

THE TEACHING AGENCY

Decision of a Professional Conduct Panel and the Secretary of State

Teacher: Dame Maureen Brennan

Teacher date of birth:

Teacher: Mrs Linda Westwood

Teacher date of birth:

Teacher: Mrs Shelley Derham

Teacher date of birth:

Date of Determination: 28 November 2012

Former Employer: Hillcrest School & Community College

A. Introduction

A Professional Conduct Panel (“the Panel”) of the Teaching Agency convened on 12 November 2012 until 16 November 2012 at 53-55 Butts Road, Earlsdon Park, Coventry, CV1 3BH and again between 19 November 2012 and 28 November 2012 at The Beeches Management Centre, Selly Oak Road, Bournville, Birmingham, B30 1LS to consider the cases of Dame Maureen Brennan, Mrs Linda Westwood and Mrs Shelley Derham.

The Panel members were Mrs Susan Netherton (Lay Panellist – in the Chair), Ms Jean Carter (Lay Panellist) and Mr John Pemberton (Teacher Panellist).

The Legal Adviser to the Panel was Mr Graham Miles of Morgan Cole LLP, Solicitors.

The Presenting Officer for the Teaching Agency was Mr Bradley Albuery of Blake Laphorn LLP, Solicitors.

Dame Maureen Brennan was present and was represented by Ms Melanie McDonald of Counsel.

Mrs Linda Westwood and Mrs Shelley Derham were both present and were both represented by Mr Andrew Faux of Counsel.

The hearing was recorded. On 19 November 2012, the Panel sat in private to hear evidence from the parents of Pupils D and I. All other parts of the hearing took place in public.

B. Allegations

The Panel considered the allegations set out in each of the Notices of Proceedings dated 4 May 2012.

It was alleged that **Dame Maureen Brennan** was guilty of unacceptable professional conduct, in that:

Whilst employed as Headteacher at the Hillcrest School & Community College between September 2000 and April 2007:

1. **Pupil attendance was not recorded accurately and;**
 - (a) she was aware of those inaccuracies;
 - (b) she should have been aware of those inaccuracies;
 - (c) she took no action in relation to those inaccuracies;
 - (d) she failed to ensure that the figures were accurate;
 - (e) her actions at (a) and (c) above were dishonest.

2. **The Pupil Level Annual School Census (PLASC) was manipulated to suggest a false improvement in GCSE 5 A* to C grades and:**
 - (a) she was aware of the manipulation of the PLASC;
 - (b) she should have been aware of the manipulation of the PLASC;
 - (c) she took no action in relation to that manipulation;
 - (d) she failed to ensure that the PLASC was accurate;
 - (d) her actions at (a) and (c) above were dishonest.

3. **As Headteacher, she failed to ensure that pupils identified in Schedule A received a statutory level of education or alternative provision.**

The facts of the allegations against Dame Maureen Brennan were not admitted.

It was alleged that **Mrs Shelley Derham** was guilty of unacceptable professional conduct in that:

Whilst employed at the Hillcrest School & Community College between 2 September 2005 and April 2007:

1. **Pupil attendance was not recorded accurately and:**
 - (a) she made inappropriate alterations to the records of attendance;
 - (b) she told others to make inappropriate alterations to the record of attendance;
 - (c) her actions at (a) and (b) above were dishonest.

2. **The Pupil Level Annual School Census (PLASC) was manipulated to suggest a false improvement in GCSE 5 A* to C grades and:**
 - (a) **she was responsible for that manipulation;**
 - (b) **her actions at (a) above were dishonest.**

The facts of the allegations against Mrs Shelley Derham were not admitted.

It was alleged that **Mrs Linda Westwood** was guilty of unacceptable professional conduct in that:

Whilst employed at the Hillcrest School & Community College between 2 September 2005 and April 2007:

1. **Pupil attendance was not recorded accurately and:**
 - (a) **she made inappropriate alterations to the records of attendance;**
 - (b) **she told others to make inappropriate alterations to the record of attendance;**
 - (c) **her actions at (a) and (b) above were dishonest.**
2. **The Pupil Level Annual School Census (PLASC) was manipulated to suggest a false improvement in GCSE 5 A* to C grades and:**
 - (a) **she was responsible for that manipulation;**
 - (b) **her actions at (a) above were dishonest.**

The facts of the allegations against Mrs Linda Westwood were not admitted.

C. Summary of Evidence (Facts and Unacceptable Professional Conduct)

12 November 2012

Documents

The Panel received a bundle of documents which included:

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| Pack 1 | Teaching Agency statements on pages 1 to 127 |
| Pack 2 | Teaching Agency documents on pages 1 to 766 |
| Pack 3 | Dame Maureen Brennan's statements and documents on pages 1 to 174 |
| Pack 4 | Mrs Shirley Derham's and Mrs Linda Westwood's statements and documents on pages 1 to 298. |

These documents were presented to the Panel on the morning of the hearing. It was agreed that, after the opening statements, the Panel would retire to read those papers to which they were directed by the parties.

Opening Statements

The Presenting Officer said that he proposed to call the following named witnesses, namely:

1. Witness A
2. Witness B
3. Witness C
4. Witness D
5. Witness E
6. Witness F
7. Witness G
8. Witness H
9. Witness I
10. Witness J
11. Witness K

In addition, the Presenting Officer said that he proposed to call as witnesses the parents of three pupils and the grandparent of one pupil. The witnesses were listed 14 to 17 in the index to the bundle of statements relied upon by the Teaching Agency. (The names of the witnesses were not read out in public in order to preserve the anonymity of the pupils concerned).

Mr Albuery added that two of the witnesses whose statements are contained within Pack 1, namely Individual A and Individual B, would not be called to give oral evidence as their evidence was not contentious.

Mr Albuery said that Hillcrest School and Community College, Dudley, ("Hillcrest") caters for 11 to 16 year olds with approximately 950 pupils on the roll. The school serves the communities of Netherton and Dudley and has many low income families. The school was placed in special measures in 1998. Maureen Brennan was appointed Principal in September 2000, having previously been a Deputy Headteacher at Great Barr School in Birmingham. Mrs Linda Westwood had worked with Maureen Brennan as Great Barr School and joined Hillcrest at the same time as her. Shelley Derham was already at Hillcrest and had been there since 1992. She was appointed as Vice-Principal in 2005 having previously been acting up in that role. In 2005 Maureen Brennan became a Dame as a result of her exceptional performance at Hillcrest. All three teachers left the school in 2007 to move to Barr Beacon Language College, where they all now work.

After Dame Maureen Brennan left Hillcrest, Witness A took over as Headteacher. In July 2007, Witness B, Education Welfare Officer (EWO) for Dudley Metropolitan Borough Council undertook an audit of attendance and admission registers at Hillcrest. This routine audit identified a high percentage of students who appeared to be educated off-site, the incorrect use of codes and the names of students who had been removed from the roll. As a result of these

concerns, a wider analysis was undertaken for the period from September 2003 to July 2007. As part of the audit the EWO service team interviewed staff and parents at the school. On the instructions of the Director of Children's Services, the matter was reported to the Police and to the General Teaching Council for England.

After a long investigation and liaison with the Crown Prosecution Service, a decision was made that no criminal proceedings should be brought. The decision by the CPS was of limited relevance. It was not alleged that the registrants were guilty of criminal offences, but that they were guilty of unacceptable professional conduct. Criminal proceedings had a higher standard of proof than these proceedings.

Schools are judged by a number of different benchmarks, two of which are attendance and achievement at 5 A* to C grades including English and Maths. This case was about manipulation of figures relating to the PLASC and in relation to the attendance register. There was direct evidence linking Mrs Linda Westwood and Mrs Shelley Derham to manipulation of the attendance registers so as to make it appear that attendance was better than it was. The allegations against Mrs Linda Westwood and Mrs Shelley Derham were the same, but different periods applied to each of them.

As regards Dame Maureen Brennan, the allegations were different. The evidence linking her to the operational changes was not great. There was very little evidence pointing to her actually making the changes. However, it was fanciful to suppose that Dame Maureen Brennan did not know what was going on in the school given her role as Headteacher and how closely the 3 teachers worked together. The Teaching Agency put the case on the basis that, if Dame Maureen Brennan did not know, she should have known. It was not open to her to turn a blind eye as to what was going on.

As to evidence relating to allegation 1, members of staff were asked by Mrs Linda Westwood and Mrs Shelley Derham to make alterations to the register. One of the witnesses, Witness D, was given a pile of papers containing marked alterations and told to lock herself away and carry out changes to the register. Another witness, Witness E, was present during a conversation with Mrs Shelley Derham who offered the parent of a pupil the choice between permanent exclusion and an opportunity to be educated at home. There was little or no evidence of work being given to children educated at home. Witness E had joined the school as a newly qualified teacher and assumed that this was the usual procedure. She felt "gutted" that the school had failed the pupil concerned. Mrs Shelley Derham and Mrs Linda Westwood told staff what code to put on the register. Witness E was aware of discrepancies on the register but felt unable to challenge them. Another member of staff, Witness H, was asked to make changes to codes that mainly involved changing code "U", which meant an unauthorised absence to "M", which meant that a message had been received about the pupil's absence, despite there being no evidence of this was the case. She was also advised to change codes back.

On 8 August 2008 West Midlands Police attended the school and accessed the school's voice system which recorded telephone conversations. Copies of the transcripts of telephone conversations are contained within the papers commencing

at Pack 2, pages 35. On page 41 the transcript referred to Mrs Linda Westwood asking for copies of the attendance registers as she wanted to “do some work on the unauthorised”. At page 45, the transcript of a conversation with Mrs Linda Westwood, recorded that Mrs Shelly Derham asked that a copy of the “fake one” be printed off. At page 53, the transcript recorded Mrs Linda Westwood giving instructions to change all unauthorised absences to little “ts” and to change to a “B” an entry for a named pupil who was truanting.

Witness B found on her inspection that there were missing marks on the registers and incorrect use of codes for students and that there was changing of one code to another code months after an event. On one occasion all pupils were marked as present when the school was closed.

The evidence available to the Panel included a total of 31 lever arch files. The first 15 files contained copies of the print outs of the registers for the years 2003 to 2007. These files needed to be available in case any reference needed to be made to them, but it was not anticipated that the Panel would need to look at them unless any reference had to be made to them in direct evidence. Files 19 to 21 contained inconsistencies that were identified on the registers for the years 2004/05, 2005/06 and 2006/07. Schedule B listed 44 pupils as examples. Not all of them would be looked at but a sample would. File 22 contained PLASC reports and GCSE results. File 24 was relevant to 26 November 2004 when the school was closed although all pupils were marked present.

In relation to Dame Maureen Brennan, the Teaching Agency relied upon the same evidence for allegation 1 as in relation to Mrs Linda Westwood and Mrs Shelley Derham. As Headteacher, she had relevant knowledge and must have been at least aware of the practices being adopted.

As part of the police investigation, each of the 3 teachers were interviewed under caution and transcripts of the interviews were in Pack 2 pages 123 to 766. There were consistencies in the accounts given during interview and the transcripts might be of limited value.

Allegation 2 related to the PLASC. The Teaching Agency’s cases was that the final attainment figures showed 5 A* to C percentages to have been reached by reference to a lower number of pupils resulting in inflation. The figures for the years 2004 to 2007 were as follows:

- 2004 – 135 (43%) instead of 143 (41%) – inflation of 2%
- 2005 - 126 (35%) instead of 137 (32%) – inflation of 3%
- 2006 - 126 (48%) instead of 136 (44%) – inflation of 4%
- 2007 - 158 (52%) instead of 164 (50%) – inflation of 2%.

Allegation 3 concerned Dame Maureen Brennan alone and was an allegation that the pupils referred to in Schedule A were not given a statutory education. Witnesses 14 to 17 in the index to the bundle of statements relied upon by the Teaching Agency, consisting of three parents and one grandparent, would be called to give evidence.

There were allegations of dishonesty against all 3 registered teachers. The Panel should treat all 3 registered teachers as being women of good character, which was particularly relevant where, as in this case, dishonesty was alleged. Dishonesty could only be established if the Panel is satisfied that the actions of each of the registered teachers were both objectively and subjectively dishonest.

Ms Melanie MacDonald said that she would not be making an Opening Statement, but confirmed that, in addition to Dame Maureen Brennan, Witness L would be called to give evidence.

Mr Andrew Faux said in his Opening Statement that it was a feature of this case that there was a police investigation. Although this did not result in any charges, the fact that there was a police investigation may have changed the way in which some members of staff had viewed what had taken place. Both Mrs Derham and Mrs Westwood placed the interests of children at the centre of what they were trying to do. Mr Faux referred to the testimonials and letters of support for both teachers. For example, he referred to the letter from a former pupil at page 130 of Pack 4 who referred to Mrs Shelley Derham as an inspirational teacher.

