant, in the company of her union representative. In that interview the Appellant said that Tesco incident had taken place *before* 22 November 2007 and that she “may” have talked to AS or JG about it. AS was interviewed by FJW on 15 July 2010. AS knew that Appellant gave Pupil A lifts home. On 16 July 2010 Pupil B was interviewed by FJW and the Head. AH was interviewed on the same date and subsequently on 20 October 2010, AH provided a statement. At the second pre-disciplinary meeting on 17 September 2010, attended by Appellant, the union representative and FJW, the Appellant was interviewed further. On 19 October 2010, JG was interviewed by FJW. AS provided a manuscript statement on 20 October 2010 and a further statement dated 8 November 2010.

25 The investigation led to a disciplinary hearing of the governors of the School, which took place on 29 and 30 November 2010. The Appellant submitted a defence case, together with 18 Appendices. Neither she, nor her union representative attended the hearing. Following the disciplinary hearing, by 6 page letter dated 6 December 2010, the School dismissed the Appellant on grounds which included, but were not limited to, the fact that she had formed inappropriate relationships with Pupil A and Pupil B, even if not proven to have been sexual in nature. The Appellant's appeal to the governors' Appeal Panel was heard on 14 and 18 February

2011 and dismissed by letter dated 23 February 2011. The Appellant and her union representative did not attend the appeal hearing.

Proceedings before the Teaching Agency

Referral to the Teaching Agency

26 Thereafter the matter was referred by the School to the Independent Safeguarding Authority ("ISA"). On 7 February 2012, the ISA indicated that it would not be taking action itself, but that information would be passed to the General Teaching Council ("GTC"). On 24 February 2012, the ISA referred the Appellant's case to the GTC. On the abolition of the GTC, the matter was passed on to the Teaching Agency. On 10 May 2012, the Teaching Agency informed the Appellant that the matter had been referred to it and that a formal investigation would be started. On 27 June 2012, the Appellant's solicitors responded in detail to the allegations.

The Case before the Panel

27 The Panel issued Notice of Proceedings on 20 November 2012. This Notice stated that there would be a hearing to investigate allegations of misconduct and set out the particulars of the allegations made against the Appellant. The Particulars stated as follows:

> "You engaged in unacceptable professional conduct and/or conduct which may bring the profession into disrepute in that
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> Whilst employed at [the School] between 2007 and 2010, you had
>
> (1) Engaged in an inappropriate relationship with Pupil A,
>
> (a) your relationship included conduct of a physical nature;
>
> (b) your conduct was sexually motivated
>
> (2) Engaged in an inappropriate relationship with Pupil B;
>
> (3) Failed to follow appropriate safeguarding procedures following the receipt of relevant safeguarding information concerning Pupil B which you did not pass on:
>
> (4) Failed to follow reasonable management instructions with regard to
>
> (a) Your relationship with students in that:
>
> (i) You ignored an instruction given in November or December 2007 to stop giving Pupil A lifts home;
>
> (ii) You ignored an instruction given in November or December 2007 to avoid being alone with Pupil A;
>
> (b) The terms of your suspension as set out in a letter of 8 May 2009 in that:
>
> (i) you made contact with Pupil B in June 2009 via email;
>
> (ii) you exchanged text messages with teach AS' daughter."

The Appellant denied Particulars (1) (2) and 4 (a). She admitted Particulars (3) and 4(b).

The hearing before the Panel

28 The hearing before the Teaching Agency Panel took place between 4 and 6 March 2013. The Panel comprised three members, with the assistance of a legal adviser. The case against the Appellant was put by the Teaching Agency's Presenting Officer. The Appellant was assisted by a solicitor, KL, who was acting by way of a legal help scheme (which did not include the provision

of advocacy services). I have been provided with a full transcript of the Panel's hearing, including of the oral evidence given by the three live witnesses. Transcript references are denoted (T page no.).

29 As a result of her vulnerable mental health, the Appellant chose not physically to attend the hearing. She could not face coming to the same building as where the hearing was taking place. Since no video link facility was available elsewhere, she and her solicitor chose to take part by way of a telephone link. The appropriateness of this arrangement was considered at some length by the Panel at the outset of the hearing, with submissions being made by both parties and with advice from the legal adviser. The Panel accepted the arrangement as being all that the Appellant could cope with at that time and agreed to proceed on this basis. Whilst the legal adviser advised the Panel that it did have the power to proceed in the absence of any teacher who chooses to absent himself or herself from proceeding, he, and the Panel, also expressly drew to the attention of the Appellant and KL (T5–6, T8–9), the disadvantages to the Appellant of proceeding in this way, in particular loss of the opportunity of seeing Pupil A giving her evidence and thus making submissions as to her demeanour.

30 Pupil A herself was not physically present at the hearing. She gave oral evidence by video link. Her mother was present in that room and visible at all times on the video link. At the outset of the hearing, and having heard submissions from KL, the Panel considered that this was an appropriate way to proceed, and took steps to ensure that Pupil A's evidence was not affected by the mother's presence, making sure that her mother was seated behind and not within Pupil A's line of sight (T19). Also present in the video link room were Pupil A's grandmother (also seated behind Pupil A) and a representative of the Teaching Agency (T35).

31 The Panel heard oral evidence from Pupil A, the Head and the Appellant. The Appellant was questioned by KL and by the Panel and by the Presenting Officer. In practice, the Appellant and/or KL participated in most of the hearing, with the exception of the evidence given by the Head. Although not formally acting by way of advocacy representation, KL cross-examined Pupil A for some time (T54–68). The Appellant herself presented her own closing submissions, in the presence of KL.

32 In addition to the oral evidence, the Panel had before it a bundle comprising transcripts of earlier police interviews and evidence taken in the course of the School investigation and witness statements for the hearing, including a detailed and lengthy witness statement from Pupil A dated 11 January 2013, a detailed and lengthy witness statement from the Head dated 17 January 2013; and a witness statement from the Appellant dated 29 January 2013. This statement did not deal in detail with the specific allegations made, in particular those made by Pupil A, but rather concentrated on the reliability of Pupil A and B's evidence. There was also a short statement dated 28 February 2013 from JG, submitted by the Appellant.

33 Thus the evidence before the Panel from Pupil A comprised her police interview, her witness statement and her oral evidence. The evidence from the Appellant comprised transcripts of her police interview, notes of her interviews with the School, her statement and her oral evidence.

34 In her closing submissions the Appellant pointed out that there were certain inconsistencies in Pupil A's evidence, between her witness statement and what she had told the police. In particular she referred to the problem with the shower, and to JP attending lessons.

35 Before closing, the legal adviser read out in some detail legal directions for the Panel to consider, on all aspects including the Panel's duty to give reasons, the standard of proof, and hearsay evidence (T167–170). KL indicated that he was content with these directions.

The Decision

36 At the hearing itself, on 6 March 2013, the Panel announced its decision in relation to the Particulars alleged, in relation both to its findings of fact and its findings on unacceptable conduct. It found all the allegations proven save for Particular (4)(a). Thus, of the contested allegations, it found Particulars (1) and (2) proven. Following the announcement of these findings, the legal adviser gave his advice on the position relating to the Panel's recommendation and the making of a prohibition order. Thereafter the Panel reserved its judgment on the recommendation which it would send to Secretary of State.

37 The Panel then made its recommendation to the Secretary of State and on 7 March 2013 the

Secretary of State made his decision on the prohibition order. On the same date, the Decision and the Secretary of State's decision on the prohibition order were issued in a combined written document entitled “Professional Conduct Panel and Secretary of State Decision”. This document is divided into three parts: Panel's Decision and Reasons; Panel's Recommendation to the Secretary of State; and Secretary of State's Decision and Reasons

38 The first part of the combined document was the Decision (as defined above). In it, the Panel summarised those involved and the core factual allegations and the particulars. Then, under the heading “Findings of Fact”, the Panel made its findings of fact in relation to each of Particulars (1) to (4).

39 In respect of Particular (1) (a) (a physical relationship with Pupil A), the Panel's findings was as follows:

> “With respect to the evidence of Pupil A, we found her to be a credible witness. She is now an adult and is not a pupil at this school. Despite not being at the school and despite the personal stress which attending a hearing such as this created, she was prepared to present her evidence to this hearing. She was prepared to make herself available for cross examination and for panel questioning. Having considered her oral evidence and that evidence which she presented through her interview with the police, we are clear that her recollection of event is consistent- and remained consistent during cross examination which probed her version of events. We had the opportunity to test her evidence and observe her demeanour during questioning. We found her to be measured in her approach as well as considered, open and honest in her answers.
>
> We carefully considered Pupil A's evidence and the context of the events referred to. She described, in detail, the times when you met and the physical contact between you. She described in detail the locations when you met and her evidence was consistent with earlier versions which she had given. Pupil A was able to provide detail which, we have decided, allows us to give weight to her evidence and has allowed us to assess the credibility and cogency of her evidence.
>
> It was suggested that Pupil A had been a fantasist, was a known liar and had fabricated her evidence. However, having heard directly from Pupil A we did not find that she presented as someone who had motivation to lie about her recollection of events. She was clear in her evidence that she had not wanted to raise allegations or concerns and we have noted that the concerns were raised by Pupil A's mother and not by the pupil.
>
> We carefully considered the evidence which is available in the bundle which recorded the evidence of Pupil B. Pupil B was a friend of Pupil A and she was privy to conversations with Pupil A during which she disclosed detail about her contact with you. The statements which she had made were hearsay and whilst we have given limited weight to that evidence in support of this allegation, we have noted that her evidence does corroborate the version of events which Pupil A presented to this hearing.