Prior to the Panel withdrawing, the parties invited the Panel to read the following documents:

- Mr Albuery - Pack 1 - the statements of witnesses.
- Ms MacDonald – Pack 3 - the statement of Dame Maureen Brennan and the Ofsted Report at page 23.
- Mr Faux - Pack 4 – the statements of both Mrs Derham and Mrs Westwood and a sample of the letters and testimonials in Pack 4.

The Panel retired to read these documents. At the resumption of the hearing, the Chair confirmed that the Panel had read the statements and documents identified.

Ms McDonald then said that Dame Maureen Brennan would make the following factual admissions:

Allegation 1 – “Subject to occasional mistakes, attendance was generally accurately recorded, but the coding for those who were not present was not accurately recorded. Retrospective changes to the codings were made for children who were not attending”.

1(a) “Dame Maureen Brennan was aware that changes were made to the codings for children who were not attending. The reason was to avoid losing them and to ensure that their record did not contain either significant unauthorised absences or permanent exclusion”.

1(b) was not applicable.

1(c) “Dame Maureen Brennan admits that she took no action in relation to those inaccuracies because she believed that that this was standard operating procedure.”

1(d) was not applicable.

1(e) “Dame Maureen Brennan denies that her motivation was dishonest”

Allegation 2 - “Dame Maureen Brennan admits that in anticipation of PLASC, children who had not been attending school were taken off the roll. This was to ensure that the figures relied upon to calculate funding for the school were accurate. Dame Maureen Brennan accepts the records show that some pupils were subsequently reinstated. She cannot recall actioning this but accepts that it is most likely that she arranged for this to be done as it would have enabled them to be entered for exams. Dame Brennan confirmed that Shelley Derham and Linda Westwood had no involvement in PLASC. She accepted that as Headteacher, she had overall responsibility for PLASC”.

“Dame Maureen Brennan denies that the figures were “manipulated” or that the purpose for this was to suggest a false improvement in GCSE results, but does accept:

- (a) That she was aware that pupils were taken off the roll before PLASC;
- (b) Not applicable
- (c) She took no action on the basis that the purpose was to provide accurate information for funding purposes;
- (d) Denied. PLASC was accurate in that it accurately recorded the number of pupils receiving education at Hillcrest at that time;
- (e) Dishonesty is denied”

Allegation 3 – “Dame Maureen Brennan denies that the effect of any action she took while Principal of Hillcrest was to deprive the pupils of Schedule A of a statutory education. She accepts that their attendance coding was inaccurate but they were not prevented from attending school. Active efforts were made to get these children into school and work for them to do at home was provided”

Mr Albuery confirmed that these limited admissions did not affect the Teaching Agency’s case or the witnesses to be called.

13 November 2012

Brief summary of evidence given

Witness A

Witness A confirmed and read her statement found at Pack 1, pages 1 to 2. In answer to questions from the Presenting Officer, Witness A stated that:

- PLASC is returned three times each year, but the main submission is in January.
- A Headteacher’s involvement with PLASC is to ensure the headline figure is correct before signing off.
- 3% inflation can be quite significant in terms of the league tables.

- The reference to conversations with members of staff was to Witness K, in particular, and other members of staff not part of the Leadership Team.
- She was informed that there had been a very tight leadership team of three: Dame Maureen Brennan, Mrs Linda Westwood and Mrs Shelley Derham. They were referred to as “the Senior Leadership Team”.

Witness A confirmed and read her further statement found at Pack 1, pages 3 to 7. In answer to questions from the Presenting Officer she stated:

- Her first headship was at Hillcrest, but she had knowledge of PLASC as a member of the leadership team at her previous school. She knew that pupil registers were the most important documents to be completed in school.
- The school was not close to 30% even without inflation. The importance of GCSE results was the need to show improvement.
- She found that the attendance register was not being completed properly. There was no slot in the afternoon to take the register. In the absence of a slot the register should be taken in the last period. There were occasions when the register was not taken at all in the last period. Duplicate marks from the morning were included for the afternoon.
- A code “B” represents a pupil being educated off site. The pupil is still treated as being present and the school still receives funding for that pupil. She found that there were pupils marked “B” for whom no off site education was being provided.
- If a pupil is permanently excluded, the school loses the funding for that pupil.
- A headteacher’s salary is linked in to performance objectives which would include attendance and exam results.
- Witness A became aware of the term “early bath” in her first term at Hillcrest. Based on conversations that she had. This term was used for the exclusion of a pupil in Year 11 at an early date but where the pupil would still be marked as present on the register.
- It is not within the remit of a Headteacher to decide how to complete the register. This is set down in law.

On cross-examination by Ms McDonald, Witness A said:

- She acknowledged that the school had been described in an Ofsted report (Pack 3, page 57) as “outstanding with a national reputation for excellence”. Apart from attendance, the school did meet her expectations as portrayed for the first few weeks. Then concerns arose. The behaviour of pupils in the school was good, but it was not until later that she became aware that pupils who might not be of good behaviour were not in the school.
- It was correct to say that, even without the alleged inflation, the figures were improving. The reference to 90% in her statement was to a figure used by Inspectors.
- Child H on Schedule A had been given a fixed term exclusion for theft in her last term. The fixed term expired around 12 May. Study leave would have started around mid May. Witness A followed the advice of Mrs Derham. She could not recall if the pupil achieved 5 A* to C grades at GCSE.

- The figures in her first statement were calculated from her meeting with Witness B.
- Witness A did not recall being briefed about any pupil being on a work placement. She was not aware of arrangements with outside agencies. As far as she was aware, there were limited opportunities for pupils to attend off-site placements. She acknowledged that the school inspection report for March 2003 (Pack 3, page 39 paragraph 44, and page 40 paragraph 56) referred to strong links with colleges of further education and training providers and the development of work-related courses. Some work experience might be arranged by a pupil's parents. In this type of arrangement, there would be no funding implications for the school.
- The impression given by Witness K was that the Leadership Team in the school had been very tight. In running her own leadership team there is far more discussion and debate. Witness K would not have any input into PLASC; only in relation to data input.
- She had only ever heard the term "early bath" used at Hillcrest and had not heard it used in that context before.

On cross-examination by Mr Faux, Witness A said:

- She did not know the GCSE results of the children removed from the PLASC.
- She had read the transcripts of the telephone conversations at Pack 2, pages 59, 71 and 85. Witness A was not aware of the exact procedures going on at the school. Mrs Derham may have continued custom and practice from before. Mrs Derham did not seek her permission in dealing with these pupils. The transcript of Mrs Derham's conversation with the parent states that the parent could send a letter to Mrs Derham or Witness A, but Witness A could not recall this pupil or Mrs Derham talking to her about the pupil.
- She agreed that funding does not vary with the attendance of a pupil, but relates to the presence of the pupil on the roll. At page 4 of her statement she should have said that funding varied with the presence on the roll rather than with attendance.
- Witness A did not recall a conversation with Mrs Derham about a fixed term exclusion that had not been reported. She did not tell Mrs Derham to lose the name of a pupil who had been given a fixed term exclusion.
- Study leave may have been given to a pupil a short period before the start of the school study leave so that the study leave was slightly extended for that pupil.

On questioning by the Panel, Witness A stated that:

- Every school decides how long to give for study leave, but it normally starts in May. Pupils on study leave are not monitored.
- When a pupil is educated off-site a code "B" is recorded on the register. Her Deputy and Head of House would be involved in monitoring.
- Each pupil has a personal file. She did not look at the personal files when she arrived.
- The EWO would know of work placements as they would monitor attendance at the placement.

- Every Headteacher has to maximise results by means of a range of intervention plans and mentoring.
- The GCSE results for the school are not at the average level. They are broadly the same as other similar schools.
- She did not believe that the register had been taken very accurately. In the afternoon, it should have been taken in period 5, but she did not believe that it was always taken by staff. The reference to the average age of staff of 29 was because she thought that they might not have had an understanding of the importance of the register.
- It is highly unlikely that attendance would not be a performance measure for a Headteacher.
- There is a 2 week window in which to make changes.

At the conclusion of the evidence of Witness A, Mr Faux requested an adjournment to discuss matters with his clients, which was granted by the Panel. When the hearing resumed, Mr Faux confirmed on their behalf that:

- Allegation 1 (a), both Mrs Shelley Derham and Mrs Linda Westwood admitted the alleged facts, namely that they had made inappropriate alterations to the record of attendance. Both teachers admitted the alleged facts, but the period over which this had taken place was not the same for each of the teachers;
- Allegation 1 (b), both Mrs Shelley Derham and Mrs Linda Westwood admitted the alleged facts, namely that they had told others to make inappropriate alterations to the record of attendance.
- Allegation 1(c), both Ms Derham and Mrs Westwood accept that, judged by the standards of ordinary reasonable people, their actions were dishonest. They now accepted this. However, at the time of their actions, they were not aware that that judged by those standards, their conduct was dishonest. Both Mrs Derham and Mrs Westwood, therefore, admitted that their actions were dishonest by the first objective part of the test for dishonesty. They did not, however, admit that their actions were subjectively dishonest according to the second part of the test.

Mr Faux added that the analysis of Witness B as to what was done physically was accepted. The Teaching Agency intended to refer to 40 examples of changes. Mrs Derham and Mrs Westwood accepted the way in which the Teaching Agency put the case that all 40 examples were inappropriate.

Mr Albuery said that he would need to consider the admissions made and review further evidence to be called.

14 November 2012

Mr Albuery confirmed that he had reviewed overnight the matters that were now admitted and which remained in dispute. He said, Mrs Shirley Derham and Mrs Linda Westwood both now admitted the facts of 1(a) and (b). They both accepted the allegations in their entirety (subject to the different periods that applied to each of them). However, although they admitted objective dishonesty, they both denied subjective dishonesty. Both denied allegation 2, relating to the PLASC. As for Dame Maureen Brennan, the admissions made were very limited.

Mr Albuery had now formed the preliminary view that there were 4 or so witnesses that he was proposing to call that might not now need to be called.

Witness B

Witness B confirmed, but did not read, her statement at Pack 1, Pages 8 to 14. In answer to questions from the Presenting Officer, Witness B stated that:

- She is now EWO for looked after children in Dudley. Between 2005 and 2009 she was EWO for Hillcrest and 4 other schools. Prior to 2005, she worked in secondary schools as an attendance officer, monitoring pupils on a daily basis.
- It is a legal requirement for registers to be taken twice per day; mornings and afternoons. Some schools use electronic systems. At the relevant time in Dudley the electronic system used was Integris. Attendance of pupils would be recorded directly onto laptops.
- The difference between the register and the roll is that the register is an attendance document. The roll is the total number of pupils at any time.
- As EWO, she could not directly access the Integris system. Part of her role was to carry out inspections of the register in 2005, 2006 and 2007. The registers were printed off on paper and she was given a room in which to check them. The audit would take several hours. She would normally arrange for a day to attend to do the audit so that the registers would be ready. Some schools gave access to the computer system, but she did not get this at Hillcrest. She would normally liaise with the person that she would meet at the school. This changes from year to year. She could remember a teacher called Individual C. She liaised with Mrs Linda Westwood and Mrs Shelley Derham for 1 term in 2006/07. She did not liaise with Dame Maureen Brennan.
- Inappropriate entries were identified on the register when she did the inspection in July 2007. By the date of this inspection, Witness A had taken over as the Headteacher and Witness B was allowed access to the Integris system, which she had not been given previously.
- She noted that there were lots of pupils being educated off-site and a lot on study leave. In addition, some form groups did not match with the house groups in the school.
- In her statement at Pack 1, page 19, she stated that an unusually high number of 57 pupils were marked as "B", indicating that the pupils were being educated off-site. Some of the pupils had significant periods of Code "B" marks. Off-site education could be college placements or a training placement. Pupils could only be marked "B" if they were in year 10 or 11. 57 is a high number for those years based on her experience of other schools. On the same page of her statement, Witness B stated that there were missing marks throughout the register for every class. It was agreed that there should be a more thorough audit of registers for that academic year. There had been a widespread misuse of codes.

- At pages 18 and 19 of her statement, the codes in use after September 2006 are listed. Code “M” after that date referred to a medical or dental appointment, but prior to that “M” meant that a message had been received.
- During the register check it was noted that an “S” code was used as early as January. Study leave normally begins at the end of May. Study leave should only be used for pupils in Year 11 for GCSE exams.
- She visited parents/ guardians of pupils marked with a “B” code. Every parent/ guardian has the right to educate their child at home. She was informed by some parents that they had been told that they had to home educate in order to avoid permanent exclusion. This should not have resulted in a “B” code. In order to educate at home, the parents should contact the school and be invited in to discuss. If the parents then still wished to go down this route they should be asked to confirm in writing and the school should then refer the case to the EWO. This procedure was not followed at Hillcrest. The school should not have advised parents to home educate their children. The funding for home educated pupils should be removed from the school. None of the children she visited were referred to the EWO, removed from the school or included on the elective Home Educated database.
- During her investigation, she printed off the attendance registers for each class for each academic year and carried out an analysis. Her line manager, Individual D supported her. The investigation was carried out during the summer holidays in 2007 and was completed in 2008. She was not working on it every day. She produced corrections registers showing what the change to the register was, when made and by whom. In the registration regulations it is said to be good practice to make any amendment to the register within 10 school days, but a specific time period is not stated.
- File 19 contains example of inappropriate changes to the register in 2004/05. In relation to Pupil 1, the file contains an attendance register summary and alteration correction report. The summary, prepared by Witness B, states that the register and attendance corrections report indicate that the pupil was marked “M” as authorised absence, which was then changed to “B”. The causal effect improved the attendance rate for the pupil and the school.
- Similarly, in relation to Pupil 2, she completed an attendance correction report. Pupil 2 had been marked as unauthorised absent “U”, which was then changed to “B”. This was a Year 8 pupil who would not have been accessing alternative education.
- Of the pupils referred to in File 19, Pupils 1 to 4 were in year 8, Pupils 5 and 6 in Year 9, Pupils 7 to 9 in Year 10 and Pupils 10 to 19 in Year 11.
- There were more pupils with changes in years 10 and 11.
- File 20 contained examples of inappropriate changes to the register in 2005/06. Pupils 20 to 21 were in year 8, Pupils 22 to 23 in year 10 and Pupils 24 to 26 in year 11.
- File 21 contained examples of inappropriate changes to the register in 2006/07.
- File 18 provided reports of cases involving use of the “S” code.
- The purpose of PLASC is to inform the funding for the following financial year. There is a relationship between PLASC and grades. PLASC is used by Government to work out the percentage of GCSE grades. Her investigation included analysis of the PLASC. There was a high level of movement on and

off the roll. They discovered pupils who had been removed before PLASC and subsequently put back on.

- She was told by Witness K that pupils were removed from the register.
- In general terms, her analysis of the PLASC was that pupils' names were being removed from the roll at all times of the year. This should not happen. She did not discover who was responsible for compilation or submission of the PLASC.
- File 22 contains a document headed "PLASC 2004" which would have been created from the computer system and not amended or modified. This document related to year 11 pupils only.
- The next document in the file contained GCSE results for July 2004.
- Pupil 45 was taken off roll on 15 January 2004, only to be reinstated later that day. On 20 January 2004 he was reinstated again but then removed on 11 June 2004. On 14 June 2004 he was reinstated and then removed later the same day. Finally on 17 June 2004, he was reinstated again. Pupil 45 did not appear on the GCSE results for 2004 and did not appear on the 15 January 2004 PLASC. The outcome was that by not appearing on PLASC/GCSE, there was inflation of the school's GCSE performance.
- Pupil 46 was taken off roll on 15 January 2004, only to be reinstated later that day. He did not appear on GCSE results for 2004. By not appearing on PLASC/GCSE, there was inflation of the school's GCSE performance.
- Pupil 47 was taken off roll on 15 January 2004, only to be reinstated later that day. He did not appear on GCSE results for 2004. By not appearing on PLASC/GCSE, there was inflation of the school's GCSE performance.
- The report contained an entry for this pupil with reference number 97896 which showed that the pupil's name was removed from the register at 8.43am on 15 January 2004. The report did not name the person who made the change, but referred to code 33, which, from her memory was Witness D. The same report showed the pupil being reinstated at 9.34am the same day. This showed that the pupil had been off roll for about 40 minutes.
- The position was the same for other pupils referred to in Schedule C.
- As for Pupils names that did not appear on GCSE results 2004, she did not know whether these pupils had actually sat GCSE examinations.

Following a break in evidence and before the witness returned to the hearing room, the Presenting Officer confirmed that the Teaching Agency's case in relation to allegation 3 would be limited to Pupils A, D, F and I. The parents, and in one case, the grandparent, of these pupils were due to give evidence. Mr Albuery confirmed that the Panel should ignore any evidence relating to the other pupils in Schedule A.

The parties agreed to a proposal to amend allegation 3 and the Panel agreed to amend the allegation as follows:

As Headteacher, you failed to ensure that pupils A, D, F and I, as identified in Schedule A received a statutory level of education or alternative provision.

The hearing then continued with the evidence of Witness B. In response to further questions from Mr Albuery, Witness B stated that:

- Code “S” referred to study leave. For years 2004/05 and 2006/07 there were no concerns about the use of “S” grades. However, there were concerns in respect of the year 2005/06. File 20 contains some examples.
- Pupil 24 was an example of the use of an “S” code for a pupil being used as early as January 2006. The attendance corrections report showed block changes in May 2006 from unauthorised absence to study leave. The change was inappropriate in that study leave would not start as early as January and the change was made 5 months later. The effect of the changes was to improve the attendance record for the pupil and the school.
- Pupil 25 was another example of the use of an “S” code being used in January 2006 and an attendance corrections report showing block changes in May 2006. The attendance corrections report referred to changes from “M” to “S” being made by Mrs Linda Westwood on 9 June 2006.
- Pupil 26 was another example of use of the “S” code being used from January 2006. Page 4 of the attendance corrections report shows block changes on 11 May 2006 from “U” (i.e. unauthorised absence) to “S” (i.e. Study leave).
- The statutory level of education is 190 days per year/ 25 hours per week.
- Witness B read parts of her statement at Pack 1, page 10 and 11.
- The mother of Pupil D was interviewed on 11 January 2008. Pupil D’s mother said that Pupil D was hardly ever at school and that he had an exclusion lasting 3 months and never went back to school until contacted by the Youth Offending Team, who helped to get him back for his exams.
- The father of Pupil I was interviewed on 14 January 2008, who stated that he had been prosecuted for non attendance of Pupil I. He attended a reintegration meeting in school and it was agreed for Pupil I to take core subject over 5 days, but she did not go to school thereafter. He stated that, from that time, Pupil I received no education from the school or elsewhere.

On cross-examination by Ms McDonald, Witness B stated:

- In relation to each of the 5 schools for which she worked, she had a limit of 8 pupils from each school. This limit did not feel uncomfortable to her. She felt that she was able to provide an appropriate level of support to pupils. She did not remember a waiting list.
- The school was a challenging one. In 2005, when she started, there had been an improvement in the running of the school.
- She initially accepted the offer of a job at the school, but then turned this down at the last minute.
- It was sometimes difficult to obtain attendance summaries. On occasions she used to have to wait in reception when she asked for attendance summaries to be printed off. This would often take around 10 minutes. She did not see the need to speak to the Headteacher about this. She was not aware of any intention to obstruct her.
- As an EWO she could not access the school’s database. Only the school could access individual pupil records. It was not possible to obtain attendance summaries by different means.

- She conducted the interviews of parents. There was no difficulty in her doing so. She was used to interviewing parents in connection with court cases. She was not involved in the prosecution of the parent of Pupil I.
- If pupils were entered for exams their names should be on the schedule of GCSE results for 2004.
- It was suggested that pupils were removed in order to improve GCSE results and she was told this by Witness K. She accepted that at least a proportion of pupils who were not on the roll were not removed for the purpose of enhancing GCSE results.

On cross-examination by Mr Faux, Witness B said:

- She was offered a job by the school to come in and sort out their attendance registers. Her role would be like that of an Attendance Officer.
- There had been competitions in the school to improve attendance. At the relevant time she was not aware of leadership registers but had now seen them. She now understands that pupils were moved out of their form groups onto these registers. She was not aware of this practice at the school until she did an inspection of the registers and was allowed access to the school's computer system.
- She did not become aware of the practice of "early baths" in the school until her investigation. What was happening was that parents were being invited to keep pupils at home, not to educate them, but to prevent them from being permanently excluded.
- When she was EWO the person that she was dealing with at the school was Linda Westwood after Witness E went on maternity leave.
- Reference was made to the email at page 4320 of the Hillcrest disclosure files. The email was sent by Witness B to Mrs Linda Westwood on 5 February 2007. The email refers to a fixed penalty fine for the parent of Pupil E that Witness B was proposing to issue. In the email, she was querying the fact that some of the unauthorised absence had been changed to authorised. She was simply asking Mrs Linda Westwood if this could be changed back.

On questioning by the Panel, Witness B stated that:

- In relation to Pupil I, the prosecution of Pupil I's father was based upon the unauthorised attendance record. On examining the pupil's file she obtained the Headteacher's certificate of evidence signed by Dame Maureen Brennan in relation to the period from 15 December 2003 to 12 March 2004. She obtained a copy of the print out of the register from the records held at the school for 1 September 2003 to 23 July 2004 which indicated that data had been removed suggesting that Pupil I was not on the roll for the same period as the Headteacher's certificate of evidence. In her view, the records were changed to improve attendances. She could not think of any other explanation.

At the conclusion of the evidence of Witness B, Mr Albuery said that he had decided not to call the following witnesses, namely:

- Witness C
- Witness F
- Witness G

In addition to not calling these witnesses, Mr Albuery confirmed that he would not be relying upon the Final Investigation Report contained in Pack 4 at pages 3 to 10.

15 November 2012

Witness D

Witness D confirmed and read her statement found at Pack 1, pages 42 to 43. In answer to questions from the Presenting Officer, Witness D stated that:

- By Leadership Team she was referring to Dame Maureen Brennan, Mrs Linda Westwood and Mrs Shelley Derham. The leadership office was one occupied by Mrs Westwood.
- She was given a pile of registers by Mrs Westwood and Mrs Derham and told to 'lock herself away' in the leadership office and carry out the changes on Integris. The changes had been marked in pen on the register printouts.
- She was told that pupils who were marked absent should be changed to educated off-site, late, or present at school.
- She would also have to change some unauthorised absences to "message received" despite the fact that no message had been received from the parent. Usually a message would appear in the register when it came back from the teacher, but some of the changes they were asked to make were to say that a message had been received. She saw no evidence of such messages.
- Mrs Westwood and Mrs Derham asked her to to make the changes. She was too scared to question this. She did not want to put a foot wrong. She had seen other members of staff come and go and seen the way that they had been treated, unfairly at times, and did not want to put herself in that position.

On cross-examination by Ms McDonald, Witness D stated:

- Now she felt that she was used at the time. Generally, she believes that she was treated fairly. She was given responsibility for the Duke of Edinburgh scheme, which took her beyond her administrative duties. She was also asked to attend a skiing trip. She was grateful for the opportunities that she was given.
- At page 40 when she said "they", she was referring to Dame Maureen Brennan, Mrs Linda Weston and Mrs Shelley Derham.
- Her role and that of another colleague, Witness H, was changed to that of Head of House PA. She felt isolated in the new role; away from the front office and had no colleagues up there. It was a new job title, but with no pay increase. It was a change in responsibility to a degree.
- She applied for a job as office manager after she had been given the role on a temporary basis. The Leadership Team decided to advertise the post. She was interviewed, but was not appointed. She did not have a good relationship

with the Office Manager who was appointed. She sent an email to a colleague about the Office Manager which was not complimentary. She met with Dame Maureen Brennan and Mrs Linda Westwood in relation to the email that she sent.

- Referring to Hillcrest Disclosure File 8 pages 3641 to 3647, despite the concerns expressed, she was not subject to formal disciplinary action. She was still allowed to do the ski trip and the Duke of Edinburgh scheme. She was fairly treated about this.
- She did feel that she was bullied towards the end of her employment and not the whole time. She felt that Dame Maureen Brennan began nitpicking. Witness D felt that the criticism of her failure to return items of ski equipment that had been hired was an example of this. She accepted that it had been her responsibility to return this equipment and that she had failed to return some items but this had been at the bottom of her “to-do” list. It was fair to say that Dame Maureen Brennan’s response to this incident was measured and was not bullying.
- When the Attendance Officer arrived at the school, her instructions were that she would have to show a copy of the attendance record to a membership of the Leadership Team the before being able to give it out.

On cross-examination by Mr Faux, Witness D stated:

- When she started at the school in 2002, Dame Maureen Brennan was the Principal. She could not remember who the Vice Principal was at that time. She could not remember when Mrs Linda Westwood became Vice Principal or whether she was already Vice Principal when she started.
- At the time she was at the school, there were 3 members of the Leadership Team, namely Dame Maureen Brennan, Mrs Linda Westwood and Mrs Shelley Derham.
- Part of her administrative duties was the amendment of pupil registers. She was never told why an amendment should be made. Her role was to change codes, but she was never told why.
- She believed that the day that Mrs Linda Westwood asked her to make changes to a pile of papers was when Individual E was still at the school. She was asked by Mrs Westwood if she could sit in her office and was not to leave until she had carried out the changes. The pile was about the thickness of the documents in Pack 2. She did not get the impression that she was asked to do something secret.
- The amendments to be made were written in the handwriting of Mrs Westwood and Mrs Derham. The registers were given to her by Mrs Westwood. Mr Derham was not present when the registers were given to her.
- She was not involved in the PLASC submission, but she was asked to take pupils on and off the roll. Some pupils were taken off the roll at other times of the year, but mainly around reporting time. She could not recall who was instructing her to take pupils off the roll.