The findings then went on to record the Appellant's evidence:

> There is a direct evidential conflict in relation to this particular. Your recollection of events has been clear. You have maintain [sic] that there was no physical contact between you and Pupil A; you maintain that there was no meeting or meetings with Pupil A in the store cupboard; there was no contact between you and Pupil A in your car; you maintain that Pupil A's version of events relating to the supermarket did not happen as suggested by Pupil A; and you dispute the majority of Pupil A's version of events in relation to what happened on the school trip.
>
> You maintain that Pupil A has fabricated her version of events, that she is a fantasist and that she has lied consistently. We have considered the evidence of the Head teacher. We found the Head teacher to be a credible and open witness. She gave clear evidence to us that she did not believe that Pupil A was known to be a liar but acknowledged that she was a vulnerable individual.”

The Panel then continued by assessing the credibility of *the Appellant's* evidence, as follows:

> "We considered your evidence very carefully. Having considered it carefully, we were not satisfied that the evidence and version of events which you gave to the school, to the police and most recently to us has been consistent. A number of responses which you gave to the school and to the police were not given openly and fully. We are not satisfied that you have given full, open and consistent evidence on the issues where there is a direct conflict with the evidence of Pupil A in regard to the alleged relationship with her.
>
> Given the nature of your responses to the police, to the school and to us, we do not find that your blanket denial of many of the events relating to Pupil A is credible. In addition, we noted that you were a senior pastoral leader at the school and had regular and relevant training linked to your pastoral responsibilities. Despite this additional knowledge, we believe that the evidence which you presented to us in relation to your handling of the two serious child protection matters lacked credibility. We note that this issue is dealt with specifically in relation to Particular 3, but our assessment of your credibility in general has contributed to our decision as outlined above"

The Panel then concluded on Particular (1)(a) as follows:

> "For the reasons given above, we found the evidence of Pupil A to be credible, cogent and consistent. On the basis of our consideration of the weight to be given to her evidence we find, on the balance of probabilities, this particular to be proven"

40 As to Particular (1)(b) (to sexual motivation), the Panel found this to be proven, preferring the evidence of Pupil A over that given by the Appellant, for largely similar reasons as given in respect of Particular (1)(a):

> "Pupil A provided detail about the nature of the physical contact, meetings and conversations between you. You have denied that any of your behaviour was sexually motivated. For the purposes of this public decision we have decided not to include the specific detail, but the available evidence has satisfied us, on the balance of probabilities, that your conduct and relationship with Pupil A was sexually motivated."

The Panel then went on further to conclude that these findings established that the Appellant's relationship with Pupil A was "inappropriate" as alleged in "the stem" of Particular (1).

41 In this part of the combined document, the Panel then went on to make its findings of fact in relation to Particulars (2), (3) and (4)(a) and (b). In relation to Particular (2), whilst noting that Pupil B's evidence was given only by a written record of interview and was thus hearsay, nevertheless there was also other evidence, which corroborated the evidence (including the Appellant's own evidence) that the Appellant had made personal communications with Pupil B through email, MSN and music websites. The Panel concluded that the Appellant's behaviour towards Pupil B was at times personal and showed that she had crossed appropriate professional boundaries.

42 In relation to Particular (4)(a), because it could not be established whether the events at Tesco had taken place before or after 27 November 2007, the Panel was not satisfied that the Appellant had given Pupil A a lift home or had spent time with her alone on a date after 27 November 2007 (the date of the "management instruction"), and for this reason this Particular was not proven.

43 Finally, in the Decision, the Panel made its findings as to unacceptable professional conduct and/or conduct that may bring the profession into dispute. Its conclusion was that the facts found amounted to unacceptable professional conduct and conduct which has the potential to bring the profession into dispute. These findings are not, in themselves, challenged in this appeal.

44 In the second part of the combined document, *the Panel* recommended that a prohibition order be imposed upon the Appellant with immediate effect and that there should be no provision for a review period, on the basis of the serious findings of a sexually motivated inappropriate relationship and forming inappropriate relationships with more than one child, and despite the

"substantial mitigation evidence" presented both by the Appellant and by the management of the School.

45 Finally, in the third part of the combined document, *the Secretary of State* set out his decision, together with reasons, to impose a prohibition order without entitlement to apply for restoration. Accordingly on 7 March 2013 the Secretary of State made the Prohibition Order , banning the Appellant from teaching for life. On 8 March 2013, the Teaching Agency wrote to the Appellant, notifying her that the Secretary of State had made a Prohibition Order which would take effect from 14 March 2013, and enclosing a copy of the combined document.

46 On 25 March 2013, the Appellant filed notice of appeal with grounds. On 10 June 2013, the Appellant filed amended grounds of appeal and on 17 June 2013 the appeal was transferred to the Administrative Court in Leeds.

Relevant legal principles

The statutory framework

47 s.141B of the Education Act 2002 (as amended) ("the 2002 Act") provides:

> *"Investigation of disciplinary cases by Secretary of State*
>
> (1) The Secretary of State may investigate a case where an allegation is referred to the Secretary of State that a person to whom this section applies–
>
> (a) may be guilty of unprofessional conduct or conduct that may bring the teaching profession into disrepute
>
> …
>
> (2) Where the Secretary of State finds on investigation of a case under subsection (1) that there is a case to answer, the Secretary of State must decide whether to make a prohibition order in respect of the person."

48 A prohibition order prohibits the person to whom it relates from carrying out teaching work: s 141B(4) of the 2002 Act. Paragraph 5 of Schedule 11A to the 2002 Act provides for there to be a right of appeal to the High Court, but no further appeal from the High Court.

49 The Regulations provide for the procedure to be followed by the Secretary of State in reaching a decision as to whether to make a prohibition order. Under regulation 5 , where the Secretary of State considers that a teacher may be guilty of unacceptable professional conduct or conduct that may bring the teaching profession into disrepute, the Secretary of State must decide whether the case should be discontinued or considered by a professional conduct panel. Regulation 6 provides that, where the Secretary of State decides that a case should be considered by a professional conduct panel, he or she must appoint such a panel, which must include at least three persons, with at least one or more persons who have been teachers and one or more other persons.

50 Regulation 7 governs the proceedings of the professional conduct panel. Unless the teacher requests otherwise, the panel must determine all cases following a hearing. Regulation 7(5) provides that:

> "where a professional conduct panel finds the teacher
>
> (a) to have been guilty of unacceptable professional conduct or conduct that may bring the teaching profession into disrepute or
>
> (b) to have been convicted (at any time) of a relevant offence

> the panel must make a recommendation to the Secretary of State as to whether a prohibition order should be made"

51 Regulation 8 provides for the decision of the Secretary of State, following the panel's recommendation:

> "(1) The Secretary of State must consider any recommendation made by a professional conduct panel before deciding whether to make a prohibition order.
>
> (2) Where the Secretary of State decides to make a prohibition order, the Secretary of State must decide–
>
> (a) whether an application may be made for review of the order under regulation 16 ; and
>
> (b) if the Secretary of State decides that such an application may be made, the minimum period before the end of which no such application may be made.
>
> (3) The minimum period under paragraph (2) must not be less than two years from the date on which the prohibition order takes effect.
>
> …"

Regulation 16(1) provides that, subject to regulation 8(2) a teacher in relation to whom a prohibition order has been made may apply to the Secretary of State for the order to be set aside. Thus, a prohibition order may be for all time or it may provide an opportunity for review after a period of time, being not less than two years after the order takes effect.

52 Regulation 9 provides the teacher with an entitlement to appear and to make oral representations and to be represented by any person, at a hearing and regulation 10 makes provision for the attendance of witnesses and the production of documents. Regulation 11 provides that in principle the hearing of the professional conduct panel must take place in public. Evidence can be required to be given on oath: regulation 12 . Regulation 13 makes provision for the contents of a prohibition order. In particular Regulation 13(3) provides that the order takes effect on the date on which notice of the order is served on the teacher; and regulation 13(5) provides that that notice must, inter alia, contain "the reasons for making the order".Regulation 17 provides that a person in relation to whom a prohibition order is made may appeal to the High Court within 28 days of the date on which the notice of the order is served.

The nature of an appeal under Regulation 17

53 Whilst there is no specific statutory provision setting out the powers, or approach, of the High Court on an appeal under Regulation 17 , the provisions of CPR 52 apply to this appeal. CPR 52.10 provides:

> "(1) In relation to an appeal the appeal court has all the powers of the lower court …
>
> (2) The appeal court has power to –
>
> (a) affirm, set aside, or vary any order of judgment made or given by the lower court;
>
> (b) refer any claim or issue for determination by the lower court;
>
> (c) order a new trial or hearing

…"

CPR 52.11 provides:

> "(1) Every appeal will be limited to a review of the decision of the lower court unless –
>
> …
>
> (b) the court considers that in the circumstances of an individual appeal it would be in the interests of justice to hold a re-hearing.
>
> (2) Unless it orders otherwise, the appeal court will not receive –
>
> (a) oral evidence; or
>
> (b) evidence which was not before the lower court.
>
> (3) The appeal court will allow an appeal where the decision of the lower court was –
>
> (a) wrong; or
>
> (b) unjust because of a serious procedural or other irregularity in the proceedings in the lower court.
>
> (4) The appeal court may draw any inference of fact which it considers justified on the evidence. … "

54 As to the approach of the appeal court, CPR 52.11 makes a distinction between "review" and "re-hearing" which is explained in the accompanying notes in *The White Book Service 2013* at §§52.11.1. ("Review" in the CPR sense is not the same as the basis of "judicial review"; it is a more interventionist degree of review: see *E.I. Du Pont Nemours & Co v S.T. Dupont [2006] 1 WLR 2793* at §94). Certain categories of appeals are specifically required to take the form of a "re-hearing", including appeals from the Fitness to Practice Panel (FPP) of the General Medical Council: see Practice Direction 52D, para 19.1. In Cheatle v General Medical Council [2009] EWHC 645 (Admin) at §§12 to 15, Cranston J set out the approach of the High Court on such appeals from the FPP. As regards the present appeal, it is not specifically referred to in Practice Direction 52D. Nevertheless, in Burke v General Teaching Council [2009] EWHC 3138 (Admin) at §§1–2, an appeal under the similar predecessor legislation relating to the GTC, HH Judge Pelling QC held that such an appeal is an appeal by way of "re-hearing" and that the approach to be adopted is that set out by Cranston J in Cheatle .