On questioning by the Panel, Witness D stated that:

- She could not remember how often the EWO came to the school to collect attendance registers. They would need to get them printed. More often than not changes had to be made to the register printouts before they were released to the EWO.
- She was aware that registers were changed around reporting times.
- She questioned the actions with other members of staff as she was concerned that this was wrong. She could not remember whether the answers given to her by colleagues satisfied her.

On further questioning by Ms McDonald, Witness D stated:

- She could not be 100% sure about the instructions given to her.

On further questioning by Mr Faux, Witness D stated:

- She had not heard of the term “Leadership Register”.

Witness E

Witness E confirmed but did not read her statements found at Pack 1, pages 44, 46 to 52 and 53 to 61. In answer to questions from the Presenting Officer, Witness E stated that:

- She joined Hillcrest in 2000 as a newly qualified teacher.
- “Early bath” was a term used at Hillcrest when the pupil was no longer coming into school and was given an early finish to the academic year. She had heard the term from each member of the Leadership Team, Dame Maureen Brennan, Mrs Westwood and Mrs Derham.
- She was Head of House, but if a pupil did not come into school, one of the Leadership Team would make contact with the parent. Mrs Westwood and Mrs Derham would make the calls. To her knowledge, Dame Maureen Brennan did not make these calls.
- At times it could be a relief when pupils were given an early bath as the impact that some of the pupils were having was very bad. At other times, she was devastated that the pupil was no longer coming in. Pupils given an early bath did not go through a formal exclusion process.
- There were 2 or 3 pupils from her house given an early bath each year. She was aware of some pupils from other houses given an early bath, but these could vary and she could not speculate on numbers.
- She knew that Mrs Westwood and Mrs Derham made calls to parents to encourage them to let the pupil stay at home. She worked closely with Mrs Derham and had been present in the office when calls to parents were made by her. She could not recall being present when Mrs Westwood made calls.
- She did not know if pupils that were given an early bath remained on the roll.
- She would describe the Leadership Team of Dame Maureen Brennan, Mrs Westwood and Mrs Derham as very strong. They had a very high presence in the school, which was very positive in terms of how pupils reacted. There was also a fearful side. Dame Maureen Brennan ruled the school with an iron fist. Witness E felt under a lot of pressure that, if she did not do

things in the right way she would be treated in the same way that other staff were treated. Mrs Derham was her line manager and was very protective of her team. She acted as a buffer from Dame Maureen Brennan.

- She would sometimes see staff sitting outside the Headteacher's office waiting to be called in. Dame Maureen Brennan put fear in pupils and staff by the way that she acted.
- She was aware that Hillcrest operated a "ghost register" which was officially called the "leadership register". This was set up by the Leadership Team. She believed it was part of an incentive scheme between the houses and the forms to encourage pupils to work together to improve attendance. Pupils on this register would not normally come to her attention or the attention of the EWO.
- She always had a very close professional relationship with Mrs Derham although she was not her NQT mentor. The relationship developed after she started. The word "protected" was used by Mrs Derham. She felt a fear that she would not always be able to maintain the good relationship. She saw other members of staff treated harshly. This would take place during staff briefings. She would agree that Dame Maureen Brennan is straight talking and has a low tolerance level as regards the welfare of pupils, but this could cause fear.
- The strategies involved with the working with pupils included reward assemblies and certificates for achievements. There were both sanctions and rewards. Witness E was very protective towards her year 11 pupils and did not want them to be "early bathed".
- Child D was not one of her children and so she could not really comment. She would agree that the ethos at Hillcrest was to try to find alternative strategies to keep children at school. However, when the point was reached where those strategies had failed, in her view, it was preferable that the pupil would be permanently excluded rather than adopting the early bath version applied by Hillcrest. Pupils permanently excluded have been known to attend alternative education and so this would still be better than no exclusion. She was aware that within Dudley, pupils permanently excluded have access to alternative education.

On cross-examination by Mr Faux, Witness E stated:

- She could recall Mrs Westwood becoming a Vice Principal before Mrs Derham became Vice Principal. She agrees that she had a positive relationship with Mrs Derham.
- She would agree that early baths were not equivalent to home education. Some pupils were doing school work at home rather than being home educated. They were not being monitored.
- She could not recall whether the term "ghost register" was a term used by the staff at Hillcrest at the time. Pupils on the leadership register were pupils not attached to a particular house.
- When she started at the school there was afternoon registration but towards the end of her time, the pattern was that afternoon registers were taken at the end of the afternoon.

In response to questions from the panel, Witness E stated:

- In relation to pupils that were sent on an early bath she did not remember chasing pupils for any work. She was made to feel silly when she asked why pupils were sent on early baths.
- She was aware that some work may have been sent home by the PAs but this would be in the form of a generic pack. As far as she was aware this would be the same sort of pack that would be sent to a pupil if he or she was excluded.
- She was told that she could code a pupil as “B” as being educated off site.
- In her capacity as Head of House she did say that on occasions that parents should keep pupils home. This might be, for example, where a parent could not come in for a meeting. She could not remember what code would be assigned in those circumstances.
- She began to realise that what had been happening was not a normal position when she came back from maternity leave and the Local Authority had uncovered the issues.

In response to further questions from Ms McDonald, Witness E stated:

- Some pupils were not allowed back on site to do examinations.
- It was difficult to estimate how many cases of early baths there were but she would estimate 2 or 3 from each house.
- She now believes that she was beginning to uncover manipulations. Now she could see that there were irregularities but at the time she did not appreciate that this was the case.

In response to further questions from the Presenting Officer, Witness E stated:

- If a child was permanently excluded the responsibility for the child would pass to the Local Authority. Alternative education might then be provided either in an alternative school or a pupil referral unit. It would then be the responsibility of the Local Authority.

Witness K

Witness K confirmed and read his statement found at Pack 1, page 85. In answer to questions from the Presenting Officer, Witness K stated that:

- In 2005 three categories of Assistant Leader were created. This is what he meant by the extended leadership group.
- GCSE results came into the school the day before they are published. The school would then have to submit provisional GCSE figures to the Local Authority and this would involve checking a pupil’s score on the roll at the time of the PLASC submission in January. He had nothing to do with PLASC.
- Mrs Westwood was responsible for the PLASC although he could not remember if she was solely responsible.
- He believed that names of pupils were omitted as when they did checking the list did not match. These pupils could not have been on the January PLASC.

- In his original statement he removed the word “deliberately”. This statement was created by the police and he did not think that he could say that what had happened was deliberately done.

On cross-examination by Mr Faux, Witness K stated:

- In dealing with the 2005 GCSE results, although the numbers did not match, he concluded that pupils who had sat the examination had been included in the January PLASC.
- Mrs Westwood was responsible for the PLASC. He agreed that the ultimate responsibility for PLASC lay with the Headteacher and he did not know the whole process for submitting the PLASC. He had heard conversations around the leadership table involving Mrs Linda Westwood, which included her describing the PLASC submission. He assumed that she was responsible for the submission. The PLASC would have to be submitted by a member of the Senior Leadership Team.

On further questioning by the Presenting Officer, Witness K stated:

- He had no idea why pupils were omitted from the January PLASC. He could not think of a reason for removing them unless it was to affect GCSE results.

At the conclusion of the evidence of Witness K, Mr Albuery confirmed that the parties had agreed to the admission of the statement of Witness J without the need for her to be called as a witness. Her statement was contained in Pack 1, pages 78 to 84. This was subject to amendment of the dates at page 79 of her statement so that the statement read that Mrs Linda Westwood was Vice Principal during the period 2002 to 2007 and Mrs Shelley Derham between 2005 and 2007.

Mr Albuery also confirmed that the parties had agreed that the correct dates for the transcripts of the telephone conversation in Pack 2 were:

Page 35 – 9 June 2006

Page 41 – 9 June 2006

Page 59 – 11 May 2007

Mr Albuery submitted an additional statement for Witness H which was admitted with the agreement of the parties. This additional statement was added to Pack 1 at pages 72a to 72h.

16 November 2012

Witness H

Witness H confirmed her statement found at Pack 1, pages 72a to 72h. The witness read paragraphs 18 to 28, 30, 32 and 35 of her statement.

In answer to questions from the Presenting Officer, Witness H stated:

- Individual F was the Office Manager who reported to Mrs Westwood and Mrs Derham.
- She was made to feel really awkward having to make excuses to Witness B when she requested the attendance registers. However, at the time she never questioned it. She spoke to Witness D about it and neither of them thought it was right.
- Usually they knew that Witness B was coming to the school in advance, but sometimes she came in without notice. The changes would still be made whether it was known she was coming into the school in advance or not.

On cross examination by Ms McDonald, Witness H stated:

- She did not remember any of the EWOs other than Witness B.
- She started in January 2004 and it was some months into her employment, possibly getting on for a year, before she was asked to make changes.

On cross examination by Mr Faux, Witness H stated:

- When she started she thought that Mrs Westwood and Mrs Derham were both Vice Principals. It did surprise her that Mrs Derham was not actually made Vice Principal until 2005.
- She mainly remembers it being Mrs Westwood who would give instructions. It was mainly Mrs Westwood that she dealt with. She was dealing with handwritten amendments made by both Mrs Westwood and Mrs Derham. She did not see amendments made by persons other than them.
- She had heard of the term “ghost register”. She just learnt about it in the office. She thought it was a general term that was used.
- She did the changes that she was asked to make and never questioned them.
- In terms of requests for information, she did not deal with any other data other than attendance registers.
- When she had to check whether it was alright to release the attendance register she spoke to Mrs Westwood or Mrs Derham whoever was around at the time. It was either one of them. It was never anybody else.
- The type of changes might include changing an unauthorised absence to an “M” which indicated that a message had been received. She was 100% sure that this was happening.

In answer to questions from the Panel, Witness H stated:

- Her recollection was that a lot of the changes were changing “U”s to “M”s. She could remember doing as many as 80 or 90 changes. One pupil might have 2 or 3 changes.
- Visits made by the EWO, Witness B, were not that often. They were probably only 2 or 3 in half a term and so 6 times a term. It was not every week.
- The offices of the Vice Principals were separate offices and she went to who was there at the time.
- She used to take a copy of the attendance register and ask if it as alright to release. Changes were often then made. There were always changes.

On further questioning by Ms McDonald, Witness H stated:

- She cannot clearly recall a situation when neither Mrs Westwood nor Mrs Derham was available after Witness B arrived.
- Some changes were more extensive than others. After the attendance register was handed over, she would change the entry back. She could not now remember who originally told her to put it back to how it was.

On further questioning by Mr Faux, Witness H stated:

- She acknowledged that she did say at page 39 of her statement that changes would be made if there was a need to make changes. On that basis she would say that it was more often than not there were changes rather than always. “Usually” was probably the right term.

At the conclusion of the evidence of Witness H, Mr Albuery confirmed that, following further discussions, he had reviewed the evidence to be called and decided that he would not be relying on the evidence of the following witnesses and that their statements could be removed from Pack 1, namely:

- Witness I – pages 73 to 77
- Individual A – pages 88 to 90
- Individual B – pages 91 to 93.

Mr Albuery also confirmed that file 26 could be removed from the bundle of files for consideration by the Panel. Mr Albuery said that he would be calling 3 of the parents and that charge 3 against Dame Maureen Brennan would now be restricted to 3 of the pupils on schedule A, namely, Child D, Child I and Child F. The parents of those pupils would be called on Monday.

Before the panel adjourned Ms McDonald drew the panel’s attention to disclosure files relating to those 4 children as follows:

Folder 3 – Child D
Folder 9 – Child I
Folder 5 – Child F

It was suggested that the panel might wish to consider the documents in those folders prior to the witnesses being called. An issue then arose as to how the evidence of the parents of the four pupils concerned could be given in a way that would preserve their anonymity. The hearing went into private session.

The hearing resumed in public. After retiring to consider the matter, the Chair announced the decision of the panel in public as follows:

“We have decided that the evidence of the witnesses numbered 14 to 17 in the index to statements relied upon by the Teaching Agency should be heard in private. We are satisfied that it is necessary in the interests of justice to hear their evidence in private. The Panel is keen to ensure that the identity of the pupils is not made public. Although the pupils concerned are now adults, it would not be in the public interest for details of their school records to be brought into the public domain. Given that the Panel will be hearing evidence from the relatives of the pupils concerned, it will be very difficult, if not impossible, for that anonymity to be preserved if their evidence is heard in public. Furthermore, any attempt to hear this evidence in public might affect the quality of the evidence that each of the witnesses can give if struggling to preserve the anonymity of the pupils. We have considered the request that the partners of the teachers should be allowed to be present in order to support the teachers. Although sympathetic to this request, we have concluded that only the parties and their legal representatives should be present during the hearing while it is in private session. The Panel believes that it would be inappropriate to select which members of the public might be present. It is anticipated that the private session will be concluded by the end of Monday”.