55 Mr Offer, counsel for the Appellant, in the grounds of appeal and in his skeleton, puts the Appellant's challenge on the basis of *Wednesbury* unreasonableness and relevant/irrelevant considerations — effectively judicial review grounds. However, in so doing, the Appellant sets the hurdle it has to overcome at too high a level. Judicial review is not the appropriate approach in the present case. The question for this Court is whether the Decision was "wrong" (or "unjust because of a serious irregularity"), and not whether it was one which no reasonable panel could have reached.

56 The appeal here is by way of re-hearing, the most "interventionist" level of appeal court review. In this regard I note that *The White Book Service* , supra, points out, citing *Assicurazioni Generali SpA v Arab Insurance Group [2002] EWCA Civ 1642* , that where the appeal court is being asked to reverse findings of fact based upon oral evidence which the judge has heard, the approach of the appeal court is the same, whether it proceeds by way of "review" or by way of "rehearing" (in the CPR sense of those terms).

57 On such an appeal, in general, this means deciding whether the decision below can be said to be wrong. On issues of professional judgment, the Court may need to defer to expertise of the lower court or tribunal. But, on questions of primary fact, the position is different. Whilst the lower court or tribunal is the primary decision maker on questions of fact, the High Court will correct material errors of fact on various grounds, such as insufficient evidence or mistake.

58 Where the decision below depends on preferring the account of X over that of Y on the basis of reliability and credibility, including an assessment of demeanour, I have *considered English v Emery Reimbold & Strick Ltd [2002] 1 WLR 2409* , Mubarak v General Medical Council [2008] EWHC 2830 (Admin) (citing *Gupta v GMC [2002] 1 WLR 1691)* and *In the matter of F (Children) [2012] EWCA Civ 828* (as well as Cheatle §15). The position can be summarised as follows:

(1) The appellate court will be reluctant to interfere with the findings of fact made by the lower court or tribunal: Cheatle , §§15, 23 to 28.

(2) There are different schools of thought as to the significance of demeanour; on the one hand, the lower court is best placed to assess credibility, because it has had the opportunity to assess demeanour. On the other hand, demeanour is not necessarily a good or the best test of credibility and it is question of feel, which may be unreliable: compare Mubarak §5 with Cheatle §23.

(3) However, the predominant view is that demeanour is a significant factor. For example, the assessment, as genuine, of a witness' distress when giving evidence can be a sound foundation for a finding of truthfulness: see Re F §44.

(4) Thus the starting position is that the lower court is in a better position to assess credibility and reliability of witnesses: see in particular Mubarak §5 citing Gupta at §10.

(5) However the appellate court may reach a different conclusion if the circumstances so justify. Demeanour is not conclusive, and it may be that the advantage of having seen and heard the witnesses is not sufficient to explain or justify the conclusion of the court below: see Mubarak §6 citing *Thomas v Thomas [1947] AC 484* at 487–488.

(6) There will always be inconsistencies of detail in the evidence of witnesses. The task is to the consider whether the *core* allegations are true: see Mubarak §20 and Re F §45.

Finally to the extent that there is or may be a tension between Mubarak and Cheatle as to the approach on appeal to findings of fact, I give the Appellant here the benefit of any such doubt and will adopt the somewhat more interventionist approach indicated by Cheatle .

The duty to give reasons: its nature and content

59 As regards the nature and extent of the duty, on the part of a judicial decision maker, to give reasons for its decision, the leading cases are Flannery v Halifax Estate Agencies Ltd [2001] 1 WLR 377 and English v Emery Reimbold , supra, §§15–21 and §§89 and 118. See also Re F , supra, §§ 40, 41. In the specific context of professional disciplinary bodies, relevant authorities are Gupta at §14, Cheatle at §§29–31, and Mubarak §§9–12, along with *Phipps v GMC [2006] EWCA Civ 397* at §§85–86 and 106. I have also been *referred to South Bucks District Council v Porter (No 2) [2004] UKHL 33 [2004] 1 WLR 1953* at §36, dealing with the scope of the duty to give reasons in a planning inspector's decision. The position in general is as follows:

(1) There is a general duty upon a judicial decision maker to give reasons for the decision it has reached. The judge must explain *why* he has reached his decision.

(2) The rationale for the duty to give reasons is twofold: first, to enable the parties, and in particular the losing party, to know why they have won or lost and to allow the losing party

to consider whether to appeal; and secondly, to concentrate the mind of the decision maker.

(3) It is not necessary to deal with every argument nor to explain in great detail every factor in the judge's reasoning. It is sufficient that what the judge says shows the parties, and if need be, an appeal court, the basis on which he has acted: English v Emery Reimbold , supra, §17. It is not necessary to deal with each and every inconsistency or conflict of evidence specifically: see Re F §41.

(4) The extent of the duty depends on the subject matter; and no hard and fast rules can be laid down: Flannery , supra, at 382C. It will depend on the facts and issues of each case. For example, in a case which turns on competing expert evidence, the judge must enter upon the issues canvassed and explain why he prefers one case over the other.

(5) The adequacy of the reasons should take account of the knowledge, on the part of those to whom it is addressed, of the submissions and evidence before the decision maker: South Bucks , supra, §36 and English v Emery Reimbold , supra, §§89 and 118.

60 Where there is a dispute of fact involving a choice as to the credibility to competing accounts of two witnesses, the adequacy of reasons given will vary. In a straightforward dispute between competing accounts of facts, little may be required. In Flannery , Henry LJ stated (at 382A-B):

> “Where there is a straightforward factual dispute whose resolution depends simply on which witness is telling the truth about events which he claims to recall, it is likely to be enough for the judge (having, no doubt summarised the evidence) to indicate simply that he believes X rather than Y; indeed there may be nothing else to say”

This passage was cited by Lord Phillips MR in English v Emery Reimbold (and also by Burnett J in Mubarak), who then went on to state at §19:

> “If the critical issue was one of fact, it may be enough to say that one witness was preferred to another because the one manifestly had a clearer recollection of the material facts or the other gave answers which demonstrated that his recollection could not be relied upon”

This suggests that the judge should not only indicate that he preferred the evidence of X over that of Y, but should also give some, albeit brief, reasons for that preference. The view of the court below as to witness credibility may be susceptible to intellectual explanation, but sometimes it is more difficult to articulate: Re F §41.

61 The question of competing accounts has been considered in the context of professional disciplinary tribunals in Gupta , Phipps and Mubarak . These cases establish that, on questions of fact which turn on credibility or reliability of witnesses, there is no general duty to give reasons, but there will be cases where the principle of fairness requires reasons to be given even on matters of fact i.e. where without such reasons, the losing party will not know *clearly* why he has lost. However such clarity may arise not only by express statement of the reasons, but where they are otherwise plain and obvious. Whilst the approach of the Court of Appeal in Phipps represents a somewhat more demanding requirement, the cases say, in essence, that in some cases express reasons will be required and in others they will not. It is all a question of fairness in enabling the losing party to know why he has lost.

62 In summary, in my judgment, where court decides to accept evidence of X over evidence of Y, then some explanation is required of why X has been preferred, albeit that explanation can be relatively brief, and depends on the circumstances.

Appeal on ground of inadequacy of reasons

63 An appeal against a judgment or decision may be allowed on the grounds that the reasons

given by the court below were inadequate. However, an appeal court will not allow such an appeal, unless, even with the benefit of knowledge of the evidence and submissions made below, it is not possible for the appeal court to understand why the judge below had reached the decision it did reach. It is appropriate for the appeal court to look at the underlying material before the judge to seek to understand the judge's reasoning and to "identify reasons for the judge's conclusions which cogently justify" the judge's decision even if the judge did not himself *clearly* identify all those reasons: see English v Emery Reimbold §§89 and 118. Further, "an appellate court has to resist the temptation to subject a judgment to narrow textual analysis and it must recognise the limitations of language in explaining the complexities of a hearing with witnesses": Re F §40.

64 If the reasons in the judgment are inadequate, the appeal court may set aside judgment and remit for new trial, or set aside the judgment and decide the case itself one way or another, or it may, in the course of the appeal, invite the court below to give further reasons. This third option is considered in the next section.

Amplification of reasons

65 There is substantial authority on whether, and if so, when, it is appropriate to refer a decision back to a lower judicial or administrative decision maker for an explanation of its reasons for the decision in question, *before* the appellate court rules on the substantive challenge to the decision. The issue is addressed in English v Emery Reimbold , supra, §§22 to 25 and also in VK v. Norfolk County Council and Special Educational Needs and Disability Tribunal [2004] EWHC 2921 (Admin) at §§69 to 79; *Barke v SEETEC Business Technology Centre Ltd [2005] EWCA Civ 578* at §§9 to 11 and 29 to 49; *Aerospace Publishing Limited v Thames Water Utilities [2006] EWCA Civ 717* at §§5 to 13; T v Special Educational Needs Tribunal and Neath and Port Talbot County Borough Council [2007] EWHC 3039 (Admin) at §§24 to 29, 32; and *CSC Media Group Limited v Video Performance Limited [2011] EWCA Civ 650* at §§89 to 90. The appellate court has *the power* to invite a lower court or tribunal to amplify its reasons, even if only as a matter of inherent power: see VK §71 and Barke §29 to 31. Whether an appellate court should do so is a matter of discretion to be decided on a case-by-case basis: Aerospace §17. Competing factors are, on the one hand, the risks of ex post facto rationalisation and reconstruction of reasons and, on the other, the risks of costs and delay incurred in ultimately allowing the appeal and remitting the case to the original decision maker for re-trial. There may be some debate as to the circumstances in which on appeal from a *judicial* tribunal, such as the present, to the High Court, it is appropriate to remit for further reasons (in particular whether, in the light of Barke , the more restrictive position identified in VK represents the law). However, in the light of my conclusions below that the reasons in the present case were adequate, it is not necessary to consider this issue further.

The relevant standard of proof

66 As regards the standard of proof to be applied by the Panel, and by this Court, the civil standard of proof applies. There has, in the past, been a view that the content of this civil standard might vary depending upon the gravity of the misconduct or the seriousness of the consequences for the person concerned, and that, as a result, more cogent evidence is required to establish more serious allegations. In this connection, Mr Offer relied upon the well known passage in the judgment of Lord Nicholls in *Re H [1996] AC 563* at 586E-H. The correct position has now been established in the decisions, of the House of Lords and the *Supreme Court respectively, in In re B (Children)(Care Proceedings: Standard of Proof) [2008] UKHL 35 [2009] 1 AC 11* and *In re S-B (Children)(Care Proceedings: Standard of Proof) [2009] UKSC 17 [2010] 1 AC 678* , where Lord Hoffmann and Lady Hale in particular have explained Re H . The position is as follows.

> (1) There is only one civil standard of proof in all civil cases, and that is proof that the fact in issue more probably occurred than not.
>
> (2) There is no heightened civil standard of proof in particular classes of case. In particular, it is not correct that the more serious the nature of the allegation made, the higher the standard of proof required.

(3) The inherent probability or improbability of an event *is* a matter which can be taken into account when weighing the probabilities and in deciding whether the event occurred. Where an event is inherently improbable, it may take better evidence to persuade the judge that it has happened. This goes to the quality of evidence.

(4) However it does not follow, as a rule of law, that the more serious the allegation, the less likely it is to have occurred. So whilst the court may take account of inherent probabilities, there is no logical or necessary connection between seriousness and probability. Thus, it is not the case that “the more serious the allegation the more cogent the evidence need to prove it”.

See, in particular, Re B , per Lord Hoffman §§13 to 15 and Lady Hale §72, and Re S-B at §§11 to 14.

Article 6 ECHR and equality of arms

67 Article 6 ECHR provides that everyone is entitled to a fair trial in the determination of their civil rights. It is common ground that this includes the determination made by the Panel. An important aspect of the concept of a “fair hearing” is the requirement for “equality of arms”, which implies that each party must be afforded a reasonable opportunity to present his case under conditions which do not place him at a disadvantage vis-à-vis his opponent: *Dombo Beheer BV v Netherlands (1994) 18 EHRR 213* at §33. The principle of “equality of arms” includes a right to disclosure of relevant documents so that the parties are on an equal footing: *Feldbrugge v Netherlands (1986) 8 EHRR 425* at §§42–44. In that case, a party was unable to consult the evidence on the court file which was available to the decision maker.

The Appellant's Challenge to the Decision

68 Whilst formally the subject of this appeal is the Secretary of State's Prohibition Order , it is common ground that this Court may consider both the making of that order and a panel's findings of unacceptable conduct under regulation 7 . In the present case, it is the Panel's Decision which is challenged, and in particular, its findings of fact.

The Appellant's case

69 The Appellant challenges the Decision in respect of both Particular (1) (Pupil A) and Particular (2) (Pupil B). The latter aspect is however a relatively minor aspect of the appeal.

70 Whilst in her grounds of appeal and skeleton argument, the Appellant's case is formulated, substantially, by reference to principles of judicial review, as I have indicated in paragraph 55 above, the scope of this Court's inquiry is more intensive. I am entitled to disagree with the Panel and required to consider whether the decision was correct or not on the facts. On this approach, the Appellant's challenge comprises, in substance, three aspects:

(1) The Decision was wrong on the facts;

(2) The reasons given by the Panel given were inadequate;

(3) Breach of Article 6 ECHR and the principle of equality of arms.

Particular (1) (Pupil A)

Wrong on the facts

71 In relation to Particular (1) (Pupil A), the Appellant contends that the Panel was wrong to

accept the evidence of Pupil A and reject the Appellant's evidence. The Panel accepted Pupil A's evidence because it had been consistent, credible, cogent and detailed. However Pupil A's evidence was not consistent; it was littered with numerous inconsistencies, both internally and with other evidence. The Panel rejected the Appellant's evidence on the ground that it was inconsistent, and not open or full and not credible. The Appellant's evidence was not inconsistent, and certainly no more inconsistent than Pupil A's evidence.

72 As regards the inconsistencies in Pupil A's evidence, Mr Offer in his skeleton identified a very substantial number of instances. The principal inconsistencies relied upon are as follows:

(1) Whether the problem in the bathroom in the hotel in Paris was a shower leak or the hot water not working at all.

(2) Whether the Appellant returned to the bedroom in the hotel, and the length of time she spent in the bedroom.

(3) Whether JP also attended one or more of the after school French lessons given by the Appellant.

(4) A mismatch between the number of incidents of intimate contact and the number of after French lessons.

(5) Inconsistencies in Pupil A's account of what happened at Tesco.

73 Further, the Appellant contends that a large number of aspects of Pupil A's account were not credible. For example, Pupil A's account of holding hands on the coach in France was not credible. It was inherently unlikely that a teacher would have taken the risk or that it would have gone unnoticed. The account of the hot water not working in bathroom in the hotel in France was inherently unlikely. There was no explanation of how the Appellant had managed to fix it. It was inherently unlikely that the Appellant had been in the bedroom from 930 pm to midnight and that after midnight she had then sneaked out of the bedroom that she was sharing with JG to return to the room. Further it was not credible that the Appellant would run the extraordinary risks of discovery of inappropriate sexual conduct with a pupil in a store cupboard during school hours or in a local supermarket habitually frequented by pupils from the School and their families or that she would go for secret trysts in car parks, when she was supposed to be taking extra French lessons at school. Pupil A's evidence that AS interrupted them in the store cupboard shows the extraordinary risk taken by Appellant, if Pupil A's account had been true. Pupil A's description of the sequence of events in the toilet at Tesco was not credible: how would the Appellant have known which toilet cubicle to knock on.

74 Further, there were aspects of the Appellant's own conduct which made Pupil A's allegations not credible. First, in relation to the Appellant's note to the Head dated 22 November 2007, it is inconceivable that if a teacher was having an illicit relationship with a pupil which she wished to conceal, she would expressly raise with the head teacher the fact that there were rumours in the school of the relationship. Secondly, the fact that she herself reported to AH concerns about pictures of Pupil A on the Black Eyed Peas website was inconsistent with her having joined the website for improper purposes and inconsistent with claims that Appellant had caused pictures to be printed off on a school printer.

75 As regards the Panel's assessment of demeanour, this should not weigh heavily in this appeal. Pupil A had given her evidence only by video link and her evidence had not been tested by formal and rigorous cross examination. Further, the Panel was unable to assess, comparatively, the Appellant's demeanour because she gave her evidence by telephone link only.

76 The Appellant submits that Pupil A is a fantasist and attention seeker and had a bad record for being untruthful. The Head accepted that she had exhibited attention seeking behaviour in the past. On her own account, Pupil A had lied to the Head when denying, on around 27 November

2007, the rumours of the relationship. The police had provided information that Pupil A had been proved to have lied about things in the past.

Inadequate reasons

77 In any event the Panel gave no reasons for finding that Pupil A's evidence was consistent, cogent, detailed and credible nor for finding that the Appellant was inconsistent, and that her responses had not been given openly and fully. Even if the conclusion that Pupil A was consistent, credible, and cogent was open to the Panel, it was required to provide a clear explanation as to how that conclusion had been arrived at. The sheer volume of instances of inconsistency and improbability in Pupil A's evidence required a proper explanation. The reasons given failed to enable the Appellant to understand how the Panel concluded as it did. The Decision should be set aside on this ground alone. The Court could not, and should not, choose the alternative of remitting the Decision to the Panel for further reasons.

Article 6 ECHR

78 The Appellant contends that the Teaching Agency had access to further material in the possession of the police. The Appellant was not provided with such material, which prima facie would have assisted her. This breached the principle of “equality of arms” and thus Article 6 . The Teaching Agency or the Panel should have obtained it. In particular, police interviews with other teachers and pupils who had been on the trip to France and the police interview with pupil B had not been provided. Whilst it was accepted that neither the Teaching Agency nor Panel was directly in possession of this material, the Teaching Agency had had the ability to obtain the police material.

Particular (2) (Pupil B)

79 Briefly stated, the Appellant's case is that the finding of an improper relationship with pupil B was wrong, given the absence of reliable evidence from Pupil B. She did not come to give oral evidence and the only relevant evidence relating to her communications with the Appellant was hearsay. Further the Panel failed to give any reasons for its decision to accept the evidence in relation to Pupil B. Further the finding of fact on Particular (2) was not of itself sufficient to underpin the making of the Prohibition Order . The key concern of the Head relating to Pupil B was the Appellant's failure to pass on the information about sexual pressure from the father of another pupil. This was the subject of Particular (3) which the Appellant had admitted all along. Beyond this, the evidence was at most of some inappropriate contacts by email.

The Respondent's case

80 The Respondent concentrates on Particular (1), relating to Pupil A.

The Decision was not wrong

81 The issues of fact arising on Particular (1) were the subject of a straight conflict between evidence of two witnesses. In the Decision, the Panel had given eight reasons why it preferred the evidence of Pupil A to that of the Appellant, as follows:

(a) There was no reason why Pupil A would have put herself through the ordeal of giving evidence, if she had been making the whole thing up.

(b) Pupil A's evidence was consistent; the Respondent submits that Pupil A had been consistent as to the core elements of the six main incidents alleged.

(c) Pupil A's demeanour when giving evidence; she had come across as measured, considered and honest.

(d) Her evidence had been detailed.

(e) Pupil A had no motivation to lie.

(f) Her account was corroborated by evidence from Pupil B.

(g) By contrast, the Appellant's evidence had not been consistent, open or full.

(h) The Appellant's evidence about her handling of two serious child protection matters was not credible.