19 November 2012

The hearing resumed in public. The Presenting Officer said that he had reviewed the quality of the evidence given by the parents in relation to allegation 3 and he concluded that it was appropriate to withdraw the allegation against Dame Maureen Brennan.

The Presenting Officer confirmed that he had also had an opportunity to consider allegation 2 against Mrs Shelley Derham and the quality of the evidence as to her involvement with the PLASC. He had concluded that it was appropriate to withdraw allegation 2 against Mrs Derham.

Going forward, this meant that the following allegations remained, namely:

Dame Maureen Brennan – allegations 1 and 2
 Linda Westwood – allegations 1 and 2
 Shelley Derham – allegation 1

20 November 2012

Dame Maureen Brennan

Dame Brennan confirmed and read her statement found at Pack 3, pages 1 to 9 (excluding paragraphs 35 and 36). In answer to questions from the Ms McDonald, Dame Maureen Brennan stated that:

- The local community of the school, Netherton, was a very close-knit community. The people were very direct people.
- She was not able to attract experienced teachers, but could attract young teachers who had real fire in their gut. Many staff followed her from Great Barr. These people were motivated and wanted to make a difference.

- The Leadership Team met every morning at 8.30am. These meetings were just to get together and have a piece of toast. Mrs Derham was not there most mornings as she had responsibilities at home. In the evenings there were meetings to discuss the strategic direction of the school.
- In relation to PLASC, her practice at her previous school was to review pupils who were not attending. It was drummed into her that she had to be very careful about funding and that pupils needed to be taken off the roll to stop funding for them. She did not receive any assistance from the Local Authority in relation to PLASC.
- Witness B found that pupils had been taken off the roll and put back on the roll, but not all pupils who were taken off, were put back on. Taking pupils off the roll could only have happened if she authorised it.
- She might have been involved in poor practice but she did not act dishonestly.
- She admitted that PLASC was her responsibility.
- There was no need to falsify anything about Hillcrest. Parents wanted to send their children to Hillcrest. In her view, the success of a school is not about GCSE results and attendance figures.
- In giving a “B” code rather than permanently excluding a pupil, pupils would not be disadvantaged. In Dudley in the years 2000 to 2007 it was not possible to get alternative education for Year 11 pupils. If these pupils had been excluded, they would have been worse off.
- The guidance given to staff was that if a child was in front of them the child was present. If they were not, they were absent.
- Her view was that if a pupil took the true record of attendance to an employer or college, the employer or college would not look at them. Her instruction to staff was to give pupils every advantage.
- Witness B should not have had difficulty in accessing the attendance registers. If Witness B had approached her and told her that there were problems, she would have sorted this out. Witness B could have sat at any computer and any time.
- The Local Authority did not have adequate qualified people to provide supervision. The limit of 8 pupils that the EWO could take from the school was a problem for the school. There was a waiting list, although she was not sure how many pupils were on that list.
- The offer of employment to Witness B was a definite proposal. They had discussed salary and Witness B had written her own job description.
- The notion of a “ghost register” is nonsense. She knew it as a leadership register. There was competition in classes. Pupils who were always absent would still be on the school roll but would not be on the form register. The leadership register would be recorded as 11L.
- She had other job offers, but decided to stay at Hillcrest.
- Her experience of dealing with the Local Authority in her capacity as Headteacher of Hillcrest was not good. She thinks that she was viewed as a Headteacher who would always ask the difficult questions.

On questioning by Mr Faux, Dame Maureen Brennan stated that:

- She accepted responsibility for the PLASC.

- In relation to pupils being taken off and put back on the roll, she accepted that any instructions given by Linda Westwood were actually given to Linda Westwood by Dame Maureen Brennan.
- Her instructions were all directed towards Mrs Linda Westwood. Her direct contact with Mrs Derham was limited.
- She could not say whether, at the time, she was aware that a particular pupil had been inappropriately coded. However, it would have been following instructions that she had given.
- She accepted that if this was done in significant numbers it would have the effect of improving the attendance figures for the school. The topic of attendance was a frequent feature of discussion with Mrs Linda Westwood throughout the year. She conveyed to Linda Westwood the need to ensure that unauthorised attendances were kept as low as possible.
- She would not suggest that Mrs Westwood or Mrs Derham had done anything that they had not been clearly told to do.
- She would agree that study leave should not start as early as January. This was her pragmatic response to pupils that they could not get to come into school.

On cross-examination by the Presenting Officer, Dame Maureen Brennan stated:

- She would agree with Witness L that off-rolling pupils is deplorable. She now takes that view, but did not take that view at the time. Her view has been changed by her referral to the GTCE and the police. At the time she thought that it was standard procedure.
- She understands the difference between right and wrong. She agrees that a child who is truanting should not be recorded as being educated off-site. She accepted that she had allowed this to happen and that she had told her Vice Principals to mark the register in this way. This was not an accurate way of coding pupils.
- Witness H was particularly gifted. Dame Maureen Brennan had heard Witness H say in evidence that Witness H was in fear of Dame Maureen Brennan and she accepted that this was how Witness H felt.
- She was surprised that Witness E had stated that she was made to feel silly.
- She understands the importance of keeping accurate attendance registers as a record of being present in the school. She accepted that there could be potential safeguarding problems if a pupil as not present is school, but that this had become increasingly more important over the last 5 years.
- If a pupil is permanently excluded, the Local Authority would have to become involved. There is a statutory duty on a Local Authority to provide for pupils who have been permanently excluded.
- In relation to pupils coded "B" who were not attending school, she was trying to minimise the long term damage to the pupils concerned.
- Dame Maureen Brennan accepted that the effect of the inappropriate coding was that the figure for attendance at Hillcrest was artificially inflated.
- In File 19 the attendance figure for the school was recorded as 91.77% and excluding AEA 84.66%. She confirmed that 84% would be below the national

average. It was difficult to assess the true level but it might be closer to 84.66% than 91.77%. The figures were inaccurate as a result of her direction.

- The welfare of pupils was at the forefront of her mind.
- As regards pupils in years 7 to 10, she was aware of changes to the register and agrees that they were inappropriate and that her deputies would have been acting on her direction.
- If a pupil was permanently excluded the school would lose AWPU and be fined.
- The pupils who were given “early baths” were able to come into school and do exams. If permanently excluded, they could not. She was using the experience that she had and the process that she was aware of.
- She acknowledged that the law required pupils to be excluded. She did not accept that she took risks with pupils.
- In relation to PLASC, she acknowledged that the PLASC reflected the cohort of pupils used to analyse GCSE grades.
- Witness K was not correct in saying that Mrs Westwood was responsible between 2003 and 2007 for PLASC. Dame Maureen Brennan was responsible.
- She would accept that the PLASC was not accurate. She did not agree with the term “manipulated”. She did not direct that pupils be removed from the roll to cause an artificial improvement. The small percentage differences that these changes made were not important as the figures would still show an improvement. She did not feel a burden upon her to improve.
- In her statement made on 4 November 2011 she said that she was not aware of pupil being put back on the roll after the PLASC. She now accepted that this was not true as she must have been aware of this.

In response to questions from the Panel, Dame Maureen Brennan stated:

- If a pupil is permanently excluded the parent can appeal to the Governors.
- Requests for references for pupils would go to the Head of House. The reference would contain information from the attendance register. She now understands the obligation to provide prospective employers and others with accurate information. At the time, she wanted to give the pupil the best chance. In these circumstances, she felt that the child’s needs were greater. She now understands that this could lead to the provision of misleading information.
- She may have seen Witness B on occasions in the corridor and there would be meetings with her that would be minuted. Witness B would have had access to the computer system if she had asked.
- On PLASC day on 15 January 2005, the records show that pupils were taken off the roll in the morning and put back on in the morning. She did not understand why this was done as the PLASC submission would not be made until later in the day.

In response to questions from Mr Faux, Dame Maureen Brennan stated:

- Codes “B” and “S” on an attendance register would not indicate to a future employer or college that the pupil was in school.

- She did exclude some pupils.

In response to further questions from Mr Albuery, Dame Maureen Brennan stated:

- She accepted that the use of Code “B” on an attendance register could still be misleading to a future employer as it would indicate that a pupil was being educated off-site when this was not always the case.

Witness L

Witness L confirmed and read her statement found at Pack 3, pages 10 to 15. In answer to questions from Ms McDonald, Witness L stated that:

- Until 1 July 2012 she was Global Director of Education for Serco. She worked in Local Authorities in various roles for over 25 years between 1996 and 2002.
- During the period in question Dudley LEA had been placed in an Ofsted category and so their support services were likely to be weak.
- Barr Beacon had been one of Walsall’s most challenging secondary schools. After Dame Maureen Brennan took over as Headteacher, the school was transformed from a coasting school in an Ofsted category to an excellent school.
- She has found Dame Maureen Brennan to be an inspirational leader who focused only on improving outcomes and life chances for children.

On cross-examination by the Presenting Officer, Witness L stated:

- In relation to taking pupils off the roll, she was still confused by the allegation.
- She would deplore a pupil being informally excluded.

In response to questions from the Panel, Witness L stated:

- In relation to extended study leave, she would regard this as inappropriate for a pupil in Year 11 if started as early as March or April.

21 November 2012

Mrs Shelley Derham

Mrs Derham confirmed her statement and read parts of her statement found at Pack 4, pages 2 to 39. In answer to questions from Mr Faux, Mrs Derham stated that:

- She joined Hillcrest in January 1992 in a temporary position of teacher of physical education. She then remained at the school and. Following a succession of promotions, was promoted to the position of Assistant Principal in 2000. At that time, her responsibilities included pastoral welfare. In January

2005, she was promoted to the position of Acting Vice-Principal when Individual G was seconded to the GTCE and was appointed substantively in January 2006.

- Up until that point, Mrs Linda Westwood had been responsible for attendance, but Mrs Derham took over for the Spring and Summer terms of 2005. After that period, responsibility went back to Mrs Westwood.
- During these two terms, not a great deal of time was taken up with attendance. Hillcrest was a “high maintenance” school and Mrs Brennan, Mrs Westwood and her had to spend a great deal of time managing behaviour. This included spending a large amount of time with parents and they had to take register data home to work on. It was a 6-day week.
- As a teacher at Hillcrest before and after Mrs Brennan, she saw a transformation in the school. In saying this, she was not thinking of statistics,
- She did not regard Mrs Brennan as a bully. She was “formidable” and “scary”, but “scary” was what was required at the time. If something was not done she would want to know the reason why and she was scared to a degree. We worked very hard and she would often want blood, but there was also a very soft side. Mrs Brennan changed the lives of many children.
- As to the transcripts of telephone conversations, she would have phoned the parents concerned and talked about the child’s behaviour. She might have spoken previously. The pupils being discussed were those close to the end of their compulsory education.
- She had admitted responsibility for entering incorrect codes and instructing others to do so. She had not made this factual admission earlier out of loyalty to Dame Maureen Brennan. It was not until Dame Maureen Brennan made her admission that she felt able to say what she would have liked to have said earlier. Her concern was that her admission might somehow damage Dame Maureen Brennan.
- She accepted that the practice of “early bathing” and coding “B” was unacceptable and she would not do it again. At the time, she did not understand that it was wrong to use a “B” code.
- She also accepted that to code a pupil as “S” when the pupil was refusing to come into school was also totally wrong.
- From the position that she was in now, she could see that the coding of the register was inappropriate and that it would be judged as dishonest by other people scrutinising it.
- She admitted that her conduct amounted to unacceptable professional conduct.

On cross-examination by the Presenting Officer, Mrs Derham stated:

- When she assumed responsibility for the register, systems were already in place. Her oversight was in relation to a team already working to a system.
- Every attempt was made to get the child into school. The EWO was only able to take on 8 pupils from the school. What they got wrong was the coding.
- She accepted that the effect of the inappropriate codes was that attendance figures could be misleading. However, this was not a motivating factor as far as she was concerned. She was following custom and practice. She had a

Headteacher who was a national figure and had no reason to question anything.

- She admitted making changes herself and asking others to make changes.
- In the transcript of the telephone conversation at Pack 2, Page 45, she used the word “fake” in relation to the register. Her use of the word was clumsy and she was intending to refer to the anonymised data as distinct from data which included pupil names.
- In the statement made for the purpose of these proceedings, she had not made the admissions that she has now made. It is as a result of her loyalty to Dame Maureen Brennan that the admission had been made as late as it had. Dame Maureen Brennan was her Headteacher and had been in two separate schools. She is loyal to Dame Maureen Brennan.

In response to questions from the Panel, Mrs Derham stated:

- She could not remember any instances of her being approached by Witness D or Witness H to check a printed register before being this was released to the EWO.
- She could not think of why a code would be changed from a “U” to an “M” and then back again.