82 Mr Dunlop, counsel for the Respondent, submits that this Court should be slow to interfere with findings of fact based on assessment of credibility and reliability of the two main witnesses. The Court cannot say that the Panel was wrong to believe Pupil A. The Panel's decision to do so turned on a number of factors, including (albeit not limited to) her demeanour. Demeanour is a relevant factor, and it is still important, even where there are inconsistencies. Although he accepts that, if it is impossible to uphold the finding of consistency, then demeanour is not a reason to uphold the Decision.

83 As regards Pupil A's consistency, credibility and detail, there is more than sufficient material to underpin the Panel's findings. As regards the Appellant's inconsistency, there are clear instances of the Appellant being inconsistent on matters of considerable significance. Examination of the evidence relating to the six core allegations fully bears out the Panel's conclusions. The Appellant's claimed identification of multiple inconsistencies, upon examination, went to matters which were trivial or irrelevant or were instances merely of details being mentioned on one occasion, but not on another. They did not in any way undermine the Panel's conclusions on the central issues of fact.

Adequacy of reasons

84 The reasons were more than adequate. There was no requirement to give reasons for reasons; no need to give examples in the Decision itself of where Pupil A had been consistent or credible or detailed. If, contrary to that, the reasons were not adequate, the Court can, and should, invite the Panel to give further reasons and adjourn the appeal in the meantime.

Article 6 ECHR

85 The Respondent accepts that Article 6 ECHR was engaged before the Panel. However both parties had been equally able to seek third party evidence from the police. The material sought had never been in the possession of the Teaching Agency nor the School. There is no evidence to suggest that the police gave the School only a selection of material. The Appellant herself could have sought the information from the police, and indeed if anyone was able to get the information from the police, it would have been the Appellant, who could have made a Data Protection Act request. No-one asked the Teaching Agency to approach the police.

Analysis

86 In addition to the parties' detailed written and oral submissions, I have read the full transcript of the hearing before the Panel and considered all the materials before the Panel. In this way I am in the same position as the parties were at the hearing, save for not having seen or heard the witnesses and save that it is not clear to me that the Appellant or KL was aware of the content of the Head's oral evidence.

(A) Particular (1) — inappropriate relationship with Pupil A

87 Before turning to each of the Appellant's three challenges to the Panel's findings of fact on this Particular, I summarise the evidence before the Panel in relation to each of six main incidents which underlie Particular (1) and which, in agreement with Mr Dunlop, I consider constituted the core allegations of an inappropriate relationship with Pupil A. These comprised the events (i) on

the coach in France, (ii) in the hotel bedroom in Paris, (iii) relating to the Black Eyed Peas website, (iv) concerning after school French lessons, (v) at the time of the missed English lesson, and (vi) at Tesco.

On the coach in France

88 This is an “incident”, which it is accepted did happen. It is undisputed that on the coach in France, Pupil A and the Appellant sat together, and exchanged written notes of a personal nature. Pupil A's evidence was that the notes included matters relating to sexuality. The Respondent submits that this amounted to a transgression of appropriate boundaries.

Pupil A's evidence

89 Pupil A's evidence, in her police interview, in her witness statement and orally was in essence as follows: The Appellant came to sit next to her, bringing a notebook with her. She described the detail of the notebook. The Appellant communicated with Pupil A by writing notes on the notebook. At first the Appellant asked her general questions. Then the questions became personal. The Appellant asked Pupil A whether she liked her and Pupil A responded that she did.

The Appellant's evidence

90 As for the Appellant's evidence, in her *police interview* , she accepted that notes were being written on a notebook and that Pupil A mentioned her problems with her own sexuality. There is some ambiguity in her evidence as to whose notebook it was. The Appellant had replied on the notebook, and described a to-ing and fro-ing between them of notes on the notebook. The Appellant accepted that, at that time, she realised the Pupil A “liked her in that way”. Later in her interview, however, the Appellant denied that she had given Pupil A a notebook, that she had asked Pupil A questions using the notebook, and that she had made any notes in the notebook. In her *School interview* , she said that notes *were* written in a note pad and passed back and forth. In her *written statement* for the Panel, the Appellant did not address these events. In her *oral evidence* to the Panel, the Appellant accepted that it was *her* notebook that was used in conversing with the Pupil and that she wrote “a couple of questions” in the notebook. Whilst in her own evidence she did not address this, in cross-examination (T127) the Appellant accepted that the notes covered the issue of Pupil A's sexuality.

Other evidence

91 JG gave some evidence, of a general nature, relating to what happened on the coach. In her School interview, she said that, on the trip, the staff sat at the front of the coach, that Pupil A sat at the back of the coach, and that the Appellant moved about the coach more than others, and did at times sit with pupils, including Pupil A. In her statement to the Panel, JG said that the normal practice on the trip was for teachers to sit in various places, and to move around, in the coach.

In the bedroom at the hotel in Paris

92 Again this is an incident which it is accepted did happen. The Appellant went into the bathroom when Pupil A was having a shower, and she then stayed for some time in the girls' bedroom, during which time the girls were involved in styling hair.

Pupil A's evidence

93 Pupil A's evidence, in summary, was that she heard the other girls in the bedroom telling the Appellant not to go into the shower and so she put a towel round her, that the Appellant came into the bathroom where Pupil A was having a shower, saw Pupil A semi-naked, and then stayed in the pupils' bedroom for a significant period of time during which time the pupils were styling the Appellant's hair. The Appellant left the room when JG came in, and then, later — after midnight — came back to the bedroom and stayed for about half an hour. This sequence of events was described in each of the accounts Pupil A gave. In her *police interview* , she said that the bathroom floor was leaking. In her *witness statement* , Pupil A said that it was the hot water which was not working. The first period when she stayed in the bedroom lasted about an hour. In her *oral evidence* , Pupil A said that the problem with the shower was that the water was not

working. In cross-examination (at T55–57), when asked about the apparent inconsistency of her evidence as to the problem with the shower, she said she could not remember whether it was the shower leaking or the hot water not working, as it was a long time ago. She then gave some answers which appear to suggest that in fact the Appellant had visited the room only once and had stayed about two hours. However she then maintained that the Appellant came back after JG took her away.

The Appellant's evidence

94 In her *police interview* , the Appellant said that she was called to the bedroom because the shower was overflowing. She told Pupil A to put towels down. She knocked on the bathroom door prior to entering. The other girls did not ask her not to go in. She had then spent about ten minutes in the bedroom with the girls who were messing about with *her* hair, trying to curl it. As to whether she had been drinking, her answers were not consistent. In her *School interview* , she denied having her hair straightened. In her *oral evidence* , she gave a similar account, but this time she accepted that she came back to the bedroom a second time. She said the girls were curling each others' hair and showed the Appellant how to do it, but said that this was demonstrated, not on her hair, but on another girl's hair.

Other evidence

95 JG, in her School interview said that the Appellant had been in girls' bedroom about 15 to 20 minutes. The Appellant had told her that “they'd been doing hair”. JG remembered tapping her watch and thought the Appellant was putting herself in a risky situation. In her statement for the Panel, apart from mentioning that she had tapped her watch, JG did not address this incident.

The Black Eyed Peas website

96 The following is not disputed. Pupil A was on a website, the Black Eyed Peas website with revealing photographs of herself on the website. She was looking at the website on a computer in the School library. It was a website on which there were overtly sexual communications. The Appellant saw Pupil A on this website and the Appellant's response was subsequently to join the website herself, using a different computer at the School. The Appellant joined the website using a nickname. The nickname was an acronym representing the Appellant's first, middle and surnames, and it was a name which she had previously mentioned to pupils at the school. Messages were sent through the website, at least by Pupil A to the Appellant.

Pupil A's evidence

97 Pupil A, in her *police interview* , said she received a message *from* the Appellant on the website. She referred to the nickname. They communicated with each other regularly through the website. The Appellant told her to print off a picture of Pupil A. In her *witness statement* , she gave the same account, explaining that there were two photos of her on the website which were revealing. She explained how she realised that the person using the nickname was the Appellant. A few days later, the Appellant told Pupil A to go to a printer in the School, where she then found copies of the two photos of her, in the bra and in the basque. In her *oral evidence* , she explained that, when communicating through the website in the School library, each of them was on a different computer. The Appellant had turned her computer round. The Appellant asked Pupil A to print off the photos. This was inconsistent with her witness statement evidence to the effect that the instruction *to the computer* to print the photos had been given by the Appellant.

The Appellant's evidence

98 The Appellant, in her *police interview* , said that she saw Pupil A on the Black Eyed Peas website. She could see that it had overtly sexual content. She was concerned, so she signed up to the website to see exactly what was going on. She said *“I did converse with Pupil A briefly on [the website]”* . She denied that she had asked Pupil A to print off photos. She said she reported this to AH. In her two *School interviews* she denied conversing with Pupil A in the chat rooms. She said she had sent AH a written memo. In her *oral evidence* , she gave the same explanation for having joined the website. She had signed up using the nickname, and she received two messages straightaway. Asked if she responded to those messages, she answered *“No, no, not at all”* . She was pressed on a number of occasions, why she had signed up to the website and why she had not just taken steps to take Pupil A off the website. Her answer, repeatedly given,

was that she realised that she had done the wrong thing and that she should just have reported her concerns. She had wanted to “double check” the website. It was put to her that this did not make sense, given that, from the outset, she could see that its contents were clearly inappropriate.

Other evidence

99 AH's evidence was that she remembered the Appellant telling her about a picture of Pupil A wearing a basque on a website. The Head reported that AH did not receive any written memo to that effect. Pupil B in her school interview, said she saw emails coming from the Appellant's nickname on Pupil A's Black Eyed Peas website.

After school French lessons

100 It is not disputed that the Appellant gave extra French lessons to Pupil A and that the Appellant drove Pupil A home after those lessons. What is in issue is whether there were used as opportunities for sexual contact between them in a school store cupboard and in car parks on the way home.

Pupil A's evidence

101 Pupil A in her *police interview* , said that at the first such extra lesson, the Appellant had asked her to help her take books into the store cupboard. When she walked into the cupboard the Appellant hugged her and they started kissing. The door was left open. In fact they only did one such lesson. Thereafter they would be in the store cupboard or her car. The store cupboard was situated within a different classroom. In her *witness statement* , she said that the first occasion in the store cupboard was on the day after her 16th birthday. This took place in her second after school lesson. She had to be asked twice to take books to the store cupboard. The Appellant followed her in and closed the door. They kissed for about 10 minutes. Then AS called out the Appellant's name from outside the store cupboard. In her *oral evidence* , she said at first that the store cupboard kissing took place at the first after school lesson, but then corrected herself by saying that it was in fact the second such lesson. At that time, she was the only person attending the after school lesson. Pupil A thought that the request to take the books to the store cupboard was a joke, and the Appellant had to ask twice. They went in, the door was shut and they kissed. They then heard a teacher calling the Appellant's name. In cross-examination, she said that subsequently other pupils asked why the lessons were only for her and the Appellant started to do lunch time sessions. She referred to JP also attending extra French lessons. In an initial answer (T60), she was referring to JP attending the lunchtime lessons. In a subsequent answer (T65), it is disputed whether she was referring to JP attending, on several occasions, at lunchtime or after school. It is not clear which of these sessions she was referring to in that answer. However, when asked a further question as to when JP came to the sessions (T72), Pupil A replied *“I think it was an after school, but then people started turning up for lunch time ones”* .

The Appellant's evidence

102 Her evidence was that the extra French lessons were open to all and that Pupil A's parents knew about them and about her driving Pupil A home. In her *School interview* , she said that there were a couple of times when Pupil A came on her own and on 4 or 5 other occasions, others were there, including JP. In her Note of 22 November 2007, she had said that she had been giving *Pupil A* extra tuition. In cross-examination, the Appellant accepted that there were a couple of occasions when Pupil A was on her own.

Other evidence

103 Pupil B in her School interview said that only Pupil A got the after school lessons and that JP did not go, despite the fact that he needed them. JG's evidence in her School interview was to the effect that she thought that Pupil A was having the lessons on her own.

The Missed English lesson

104 It is common ground that on one occasion Pupil A missed an English lesson with another teacher taking place immediately after lunch and that, instead, she spent the time with the

Appellant, who then explained Pupil A's absence to that teacher.

Pupil A's evidence

105 Pupil A alleges that they spent the time of the missed lesson in the store cupboard, during which they kissed and had intimate sexual contact, and that the Appellant ended up crying and saying that she felt guilty toward her then partner. She gave this account in all her evidence, including the same account of the details of the sexual contact in the store cupboard. In her *police interview* , she said that they spent about an hour in the store cupboard. Afterwards they both went into the next French lesson. Both of them were really red and others commented on this. Pupil A was “on report” at the time. In her *witness statement* , she added that the Appellant locked the store cupboard from the inside. Someone tried to open the door, but the Appellant put her foot and hand against the door. In her *oral evidence* , she gave broadly the same account. It is clear from the transcript (T46) that, whilst giving this oral evidence, Pupil A was crying and had to break off for a time in the course of giving it.

The Appellant's evidence

106 The Appellant gave little evidence about this incident. In her *oral evidence* she accepted that Pupil A did miss the whole English lesson and that she, the Appellant, had told the English teacher that Pupil A would not be attending. She referred to the fact that at the time Pupil A was concerned because she was “on report”. She said that, for the 1 hour and 10 minutes of the missed English lesson Pupil, A was with her in her office but that she could not remember what they had been doing in that period of time. (T118, T137).

Events at Tesco

107 There was an incident at Tesco which involved the Appellant and Pupil A being together in a toilet cubicle at the supermarket. Pupil A alleges, and the Appellant denies, that sexual contact took place in the cubicle.

Pupil A's evidence

108 In her *police interview* , Pupil A said that the Appellant went into Tesco first and she went in a few minutes later. The Appellant let Pupil A into the toilet cubicle. They kissed passionately and there was further, more intimate, sexual contact. She gave details of what the Appellant had said to her, afterwards, relating to the intimacy of that contact. In her *witness statement* , she said the arrangement was for the Appellant to go into the supermarket first with Pupil A to follow and go straight to the toilet. Pupil A went to the toilet, where there was a queue. She then went into a cubicle. There was a knock on the cubicle door and it was obvious that it was the Appellant. She then described the sexual contact, and the detail of the conversation after, in similar terms as in the police interview. They were there 20 minutes in total. In *oral evidence* , she said that the Appellant had told Pupil A to go into Tesco first. They went in at the same time, but by a different way. Her account of the details of events in the toilet area was substantially the same as before (T49–50). In cross-examination she accepted that there was only one entrance to Tesco and both of them went through it. The teacher member of the Panel asked her how the Appellant had known that she was knocking on the correct cubicle. She answered that there were three or four cubicles and the others were clear and hers was shut.

The Appellant's evidence

109 The Appellant, in her *police interview* , said that she had suggested that she would take Pupil A to Tesco to get a magazine. Pupil A got out of the car and headed for the toilet. She went after her and into the toilet, where Pupil A had locked herself in. She was crying and refusing to come out of the cubicle. It took her 10 to 15 minutes to convince her to come out. She said she had not reported this incident to anyone. She gave a similar account in her *School interview* , except that she said it was Pupil A's idea to go for a magazine. When it was pointed out that this was inconsistent with her police interview, she said that going for the magazine was *“a mutual suggestion”* . Both in her *School interview* , and in her *witness statement* , she said that the incident took place before 22 November. In her *oral evidence* , she said that *she* had suggested they go to Tesco to get a magazine. She gave a similar account of Pupil A running into Tesco and into the toilet area, locking herself into a cubicle. She said that she had mentioned the

incident to AS on the following day.

Wrong on facts

110 I turn to the first ground of challenge, namely whether the Panel was wrong to find on the facts that the Appellant had an inappropriate relationship with Pupil A. I examine the issues by references to the 8 reasons in the Decision identified by Mr Dunlop.

111 In some cases, it is not disputed that, in general, the incident happened. Rather the witnesses differ as to what happened during the incident. This is the case in relation to events in France and at Tesco. In these cases, the consistency of their accounts, when compared with one another, is likely to be a useful pointer as to where the truth lies. In other cases, the Appellant effectively completely denies that the incident happened at all. This is the case in relation to the two alleged encounters in the store cupboard, and the printing off of the pictures from the Black Eyed Peas website. In such cases, the detail of the evidence given by Pupil A is likely to be an important indicator in assessing the credibility of her account.

112 As regards the standard of proof, in the present case, given the nature of the allegations of an inappropriate and sexual relationship between a pupil and a teacher, the starting point might well be that such a relationship (and some of the specific events alleged) are inherently improbable. However, this inherent improbability is reduced by certain of the undisputed facts in the case and by the course of relevant events as they progressed: for example, the fact that Pupil A had a crush on the Appellant, the writing of notes on the coach in France, the admitted fact and circumstances of the Appellant joining the Black Eyed Peas website and other aspects of the Appellant's admitted conduct.

Pupil A being prepared to give evidence

113 The Panel expressly relied upon the fact that Pupil A was prepared to give evidence, including cross-examination and questions from the Panel, thereby submitting herself to personal stress and despite no longer being involved with the School. Mr Offer contends that the fact that Pupil A gave evidence cannot be evidence of the truth of her allegations. However that does not meet the point made by the Panel, which was effectively to question what was in it for Pupil A to come to the Panel some six years after the relevant events, and put herself under stress (which, it appears from the transcript she did) to give evidence in such detail, if she was coming only to put forward fabricated allegations of such a serious nature. In my judgment, whilst this was not an overwhelming reason to conclude that Pupil A was credible, it was a legitimate factor for the Panel to have taken into account in assessing the credibility of Pupil A's evidence.

Consistency of Pupil A's evidence

114 *First* , as appears from the detail set out in paragraphs 89, 93, 97, 101, 105 and 108 above, Pupil A's evidence in relation to the core elements and the important detail of the six main incidents was, in my judgment, consistent. On the coach, her evidence as to the manner in which notes were written and the contents of those notes was consistent. As regards the hotel in Paris, she was consistent in describing the Appellant coming into the bathroom, in the fact that the Appellant stayed in the room for some time, in the fact that the Appellant returned later, and in the fact that the girls had been curling/straightening the Appellant's hair. In relation to the Black Eyed Peas website events, Pupil A's evidence throughout was consistent in the following detail: as to the fact that they exchanged messages through the website, as to where Pupil A and the Appellant were when communicating through the website, as to the use and understanding of the nickname, and as to the photos being printed off at the Appellant's suggestion. As regards the first incident in the store cupboard her description of the intimate contact was consistent. As for the missed English lesson Pupil A was consistent in her description of the detail of the sexual contact, in the recollection of the fact of, and reason for, the Appellant crying. Similarly, in relation to the events at Tesco her evidence was consistent in the detail of the sexual contact and in what the Appellant had said to her afterwards.

115 *Secondly* , as regards the inconsistencies in Pupil A's evidence, I address first the principal inconsistencies in Pupil A's evidence which related to the six core allegations upon which Mr Offer sought to rely. The Appellant's case is that these inconsistencies establish that Pupil A was fabricating things altogether, rather than the product of mistaken or weak recollection or even embellishment. I do not agree.

Events in the hotel room in Paris

116 Pupil A's evidence as to whether the problem arising in the bathroom was a shower leak or the hot water not working was inconsistent. The latter explanation was given for the first time in her evidence for the Panel. I accept that such evidence amounted to a claimed new and different recollection. This was put to her in cross-examination and Pupil A responded by then saying she could not remember. Whilst this inconsistency might indicate a lack of actual recollection or a willingness to embellish, it is not sufficient to undermine the overall consistency of her account of events that evening. As regards whether the Appellant returned to the bedroom after first leaving, the suggestion at one point in Pupil A's evidence that the Appellant visited only once was not clear, and followed questions in cross-examination which did not fairly represent what Pupil A had said in her witness statement (T57).