At the conclusion of the evidence of Mrs Derham, the Presenting Officer indicated that he had an application to amend the dates in the allegation relating to Mrs Derham by removing the dates. He made it clear that the case against Mrs Derham was that she was in overall charge of attendance for two consecutive terms from January 2005 and then one term in 2007. Mr Faux confirmed that there was no objection to this amendment and the Panel agreed to the amendment.

Mrs Linda Westwood

Mrs Westwood confirmed her statement and read parts of her statement found at Pack 4, pages 40 to 88. In answer to questions from Mr Faux, Mrs Westwood stated that:

- She worked at Great Barr School, Birmingham between March 1993 and July 2000. During her time at Great Barr she worked with Mrs Brennan. Mrs Brennan was Deputy Headteacher and Mrs Westwood was Senior Manager-Head of House.
- She moved to Hillcrest in September 2000 after being appointed to the post of Assistant Principal. Her role included attendance. Mrs Brennan had been appointed Principal. In 2002 she was promoted to the position of Vice Principal and retained her previous responsibilities, including attendance. When Individual G, Vice Principal, was appointed to work at the GTC for two days per week in 2005, her responsibilities changed.
- She believed that the EWO had access to all of the school’s data and could review and monitor this at any time.
- She thought that she may have heard of the term “ghost register” before, but could not recall how the term came to Hillcrest.

- Mrs Derham and herself both put handwriting on registers for amendments to be made.
- She accepted that some of the coding of registers was inappropriate. She now accepting that coding an absent pupil as “B” was inappropriate. In her current school they do not do this.
- An “S” code for a pupil as early as January was inappropriate.
- Mrs Westwood acknowledged that she said in the transcript in Pack 2, Page 41 on 9 June 2006 that she wanted to do some work on the unauthorised. She would write guidance to the Head of House and House PA’s. It was not just changes to the codes. 9 June 2006 must have been on or around a reporting date but she did not know exactly when. “Some work on the unauthorised” could have included some inappropriate changes.
- She had admitted to making inappropriate changes to the attendance register and instructing others to do so on the second day of the hearing. She had not done so earlier as she did not want to say anything that would harm Dame Maureen Brennan. Mrs Westwood made admissions after Dame Maureen Brennan had taken ownership and made her own admissions.
- She accepted that recording pupils who were not attending school as “B” had the potential to mislead. She now felt utterly embarrassed and she did want to take responsibility for not giving appropriate guidance to Mrs Derham. She did not think that Mrs Derham had a real understanding of what was going on.
- She now accepted that what was done would be viewed as dishonest by the ordinary standards of reasonable honest people. However, at the time, she did not think that it would be viewed as dishonest by people outside of the school.
- Attendance was part of her job and she acknowledged that she did not give it due consideration.
- She accepted that her actions amounted to unacceptable professional conduct.

On cross-examination by the Presenting Officer, Mrs Westwood stated:

- She had no knowledge of the PLASC.
- She accepted that she would have taken pupils off the roll at around the time of PLASC on the instructions of Dame Maureen Brennan.
- She had regular weekly meetings with Witness B. If she requested a print-out she would get it for her. She was surprised at the evidence of Witness D and Witness H to the effect that they were uncomfortable about the position that they were put in when the EWO came in and they had to make excuses before getting permission to release attendance registers. She had no recollection of asking them to make excuses. It was in line with good practice to seek permission before releasing any confidential information.
- She was under the impression that Witness B could access attendance summaries through Centris. She thought that this whole school data was available to the EWO.
- Referring to Pack 2, Page 35, the transcript of the telephone call on 9 June 2006 confirmed that she had requested changing “U’s” to “t’s”. She agreed that it would only be appropriate to use a “t” where there was some

communication and the school was awaiting for confirmation. It would not be appropriate where there had been no prior oral communication. She accepted that this was inappropriate.

- Referring to Pack 2, Page 41, she accepted that on 9 June 2006 she had said in the transcript that she wanted to do some work on the unauthorised and that she was asking for printouts of attendance as far back as January. She accepted that it would be difficult for anyone to comment in June on anything that happened in January.
- Referring to Pack 2, Page 51, she accepted that in the transcript of another of her telephone conversations on 9 June 2006, she referred to the need to get the unauthorised absences down below 1%.
- Referring to Pack 2, Page 53, she accepted that the transcript recorded her giving instructions to change “U’s” to “t’s” and her saying “yes use that all the time we love that”. She believed that she had confirmed that this was inappropriate by her admission.
- At the time she believed that the school was able to authorise absences and that they could select an appropriate code. She admitted that the effect of using inappropriate codes was to wrongly suggest that unauthorised absence was lower than it actually was.

In response to questions from the Panel, Mrs Westwood stated:

- The school ran a system of disapplication for a very few pupils in Key Stage 4 who were disaffected and whose attendance was poor and for pupils whose behaviour was so serious it might lead to permanent exclusion.

In response to further questions from Mr Faux, Mrs Westwood stated:

- She believed that she was reassured by Dame Maureen Brennan that the system that they had operated at her previous school was appropriate and that what they were doing was alright.

22 November 2012

Closing Submission by Presenting Officer.

Mr Albuery said that, although this was a serious case, it was also a very sad one. It was accepted that the three teachers had dedicated their professional lives to children in the most challenging of circumstances. These proceedings were not an indictment on their professional careers as a whole. The Teaching Agency’s case was not put on the basis of financial motive.

It was accepted that in 2000, Hillcrest needed strong and effective leadership and Dame Maureen Brennan provided that. Dame Maureen Brennan has been described as “frightening” and “scary”. Witness E has said that there were times when she was in fear. Mrs Derham has also referred to being “scared to a degree”. The Panel might think it significant that, neither Mrs Westwood nor Mrs Derham, felt able to make the admissions they did on the second day of the hearing, which was after Dame Maureen Brennan made admissions the day before.

Mrs Derham now faced one allegation and this was admitted in part. The Panel only needed to determine dishonesty. In terms of dates, the Teaching Agency accepted that Mrs Derham was correct when in saying that she had oversight of the attendance registers during the spring and summer terms in 2005 and in the summer term of 2007. When she did not have oversight, she continued, as part of her pastoral role, to have involvement in the registers, but in a limited role.

Mrs Linda Westwood also admitted allegations 1(a) and (b), but did not admit dishonesty. She does not admit allegation 2. The Teaching Agency says that Mrs Linda Westwood was, in addition to Dame Maureen Brennan, responsible for the on-off roll and this was an essential ingredient of PLASC.

Dame Maureen Brennan had made admissions in relation to allegations 1(a) and (c). She admitted that she was aware of the inaccuracies and that she gave instructions to her Vice Principal. It has been suggested on her behalf that 1(d) was irrelevant, but the Teaching Agency's position was that the Panel should make a determination as to whether she failed to ensure that the PLASC was inaccurate. In relation to allegation 2, Dame Maureen Brennan denied any manipulation. The Teaching Agency said that there was manipulation and that the purpose was to suggest a false improvement.

As to the attendance register, the Panel should consider the extent of what went on. The first 15 files do not need to be looked at. Files 16 and 18 contain reports regarding the misuse of codes "B" and "S". Bearing in mind the admissions, the Panel might feel that it was not necessary to look at them for long. The most important files were files 19 to 21. These included the correction reports and showed the changes made to the register during 04/05 (File 19), 05/06 (File 20) and 06/07 (File 21). It might be necessary to look at these to be clear about the scale of the changes made. File 22 contained PLASC records and "on-off" reports. File 23 could be ignored. File 24 contained information about the day off for inset training when pupils were marked as present. In view of the admissions made, the Panel might think it unnecessary to look at this. Files 25 and 27 could be ignored. File 26 had been withdrawn.

In relation to allegation 1, Mr Albuery invited the Panel to consider the following matters:

- (1) The extent of the changes made in 04/05, 05/06 and 06/07.
- (2) The extent of the changes of the different year groups. In 04/05 this involved pupils in years 8, 9, 10 and 11. In 05/06 years 8, 10 and 11 and in 06/07 years 7, 8, 9, 10 and 11. The 44 examples were just examples.

In relation to PLASC, Mrs Westwood admitted that she directed changes to be made to the roll as a result of being directed by Dame Maureen Brennan to remove pupils as a result of a desire not to claim improperly for pupils not attending. The Teaching Agency put the case on the basis that an essential element of PLASC was the number of pupils on the roll in year 11. The evidence against Mrs Westwood was not as good as in relation to the attendance registers, but there was enough evidence to find it proved. The evidence was from Witness K who said that Mrs

Westwood was responsible for PLASC (Page 87). He said in response to a question from Mr Faux that he knew that PLASC was done by Mrs Westwood based on conversations around the leadership table. Witness K acknowledged that he was quite possible that he was wrong, but he formed the view that he did by way of inference. The evidence of Witness D was that she was instructed by Mrs Linda Westwood to take pupils off roll and this was relevant to PLASC.

The manipulation is clear. The purpose was to suggest a false improvement. The Ofsted reports are clear evidence of the importance of GCSE results. Witness K said that he knew of no other reason why a year 11 pupil would be taken from PLASC other than to affect GCSE results.

As to dishonesty, Mrs Westwood and Mrs Derham admitted objective dishonesty. Dame Maureen Brennan made no such admission, but there could be no other proper finding. When the evidence is carefully examined, it is clear that all three knew it was wrong. The Panel needed to look at the surrounding circumstances as to what they knew or thought. The inappropriate coding of pupils, including the marking of pupils off site was clearly wrong and a deliberate misrepresentation of the true position. They must have known that it was wrong at the time.

If they did not know it was wrong, why was it so difficult for Witness B to get information from the school? Witness D said that, more often than not, changes were made before information was handed over to the EWO. Witness E said in her statement at page 45 that she was not allowed by the Leadership Team to give a copy of any register to the EWO without permission from the Leadership Team. Witness H also said in evidence that changes usually had to be made before information was released to the EWO.

Mrs Derham had made reference in her telephone conversation to “fake” data. The use of this word was indicative of a state of mind, rather than a clumsy use of language.

Why would decent good people do something dishonest? The possible explanations were:

- 1) Culture.
- 2) Passion, enthusiasm and commitment to children can cause people to do things that were wrong and which they knew to be wrong and, in some Robin Hood way, act in a way that they perceived was for the greater good.

In relation to Unacceptable Professional Conduct, Mrs Westwood and Mrs Derham admit this, but it is a matter for the Panel’s judgement. In relation to attendance registers, everyone agreed that attendance registers are meant to represent a true reflection of what a pupil is doing and if he is truanting there are safeguarding issues. Furthermore, prospective employers have a right to expect that an attendance register is accurate.

Closing Submission by Ms McDonald.

In relation to allegation 1, she was not seeking to achieve a more favourable outcome for Dame Maureen Brennan than Mrs Derham or Mrs Westwood. Dame

Maureen Brennan accepted that the greater responsibility was hers as Headteacher. It was important to have regard to the context of the police investigation in this case and the fact that this was an investigation into financial fraud which was not substantiated.

Delay had played a significant part in this case. This was relevant for two reasons:

- 1) The delay affected the cogency of the evidence. It impacted on the memory of witnesses and might cause witnesses to remember things happening in a different way than was actually the case.
- 2) Cultural issues. Criticism had been made of Dame Maureen Brennan's management style, but she was never inappropriately forceful. If she had been, why would a large number of staff follow her to other schools?

Dame Maureen Brennan accepted fully that she was instrumental in initiating the changes. The real issues were motivation and dishonesty.

As to scale, the summary of attendance in 2004 included many year 11 students who were on study leave in May, which covered 7 weeks of that school year. The "B" coding was not vastly significant.

There was evidence that this was custom and practice. There was unchallenged evidence from Dame Maureen Brennan that this was a practice that she had used in her previous post which she had implemented at Hillcrest and no reason to suppose that this was wrong. Dame Maureen Brennan gave evidence that she received no support or guidance from the Local Authority, which was itself in an Ofsted category. Added to this was the belief that the Local Authority was aware of everything that was going on and that everything on Integris was accessible on Centris. There was evidence that code changes and early baths were widespread practices. This was reinforced by the evidence of Mrs Elaine Simpson.

As to how unauthorised absences were recorded, Mrs Westwood said that her understanding from Dame Maureen Brennan was that the school had the power to authorise an absence. This may have been a mistaken belief, but not a dishonest belief. There is evidence that this was a process that was openly conducted. It was suggested by some of the evidence of Witness D and Witness H that there was a cover up. However, their evidence had to be approached with caution. Witness D had to apologise to Dame Maureen Brennan for misleading her over the return of the ski equipment. As regards Witness H, there were problems with her evidence due to the passage of time and she was not able to give a coherent account.

Witness B was attending the school to look at pupils that might need her intervention. It was perverse to suggest that changes in code were made to change unauthorised absence for something else. Witness B had access to the data, either through Centris or through the computer system at the school.

In terms of custom and practice, there was evidence of the widespread use of "B" codes. Individual H referred to this at page 2098. Also, Mrs Derham referred

to a conversation that she had with a teacher in another school who referred to an “early bath”.

As to dishonesty, Dame Maureen Brennan had always accepted major responsibility for what occurred, but there was no evidence directly connecting her. She could have said “you prove my involvement”. She had done the opposite and stepped forward and said “I was the Headteacher – this is my responsibility”.

As to unacceptable professional conduct, Dame Maureen Brennan asked the members of the Panel to exercise their independent judgment in connection with these issues and, in doing so, look at all of the circumstances of the case.

As to allegation 2, the Teaching Agency had failed to prove the factual basis on which it relied. Each part of the allegation had to be proved. In particular, there must have been manipulation for the purpose of suggesting a false improvement in GCSE grades.

The Panel was referred to File 22 and schedule C and child 45. The record showed that the child was removed and reinstated to the roll on several occasions between 15 January and 17 June. Something very peculiar was going on, but it is not clear that what was going on was to improve GCSE results. The movement on and off roll did not make sense. In addition, if PLASC for 2005 was examined, it could be seen that Child D, Child F and Child I were on it. These were 3 children who would be expected to be removed if the aim was to improve GCSE results. The Panel had heard nothing about most of the children on Schedule C. Schedule C should be littered with cross-references, but that was not the case. Furthermore, there was a very significant financial penalty for taking children off the roll and this would be a big price to pay for what is a very marginal improvement. The differences were as follows: 2004- 2%, 2005 – 3%, 2006 – 4%.

As to Witness K, his statement in Pack 1, page 85 contained a number of deletions showing that he has not agreed with certain parts. Furthermore, his statement had no probative value. He was not in a position to comment.

Closing submission by Mr Andrew Faux

In responding to Mr Albuery’s submissions about the evidence of Witness K, Mr Faux said that he would endorse the submissions made by Ms McDonald. In addition, he pointed out that when Witness B gave evidence she referred to what Witness K had said to her. This was hearsay evidence. Witness K made no mention of it when he gave evidence.

The Teaching Agency had failed to discharge the burden of proof. Witness A’s evidence in relation to the alleged improvement in GCSE results was based on assumptions about performance of particular children without evidence.

Mrs Westwood should not be accused of manipulating PLASC for here actions in removing pupils from the roll at the direction of the Headteacher.

Mr Faux read out part of Mrs Derham's statement at page 18, paragraph 39 in which she commented upon statements taken from parents by the EWO. She expressed the belief that the parents were told the actions taken by the school were wrong and that this would have angered the parents. She added that, if the pupils had been asked to comment on the support their child had received throughout their school career or how much contact had been made or what strategies had been used, a different picture would have been painted. Mr Faux said that this statement was made by Mrs Derham before the in-school disclosures had been made and what she said has been borne out by those disclosures. What was presented in the written statements of parents of pupils taken by Witness B was an uncaring approach towards children, but it was now accepted by the Teaching Agency that they were hardworking and caring professionals.

Were the actions hidden? It had been suggested by Mr Albuery that it was ridiculous to suggest that data protection issues could prevent an EWO having access to registers. However, it was not ridiculous in terms of misinterpretation of Data Protection issues and how widespread such misunderstanding can be.

What the Teaching Agency presented as a black and white issue was not as clear cut. When Witness A was cross-examined, she referred to a pupil being allowed to go on study leave a couple of weeks early. In this culture Mrs Derham and Mrs Westwood genuinely did not realise that what they were doing would be seen as dishonest by other people.

They both accepted that, at times, their coding was inappropriate. In coding study leave as early as January and an early bath as education off site. However, this did not mean that every such code was a wrong coding. The Panel needed to look very carefully at the individual circumstances. As for Mrs Derham, she had been doing good things in the school but the school failed. Maureen Brennan then took over and changed the school in ways which were not helpfully captured by key performance indicators and statistics. Evidence had been heard that Dame Maureen Brennan engendered fear in staff and pupils. Mrs Derham was one of those members of staff. When she came into a position of responsibility in 2005, what was going on was by then well established. She did not realise that what was going on was dishonest.

Mrs Linda Westwood was not quite in the same state of awe as Mrs Derham. She came with Dame Maureen Brennan. She was an ideal lieutenant for this dynamic Headteacher. The Panel should consider whether what was done was being hidden. There is evidence that what was being done was being done openly in the school with the potential for the Local Authority peering over their shoulders; so open, in fact, that they were proposing to recruit Witness B.

D. Decision and Reasons (Facts and Unacceptable Professional Conduct)

28 December 2012

The Panel announced its decisions and reasons as follows:

“We have now carefully considered the cases before us and have reached our decisions.

We confirm that we have read all the documents provided in the bundles to which we have been directed. In addition other evidence has been made available by the parties and we have accessed it as appropriate. We have disregarded evidence that the parties identified as no longer relevant.

We have heard that each of the teachers is a person of good character. We have taken this into account in assessing the credibility of their evidence and in assessing whether it is likely that they would act as alleged.

We acknowledge the delay that has occurred in this case and the impact that the passage of time might have had on the recollection of witnesses. We have taken this into account in the teachers' favour when assessing the evidence.

In assessing whether any of the teachers has acted dishonestly, we have accepted the legal advice that we have been given and applied the dual test, namely (1) whether the teacher acted dishonestly by the ordinary standards of reasonable and honest people and, if so (2) whether the teacher was aware that by those standards her conduct was dishonest.

The allegations relate to Hillcrest School and Community College, Dudley (“Hillcrest”). Hillcrest caters for 11 to 16 year olds with approximately 950 pupils on the roll and serves the communities of Netherton and Dudley. The catchment area has many low income families. The school was placed in Special Measures in 1998. Mrs Maureen Brennan was appointed Principal in September 2000, having previously been a Deputy Headteacher at Great Barr School in Birmingham. Mrs Linda Westwood had worked with Mrs Maureen Brennan at Great Barr School and joined Hillcrest at the same time as Mrs Maureen Brennan. Mrs Shelley Derham was already at Hillcrest and had been there since 1992. She was appointed as Vice Principal in 2006, having previously been acting up in that role. In 2005 Mrs Maureen Brennan became a Dame as a result of her exceptional performance at Hillcrest. All three Registered Teachers left the school in 2007, Dame Maureen Brennan and Mrs Linda Westwood in March 2007 and Mrs Shelley Derham in July 2007; all moved to Barr Beacon Language College, Walsall, where they all now work.

After Dame Maureen Brennan left Hillcrest, Witness A took over as Headteacher in April 2007. In July 2007, Witness B, Education Welfare Officer (EWO) for Dudley Metropolitan Borough Council undertook an audit of attendance and admission registers at Hillcrest. This routine audit identified what was considered to be a high percentage of pupils who appeared to be educated off - site, the incorrect use of attendance codes and pupils who had been removed from the roll. As a result of these concerns, a wider analysis was undertaken for the period from September 2003 to July 2007. As part of the audit, the EWO Service Team interviewed staff and parents. On the instructions of the Director of Children's Services, the matter was reported to the Police who undertook an investigation. After liaison with the Crown Prosecution Service, a decision was made that no criminal proceedings should be brought. The matter was also referred to the General Teaching Council for England.

Findings of fact

We heard that when school attendance registers are marked, absence is represented by a number of codes, some of which indicate authorised absences and some unauthorised absences. We were directed to consider particularly the use of codes “B” (off-site education provision) and “S” (study leave). The Teaching Agency’s case was that these codes, both of which represented authorised absences, were being used inappropriately, and in some cases, in order to reduce the number of unauthorised absences and improve the overall attendance record.

In examining the files of evidence presented, we found numerous examples of inappropriate alterations to the records of attendance across all year groups over the years 2004 to 2007.

There is incontrovertible evidence that from 2004 to 2007, many Year 11 pupils were given attendance codings which indicated that their absence from school was authorised, when this was not the case. A “B” code was given for pupils who were neither attending school nor having off site education. An attendance record showing that a pupil was given a “B” coding should indicate that the pupil was being educated off site. In Year 11, parents of those pupils who were disrupting the education of others were asked to keep their children at home, attendance was marked with a “B” coding and this was referred to as having an “early bath”. This was used as an alternative to a formal exclusion. In addition to this, the “S” code was given to indicate study leave for Year 11 pupils as early as January in their final year of school. As a result of these inappropriate codings, if attendance records were requested by prospective employers or colleges, their records would not show any long periods of unauthorised absences.

The first allegation against **Dame Maureen Brennan** is that;

Whilst employed as Headteacher at the Hillcrest School & Community College between September 2000 and April 2007:

- 1. Pupil attendance was not recorded accurately and;**
 - (a) she was aware of those inaccuracies;**
 - (b) she should have been aware of those inaccuracies;**
 - (c) she took no action in relation to those inaccuracies;**
 - (d) she failed to ensure that the figures were accurate;**
 - (e) her actions at (a) and (c) above were dishonest.**

We find the facts alleged in 1 (a), (c), (d) and (e) proved. We did not need to make a finding in relation to 1(b) in view of our finding in relation to 1(a).

The Teaching Agency’s case was that the attendance registers were altered to make the attendance figures for Hillcrest appear better than they were.

Dame Maureen Brennan has admitted that she was aware that changes were made to the codings of children and that she took no action in relation to those

inaccuracies. When giving evidence, Dame Maureen Brennan said that she had given instructions to Linda Westwood to make the changes and that it was she and not Mrs Linda Westwood, who had the responsibility for the changes made. Dame Maureen Brennan said that the reason was to avoid losing the children and to ensure that their record did not contain either significant unauthorised absence or a period of exclusion. She said that if a pupil took the true record of attendance to an employer or college, the pupil would not have been given a chance and that the “B” code was inserted to indicate that the pupil was not truanting. She also stated that use of the “S” code, although inappropriately used, was her “pragmatic response” to children who would not come into school or who would disrupt the education of others. She said that she always wanted to give pupils the best opportunity.

When giving evidence, Dame Maureen Brennan admitted that the effect of the changes was to improve the school’s attendance figures but denies that this was her motive. She maintained that the attendance record of the school was not important at that time and that her priority was to establish a safe learning environment.

The Panel finds that the practice of making inappropriate alterations to the attendance registers was misleading, as prospective employers and colleges would have an expectation that information would be accurate and reliable. The Panel is satisfied that this practice was dishonest according to the ordinary standards of reasonable and honest people. We then had to consider whether Dame Maureen Brennan was aware at the time that her actions were dishonest by those standards.

Dame Maureen Brennan is clearly an intelligent woman and, as Headteacher, she must have appreciated at the time that her instructions could result in employers and colleges being misled.

The Panel believes that in her early years at Hillcrest, attendance figures might not have been a priority as she and her team worked hard to establish effective working practices and bring the school out of Special Measures. However, as the school improved, it is difficult to believe that attendance figures did not become more important, especially as this is one of the key performance indicators to assess a school’s effectiveness.

We are satisfied, on the balance of probabilities, that Dame Maureen Brennan’s actions were motivated by both a desire to act in the best interests of pupils and in her later days at Hillcrest, by her desire to improve attendance figures. The Panel has concluded that she must have been aware, at the time, that her actions were dishonest by the ordinary standards of reasonable and honest people

The second allegation against **Dame Maureen Brennan** is that;

2. **The Pupil Level Annual School Census (PLASC) was manipulated to suggest a false improvement in GCSE 5 A* to C grades and:**
 - (a) **she was aware of the manipulation of the PLASC;**
 - (b) **she should have been aware of the manipulation of the PLASC;**
 - (c) **she took no action in relation to that manipulation;**
 - (d) **she failed to ensure that the PLASC was accurate;**

(d) her actions at (a) and (c) above were dishonest.

We find the facts of this allegation not proved. Our reasons are as follows.

We have heard that PLASC is undertaken by every school on the same day in January. Amongst other things, it comprises information on individual pupils, numbers on school rolls, staffing information etc. This data is used for a number of purposes, including the calculation of future funding for the school and the number of pupils in Year 11, as stated in the PLASC, is used to calculate the percentage of pupils achieving 5 A* to C grades at GCSE.

The case of the Teaching Agency is that the attainment figures for Hillcrest showed the percentage of 5 A* to C grades to have been reached by reference to a lower number of pupils being recorded on PLASC, thus resulting in inflated figures.

The figures for the years 2004 to 2007 were as follows.