Mismatch between the number of incidents and the number of after school lessons

117 Mr Offer points to inconsistency in Pupil A's evidence relating to the number of alleged incidents of kissing and the actual number of after school French lessons. Pupil A's evidence on this was not always clear. Any mismatch is likely to be the product of false recollection after a substantial period of time or even exaggeration. However I am not satisfied that any such inconsistency undermines the credibility of her evidence that some after school lessons on her own did take place nor that, at or following some of those lessons, intimate contact took place.

JP attending after school lessons

118 Pupil A's evidence concerning JP's attendance at extra French lessons was unclear and confused. It does appear that she accepted that, on at least one occasion, JP attended an *after school* French lesson. She did not mention this until she gave oral evidence. This, it is submitted, is inconsistent with her evidence that after the first such lesson, no further lessons actually took place. However, apart from an inconsistency in detail, it is not clear what such inconsistency establishes. It might be said to indicate that after school lessons were not “skipped” to enable car park trysts to take place or that no intimate contact could have taken place *at* the after school lessons because of the attendance of others. However, there is other evidence which supports the fact that most or at least some of the after school lessons were for, and attended by, Pupil A alone. Moreover the evidence of others, including Pupil B and AS, suggested that JP did not attend after school.

Tesco

119 Pupil A's evidence as to the Tesco incident was inconsistent both as to which of them went into the supermarket first and which of them went to the toilet cubicle first. However as indicated above, Pupil A's evidence of what happened *in* the toilet cubicle was both detailed and consistent. The inconsistency as to who let who into the cubicle was not put to Pupil A in cross-examination and she thus had no chance to explain the discrepancy. Moreover the suggested inconsistency as to the time of day that they went to Tesco is not, without more, relevant to the issue of what happened there

120 Mr Offer contends that there was a large number of other inconsistencies. I have considered each of them in turn. Many of the alleged inconsistencies were minor and inconsequential. For example, inconsistency in relation to the actual location of the store cupboard, how exactly the instruction to print off the photos from the Black Eyed Peas website was given, and whether there was an afternoon break at school. I accept that inconsistencies outside the core allegations may be relevant if they are sufficient to undermine the reliability of Pupil A as a witness as a whole, and such inconsistencies as there may have been in the present case might undermine Pupil A's evidence in relation to the particular detail in question. Nevertheless they are not such as to lead to the conclusion that Pupil A fabricated her evidence on the core allegations.

121 Ultimately the issue is whether the core allegations are true; inconsistencies in detail are to be expected: see paragraph 58(6) above. The fact that a detailed analysis, now made, of all the evidence has revealed certain inconsistencies in Pupil A's evidence does not mean that the Panel's decision to accept Pupil A's evidence on the core elements of the main incidents was wrong. Where it mattered, Pupil A's evidence was consistent.

Pupil A's demeanour

122 One of the Panel's reasons for accepting Pupil A's evidence was the manner in which she had given her evidence to them. I accept Mr Offer's submission that demeanour alone is not a sufficient basis upon which the Panel should assess Pupil A's credibility and that this had to be tested against the content of the evidence itself. However, as is clear from the authorities, demeanour is an important factor and it is clear that the Panel also took account of numerous other factors, most particularly consistency, detail and credibility.

123 I do not accept that the relevance of her demeanour should be discounted or reduced because Pupil A gave her evidence by video link only. The Panel approached the manner of the giving of that evidence with great care, conscious of the need to avoid influence from Pupil A's mother. There is no reason to consider that the Panel could not see or hear Pupil A clearly. This Court is unable to gain any true impression of the manner in which Pupil A gave her evidence. Nevertheless it is clear from the transcript that, on at least one occasion and probably more, Pupil A was crying. It was for the Panel to assess whether this distress was genuine; if it found that it was, then that was certainly a sound basis for the Panel's assessment of her credibility: see paragraph 58(4) above.

124 Mr Offer refers to the fact that, by contrast, the Panel was unable to *see* the Appellant when she gave her evidence and this imbalance in the position of the two witnesses means it was unfair of the Panel to rely upon demeanour in this case. The events surrounding this case have caused the Appellant considerable distress. The Court can only have sympathy for her consequent health problems, which it is clear the Appellant has worked hard to address. However it was the Appellant's choice to give her evidence only by telephone link. It may have been a difficult choice for her, and her legal adviser. But the fact that she did so choose was not a reason for the Panel not to have regard to Pupil A's demeanour.

Pupil A's evidence was detailed

125 The Panel concluded that Pupil A's evidence was “detailed”. Mr Offer submits that it was wrong to do so, because so much of the detail was inconsistent. I do not agree. Detail in the evidence of a witness may be a very important indicator of the reliability of that evidence. Great detail may be difficult to fabricate, and particular details may well be an indication of genuine recollection, rather than reconstruction. Pupil A's evidence contained much detail which was consistent and difficult to fabricate. The following are examples. Pupil A had a detailed recollection of the notebook on the coach — its size, its colour and the fact that it had a bumble bee on it. The explanation concerning the use of the nickname on the Black Eyed Peas website and how the photos came to be printed off was detailed. In relation to the missed English lesson, her account of what happened in the store cupboard, and in particular the recollection that at one stage the Appellant started crying, because of concerns about her own partner. In respect of Tesco, she referred to the particular detail of what the Appellant had said to her after the intimate contact. The Panel's conclusion that Pupil A's evidence was detailed was justified and, in my judgment, correct.

No motivation to lie

126 One of the reasons the Panel considered Pupil A to be credible was that she presented as someone who had no motivation to lie. This was in response to the Appellant's case that Pupil A was known to be a liar and a fantasist. The Panel accepted the Head's evidence on this to the effect that Pupil A might have been troubled, but she was not known to be a liar. In my judgment, it was entitled to do so. Mr Offer points to various pieces of evidence which suggested that Pupil A had a reputation for lying. But the evidence here was mixed. Just as the CPS had doubts about her credibility, the police who conducted the investigation did not. The Panel had the opportunity to assess Pupil A first hand. It was for the Panel to assess whether she was telling them the truth.

127 As regards the evidence suggesting that Pupil A was a liar and fantasist, that evidence related to a time when she was 15 or younger. At the time of giving her evidence to the Panel, Pupil A was 21, and it was for the Panel to assess the evidence she gave to them then. Mr Offer further submits that Pupil A was a fantasist and fantasies may be detailed but that does not make them true. But some of the undisputed facts here were not based on fantasy. For example, the

Appellant did get involved with Pupil A on the Black Eyed Peas website. This was more than a fantasy on the part of Pupil A. The Appellant was acting inappropriately and unusually with a girl who she knew “liked her”.

Corroboration by Pupil B

128 Pupil B's School interview corroborated Pupil A's evidence that the Appellant sent messages to Pupil A through the Black Eyed Peas website and that Pupil A had after school lessons on her own and that JP did not attend those lessons.

129 The Panel recognised that the fact that Pupil B's evidence was hearsay and that that affected the weight to be attached to her evidence, but concluded nevertheless that that evidence provided corroboration for Pupil A's account. Mr Offer contends that the Panel could not rely upon Pupil B's evidence because Pupil B had “slaughtered” *Pupil A's* credibility, saying that Pupil A lied all the time. Thus to rely on Pupil B's evidence was irrational. Whilst this may be correct, in so far as it relates to the truth of *the contents* of what Pupil A told Pupil B, it does not necessarily apply as regards the truth of what Pupil B was saying (whether as to *the fact* of what Pupil A had told her *or otherwise*). Mr Offer's argument is not a reason for the Panel not to accept Pupil B's own evidence about what she saw on the website or what she knew about whether JP attended lessons at lunchtime or after school.

The Appellant's evidence was not consistent, nor open or full

130 The Panel concluded that, by contrast to Pupil A's evidence, the Appellant's evidence was inconsistent and not open or full. In my judgment, this conclusion was justified. There are a number of examples of inconsistency in the Appellant's evidence, and inconsistency as to significant matters relating to core allegations.

131 First, in relation to the notebook on the coach, the Appellant was inconsistent about whether she herself had been asking questions by writing on the notebook. At times she accepted this, at others she denied it. She was also inconsistent about whether Pupil A had written notes about her own sexuality. These are important inconsistencies, because they go to significant aspects of behaviour which, if true, crossed the boundary of appropriate behaviour. The Appellant's changes of these details are indicative of a realisation of this significance. Mr Offer, in reply submissions, concentrated on a third alleged inconsistency (as to whose notebook was being used), but did not address these two clear inconsistencies.

132 Secondly, the Appellant's evidence in relation to hair “styling” in the bedroom in Paris was inconsistent. In her oral evidence, she resiled from her earlier evidence that it had been *her* hair that the girls were styling. There is no dispute that, when she was present in the girls' room, she and they were involved in some hair styling. However if the girls had been styling the hair of a teacher, this would be closer to a transgression of boundaries. It is certainly possible that the Appellant resiled from it being her own hair, because she realised that this was evidence of inappropriate conduct. In this way, the inconsistency in evidence related again to a material issue. The Appellant's evidence as to whether she returned to the room, a second time, was also inconsistent.

133 Thirdly, and significantly, the Appellant's evidence about whether she herself had sent messages to Pupil A on the Black Eyed Peas website was inconsistent. At first she said she did, and later she denied this. Mr Offer accepts that this was an inconsistency. He submits, first, that Pupil A was equally inconsistent and the same standard should be applied. However this submission takes no account of the content and significance of the particular inconsistency in question. The question is whether the inconsistency is a failure of recollection or a deliberate lie to cover something up. This inconsistency went to a very significant aspect of one of the key incidents. Secondly, he submits that the Appellant was under great stress when she gave her evidence to the Panel, thus suggesting that her denial of having communicated was not true. If that is right, then the true position is that she did communicate via the website, and if that is correct, then this strongly supports the allegation of an inappropriate relationship. Thirdly, and somewhat contradictorily, Mr Offer submits that *at the time of the police interview* she was under great stress, thus suggesting that the statement then made that she did communicate on the website was not true. However, no explanation is given as to why she would have lied on this point, against her own interest. In fact, despite having ample opportunity to do so, the Appellant did not clarify which version of this event was the true account. In my judgment, it is far more

likely that her first answer in the police interview was correct and that in her evidence to the Panel she sought to resile from it, knowing that her act of communicating with Pupil A via the website containing explicit sexual content was strong evidence of an inappropriate relationship and that there was no other explanation for her having done so.

134 There were other inconsistencies in the Appellant's evidence over time; for example, as to whether the after school French lessons were open to all or for Pupil A alone; as to whether, and, if so, to whom she reported the events at Tesco. In relation to Tesco, her evidence as to who was the person to suggest going there for a magazine was inconsistent, and her ultimate answer not credible.

135 As to whether the Appellant's evidence was open, full and credible, her account of having reported the Tesco incident to AS was not given initially and she omitted to refer to the fact that on the coach Pupil A had raised questions as to her own sexuality. She was unable to say what she and Pupil A had been doing for the hour or more of the missed English lesson. Her written statement to the Panel did not address the detail of the main incidents.

136 As regards credibility, it is clear that the Panel found the Appellant's explanation for joining up to the Black Eyed Peas website to be not credible. By this time, on her own evidence, the Appellant knew that Pupil A liked her and knew that the Black Eyed Peas website contained overtly sexual material. Her behaviour in joining the website was odd. She did not distance herself as she told the police. She was pressed by the Panel (T153) about why she had joined the website rather than just reporting her concerns about the website to the Safeguarding Officer. Her answer was principally to say that she realised this was the wrong thing to do. However she was unable to explain convincingly why she had done what she *had* done (rather than what she *ought to have* done). The Panel found her answers to these questions not credible. Having considered that part of the transcript, I agree with that conclusion of the Panel. The obvious inference is that she had no reason to *join* the website other than to pursue an inappropriate relationship with Pupil A. Finally, I do not agree that the fact that the Appellant “self-reported” to the Head lends credibility to the Appellant's account. It is, at least, equally an indication that the Appellant was concerned to put her side of the story first, because the rumours were true.

Reporting safeguarding matters

137 The Panel gave, as another reason for finding the Appellant's evidence not credible, her behaviour in relation to two child protection issues. It is clear from the transcript (T147) that the Panel was there referring to, first, her failure to report the events at Tesco, and secondly, her failure to report the text messages between Pupil B and the father of another pupil.

138 As regards the incident at Tesco, the Panel's concern was that, on the Appellant's account of what happened and that Pupil A had been very upset about things at home, this was a serious matter which warranted reporting to the Head or the Safeguarding officer. The Head's oral evidence was that if the incident had happened before 22 November 2007 (which was the Appellant's evidence), it was surprising that the incident had not been mentioned in the Appellant's Note to the Head; and if it had happened after that date, then it should have been reported anyway because of the Head's instruction to her to report anything further of concern about Pupil A. The Appellant's response was that she had mentioned it to AS and evidence from AS supports the fact that the Appellant had mentioned something to her. The Panel however (T147–148 and T155–156) indicated its view that this warranted reporting it immediately and officially. The Appellant accepted that what happened at Tesco (on her account) was a child protection issue, that she had not followed the appropriate procedure to report it to AH, and said expressly she could not answer why she had not done so. This is clearly the basis for the Panel's conclusion that her evidence on reporting the Tesco issue was not credible. It is a conclusion which the Panel was entitled to reach and which, in my judgment, was justified.

139 As regards the failure to report the text messages received by Pupil B, the Appellant submitted that this was something on which she had always accepted she had made an error. Mr Offer suggests that this failure did not make it more likely that the Appellant had engaged in illicit sexual activity with a pupil. This may be true on its own, but, given the nature of that safeguarding issue and the Appellant's desire to keep it confidential with the pupil in question and when taken with the failure to report the Tesco incident, it is a factor which the Panel was entitled to take into account when assessing the Appellant's credibility.

Conclusions on whether the finding on Particular (1) was wrong

140 For these reasons there is very substantial material to support to the findings of fact on Particular (1) — to support its conclusion that Pupil A's evidence was consistent, credible, and detailed and that the Appellant's evidence was not consistent or credible.

141 In relation to the disputed issues, the Panel's assessment of credibility has to be set in the context of certain significant facts which were undisputed. By the time of the coach journey in France, at the latest and very possibly before, the Appellant knew that Pupil A “liked her” and had a “crush” on her. Rather than keeping her distance, the Appellant's contact with Pupil A became more personal. On the coach itself, they exchanged private written notes, which included discussion of Pupil A's own sexuality. In the hotel room in Paris, the Appellant both went into the bathroom when Pupil A was taking a shower, and then remained in the bedroom with Pupil A and others, and got involved in hair styling. On return from that trip, after school lessons started and the Appellant gave Pupil A lifts home. Then, perhaps most significant of all, the Appellant joined a website with explicit sexual content and communicated with Pupil A via that website and changed her evidence about those communications. Finally, there is the fact that the Appellant failed formally to report the events at Tesco.

142 Having considered the material and submissions that were before the Panel, I have concluded that the Panel's findings were justified. For these reasons, I conclude that the Panel's findings of fact in relation to Particular (1) were not “wrong” and this ground of challenge fails.

Failure to give reasons

143 Mr Offer submits that, in any event, the Panel's reasons did not meet the requisite legal standard. The Panel had the Appellant's career for life in its hands and it was incumbent upon it to conduct a detailed examination of the evidence and the facts. That it failed to do so is evidenced by the paucity of its reasons. It was not sufficient merely to assert consistency or lack of it. It had to explain why it had reached *those* conclusions.

144 I agree that it was incumbent upon the Panel to examine all the evidence carefully. However, for the reasons given above, I am satisfied that it did so. Its conclusions on the facts were cogent and justified.

145 As regards the adequacy of the reasons given, first the Panel did not confine itself to the issue of consistency, but took into account an array of factors in deciding to accept Pupil A's account and reject that of the Appellant. Secondly, it is the case that the Panel did not give *examples* of why and where it found the evidence to be consistent or inconsistent or detailed or credible. It might have been helpful if it had done so, although, in respect of the sexual conduct, the Panel explained why it deliberately refrained from giving further detail in a public document. Nevertheless, in my judgment, the fact that it did not give examples, does not mean that the reasons given were inadequate.

146 As set out in paragraphs 59 to 62 above, the standard of reasons required for such findings of fact is flexible, and depends on the facts of each case. In general, not much is needed by way of explanation for preferring the evidence of one person over that of another. The question is whether, with her knowledge of the underlying evidence and submissions, it was not clear to the Appellant why she had lost. In my judgment, in this case, the Panel made it sufficiently clear for the Appellant to know why she was not believed, taking account of her own understanding of the evidence and argument.

147 I conclude that the Panel gave adequate reasons for its decision on Particular (1) and complied with its duty to give reasons. The challenge based on failure to give reasons fails.

148 Accordingly, the issue for remission for further reasons does not arise. In the present case, the issue of adequacy of reasons is in fact intimately connected with the substantive issue of whether the Decision itself was wrong. Had I concluded that the reasons given were not adequate, it is very likely that I would also have concluded that the Panel might well have erred on the substantive facts. In that event, I would therefore have set aside the entire Decision and remitted the matter for a fresh hearing, rather than remitted it for further reasons; on that hypothesis, in my judgment there would have been a substantial risk of ex post facto rationalisation.

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149 I do not consider that the fact that the Appellant did not have access to other potential evidence in the possession of the police constituted a breach of the Appellant's right to a fair hearing before the Panel. Unlike the position in the Feldbrugge case, this was not material which was before the Panel, nor was it in the possession of the Teaching Agency or indeed the School. If there is any material, it is material in the hands of a third party.

150 In June 2010 the Head wrote to the police and asked for its case file. Everything which the police gave to School was disclosed by School to the Appellant in the course of the School investigation. There is nothing to suggest that the School held anything back from the Teaching Agency. The only possibility is that the police did not give the School all the material they had, but even then there is little evidence to suggest that the police gave the School only a selection of material.

151 I accept Mr Dunlop's submissions here. The Appellant was just as much in a position to seek any such additional material from the police as was the Teaching Agency. She did not do so, nor did she ask the Teaching Agency to do so, nor did she raise this as an objection before the Panel. There was no breach of the principle of inequality of arms here, and this ground of challenge fails.

(B) Particular (2) — inappropriate relationship with Pupil B

152 In view of my conclusion on Particular (1) and the Appellant's acceptance that the finding of an inappropriate relationship with Pupil A justified the Prohibition Order , there is no remaining basis upon which the Prohibition Order could be quashed. That makes any conclusion I express on Particular (2) academic. I therefore do not need to decide whether this finding was correct. I note only that the Decision records that the Appellant accepted that she had communicated with Pupil B in the way alleged. This appears from her police interview. I add however that I agree with the Appellant that it is at least doubtful whether the facts underlying Particular (2) on their own were sufficient to justify a Prohibition Order , and, had I found that the finding in relation to Particular (1) was wrong, then I would have quashed the Order as a whole and remitted the entire case for re-hearing.

Conclusions

153 For the reasons given in paragraphs 142, 147 and 151 above, the Appellant's three challenges to the Panel's finding of an inappropriate relationship with Pupil A each fail. The Prohibition Order was thus justified and I decline to quash it. Accordingly this appeal is dismissed.

154 The parties have agreed upon the terms of the order for dismissal and in relation to costs. I will make that order.

155 I am grateful to Mr Offer and Mr Dunlop for their assistance to the Court in the presentation of detailed oral and written argument in this matter.

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