- In 2004 135 pupils were recorded instead of 143 resulting in a 2% inflation of A* to C grades (43% instead of 41%)
- In 2005 126 pupils were recorded instead of 137 resulting in a 3% inflation of A* to C grades (35% instead of 32%)
- In 2006 126 pupils were recorded instead of 136 resulting in a 4% inflation of A* to C grades (48% instead of 44%)
- In 2007 158 pupils were recorded instead of 164 resulting in a 2% inflation of A* to C grades (52% instead of 50%)

We heard evidence from Witness B, the Education Welfare Officer (EWO) and we were also directed to documentary evidence to show that pupils were taken off roll and reinstated around the time of the PLASC returns for the years between 2004 and 2007. We are satisfied by the evidence presented that pupils were removed from the roll around the time of the PLASC submission and were reinstated later. The Teaching Agency asserts that the motive for the removal of these pupils was to reduce the size of the cohort of the Year 11 pupils which would be used to calculate the percentage of pupils achieving 5 A* to C grades, a key benchmark for all secondary schools. We are satisfied that the effect of removing these pupils did inflate the percentage of pupils achieving 5 A* to C grades. We heard from Witness A, the current Headteacher at Hillcrest, that if the percentage pass rate fell below 30%, this could impact on the school and result in a reduction in the number of parents wishing to send their children to the school. However, Witness A accepted that, even without the inflated figures, the percentage for the school would still be above 30%. Witness A said that 3% inflation would still be significant for league tables. She also said that the school needed to show a continued improvement. We heard from Witness K, who became a member of the extended leadership group at Hillcrest in 2005, when he took on responsibility for pupil academic data. He said in his evidence that he could think of no reason why a group of Year 11 pupils would be removed from PLASC unless it was to affect GCSE results.

Dame Maureen Brennan admits that, in anticipation of PLASC, children who had not been attending school were taken off the roll. She says that this was to ensure that

the figures relied upon to calculate funding for the school were accurate. Dame Maureen Brennan also accepts the records show that some pupils were subsequently reinstated. She cannot recall actioning this, but accepts that it is most likely that she arranged for this to be done as it would have enabled them to be entered for examinations. She accepted that, as Headteacher, she had overall responsibility for PLASC. Dame Maureen Brennan denies that the figures were “manipulated” or that the purpose for this was to suggest a false improvement in GCSE results. In her evidence, Dame Maureen Brennan agreed that she had signed the PLASC and that it was not accurate. She acknowledged that this was poor practice but that there was not dishonest intent. Dame Maureen Brennan asserted that there was no need to falsify anything about Hillcrest as it was a school parents wanted to send their children to and that it was not about results and published data. The school provided a safe and secure environment.

In considering the evidence there is no doubt that pupils were taken on and off roll. The precise reason or reasons could not be clearly determined. The fact that pupils were taken off around the time of PLASC and put back again indicates, as Ms McDonald intimated in her closing submissions, that something very peculiar was going on. However, we could not be satisfied, on the balance of probabilities, that the changes were made in order to suggest a false improvement in GCSE results. In making this finding, we took into account that the relatively small percentage rises were not significant within the overall picture of the school’s improvement, over that period. In addition, the financial consequence of removing pupils from the roll at PLASC was disproportionate to this relatively small improvement in 5 A* to C grades.

The allegation against **Mrs Shelley Derham** is that:

Whilst employed at the Hillcrest School & Community College:

- 1. Pupil attendance was not recorded accurately and:**
 - (a) she made inappropriate alterations to the records of attendance;**
 - (b) she told others to make inappropriate alterations to the record of attendance;**
 - (c) her actions at (a) and (b) above were dishonest.**

We find the facts alleged in 1 (a), (b) and (c) proved.

Mrs Derham admitted the facts alleged in 1 (a) and (b). After examining the attendance records, we accept these admissions. With regard to the allegation of dishonesty, Mrs Derham accepted that her actions were dishonest by the standards of ordinary reasonable people, but did not admit that she was aware that her actions would be regarded as dishonest when they were carried out.

We have concluded that her actions in 1(a) and (b) were dishonest in accordance with the dual test. Accordingly, we find the facts alleged in allegation 1 (c) proved. We recognise that Mrs Derham only had full responsibility for attendance for the Spring and Summer terms of 2005 and the Summer term of 2007.

Mrs Derham accepted in her evidence that she now realises that the inappropriate coding was wrong and that she would never do it again. She also stated that she did not appreciate this at the time and she followed custom and practice that had been established; she stated that she saw no reason to question it.

Mrs Derham had been a teacher at Hillcrest prior to the school going into Special Measures and had witnessed the transformation of the school under the leadership of Dame Maureen Brennan. We can, therefore, see how she may have been accepting of the changes introduced and perhaps less likely to question individual practices. We accept that Mrs Derham was motivated to do the best for her pupils.

However, if attendance records were requested by prospective employers or colleges, their records would not show any long periods of unauthorised absences. Accordingly, the practice of making inappropriate alterations to the attendance registers was misleading, as prospective employers and colleges would have an expectation that information would be accurate and reliable. Mrs Derham is clearly an intelligent woman and an experienced teacher and must have appreciated at the time that her actions could result in employers and colleges being misled. Despite the fact that Mrs Derham was motivated to do the best for her pupils, the Panel has concluded, on the balance of probabilities, that Mrs Derham must have been aware, at the time, that her actions were dishonest by the ordinary standards of reasonable and honest people.

We accept that, as a consequence of the alterations to the attendance registers, there was an improvement in overall attendance and a subsequent decrease in the rate of unauthorised absence. However, in Mrs Derham's case, we have found no evidence to establish that this was a motivating factor.

The first allegation against **Mrs Linda Westwood** is that:

Whilst employed at the Hillcrest School & Community College between 2 September 2005 and April 2007:

- 1. Pupil attendance was not recorded accurately and:**
 - (a) she made inappropriate alterations to the records of attendance;**
 - (b) she told others to make inappropriate alterations to the record of attendance;**
 - (c) her actions at (a) and (b) above were dishonest.**

We find the facts in allegation 1 (a), (b) and (c) proved.

Mrs Westwood admitted the facts alleged in 1 (a) and (b). After examining the attendance records, we accept these admissions. With regard to the allegation of dishonesty, Mrs Westwood accepted that her actions were dishonest by the standards of ordinary reasonable people, but did not admit that she was aware that her actions would be regarded as dishonest when they were carried out.

We have concluded that her actions in 1(a) and (b) were dishonest in accordance with the dual test. Accordingly, we find the facts alleged in allegation 1 (c) proved.

Mrs Westwood had overall responsibility for attendance for all of her time at Hillcrest except for two terms in 2005.

Mrs Westwood accepted in her evidence that she now realises that the inappropriate coding was wrong and that she would never do it again. Mrs Westwood said that she was under the misapprehension that the school had the power to authorise attendance and that, at the time, she did not realise what she was doing was wrong. In addition, she said that at the time that she was making and directing the changes, she was so wrapped up in helping children and the school, she did not think to question the practice. She says that, on reflection she considers herself to have been “foolhardy”.

We accept that Mrs Westwood was motivated to do the best for her pupils and was following practices that she had seen used at her previous school. However, as an experienced and intelligent teacher, she must have appreciated that the inaccurate codings that she was applying to the registers were likely to mislead prospective employers or colleges when they requested attendance records. As we have found in relation to Mrs Derham, the records would not show any long periods of unauthorised absences. Accordingly, the practice of making inappropriate alterations to the attendance registers was misleading, as prospective employers and colleges would have an expectation that information would be accurate and reliable.

We accept that, as a consequence of the alterations to the attendance registers, there was an improvement in overall attendance and a subsequent decrease in the rate of unauthorised absence. Mrs Westwood accepted in her evidence that she did make inappropriate changes to attendance records to reduce the overall level of unauthorised absence to a figure below 1%.

We are satisfied, on the balance of probabilities, that Mrs Westwood’s actions were motivated by both a desire to act in the best interests of pupils and in her later days at Hillcrest, by the impetus to improve attendance figures. The Panel has concluded that she must have been aware, at the time, that her actions were dishonest by the ordinary standards of reasonable and honest people.

The second allegation against **Mrs Linda Westwood** is that:

- 2. The Pupil Level Annual School Census (PLASC) was manipulated to suggest a false improvement in GCSE 5 A* to C grades and:**
 - (a) she was responsible for that manipulation;**
 - (b) her actions at (a) above were dishonest.**

We find the facts of this allegation not proved. Dame Maureen Brennan has said that she was solely responsible for the PLASC and the Panel accepted this. In any case, for the reasons given in relation to Dame Maureen Brennan, we were not satisfied that the PLASC was manipulated to inflate the 5 A* to C GCSE results.

Findings as to Unacceptable Professional Conduct

In making a judgment about unacceptable professional conduct, we have applied the Teaching Agency's definition of unacceptable professional conduct, namely misconduct of a serious nature, falling significantly short of the standard of behaviour expected of a teacher.

Paragraph 6 of the General Teaching Council's Code of Conduct and Practice for Registered Teachers, which was in force at the time of the conduct in question, required registered teachers to maintain appropriate standards of honesty and integrity in management and administrative duties.

Although dishonesty has been found, the Panel recognises that this did not involve any financial motive. Indeed this was accepted by the Presenting Officer who said that, although this was a serious case, it was also a very sad one. We agree with his assessment that the three teachers have dedicated their professional lives to children in the most challenging of circumstances and these proceedings are not an indictment on their professional careers as a whole.

Dame Maureen Brennan

We are satisfied that in relation to the facts proved in allegations 1(a), (c), (d) and (e), Dame Maureen Brennan's conduct amounted to unacceptable professional conduct. In making this finding, we concluded that her actions were in breach of paragraph 6 of the code in force at the time.

Mrs Shelley Derham

Mrs Derham admitted that her conduct in allegations 1(a) and (b) amounted to unacceptable professional conduct and we have taken that admission into account. We are satisfied that in relation to allegations 1(a), (b) and (c), Mrs Derham's conduct amounted to unacceptable professional conduct. As in the previous case, in making this finding, we concluded that Mrs Derham's actions were in breach of paragraph 6 of the code in force at the time.

Mrs Linda Westwood

Mrs Westwood admitted that her conduct in allegations 1(a) and (b) amounted to unacceptable professional conduct and we have taken that admission into account. We are satisfied that in relation to allegations 1(a), (b) and (c), Mrs Westwood's conduct amounted to unacceptable professional conduct. As in the previous case, in making this finding, we concluded that Mrs Westwood's actions were in breach of paragraph 6 of the code in force at the time."

E. Summary of Evidence (Mitigation)

Ms McDonald confirmed that she would be calling Dame Maureen Brennan, Witness M and Witness N to give evidence in mitigation. Ms McDonald also submitted additional statements which were added to Pack 4 as follows:

- Witness O at pages 103A to 103D
- Witness N at pages 103E to 103J
- Individual I at pages 103K to 103M

Dame Maureen Brennan

In response to questions from Ms McDonald, Dame Maureen Brennan stated:

- She asked the Panel to bear in mind that Mrs Westwood and Mrs Derham were only before the Panel because they did what she, as Headteacher, asked them to do.
- Mrs Derham is a consummate professional and has the capacity to put herself in the position of parents and feel for them and make very difficult situations much easier. She has great humanity and will always see the best in children.
- She took up her post as Headteacher at Barr Beacon School in 2007. It was a school with different challenges for from Hillcrest.
- In terms of managing attendance at Barr Beacon, towards the end of 2007 they introduced a system under which any query in relation to coding is referred to the EWO. No pupil comes off the roll for any reason unless confirmed by an external agency.

In response to questions from Mr Faux, Dame Maureen Brennan stated:

- Mrs Derham's role Barr Beacon is as the designated safeguarding officer, with responsibility for the welfare of children and liaison with social services and for training staff.
- Mrs Derham and Mrs Westwood are both Deputy Heads at Barr Beacon.
- External validation is provided by the Educational Welfare Service.

Witness M

Witness M confirmed and read his statement found at Pack 3, Pages 89 to 94. In response to questions from Ms McDonald, Witness M stated:

- He is Chair of Governors at Barr Beacon School.
- He was present this morning when the Panel's findings were announced. These findings do not affect the content of his statement.
- If Dame Maureen Brennan was unable to continue as Headteacher, in his opinion, the school would go backwards.

Witness N

Witness N confirmed and read his statement found at Pack 3, Pages 103E to 103J. In response to questions from Ms McDonald, Witness N stated:

- He is a Parent Governor at Barr Beacon School.
- He was present this morning when the Panel's findings were announced and they do not affect the content of his statement.

In response to questions from Mr Faux, Witness N stated:

- In addition to being a Governor, he is a self-employed Business Consultant and is Director of a Limited Company. His field of work is business improvement. In his work he sees both good and bad managers. The standard of professionalism demonstrated by Mrs Derham and Mrs Westwood is the best that he has seen.

Witness P

Witness P confirmed and read his statements found at Pack 3, Pages 99 to 103. In response to questions from Mr Faux, Witness P stated:

- He is now Headteacher at Etone College, Nuneaton.
- Mrs Shelley Derham is an outstanding Deputy Headteacher and has made a difference to so many children's lives.
- Mrs Linda Westwood was one of the best colleagues he had ever worked with extraordinary standards, passion and drive.
- They both shaped his values and vision.
- Between 5 and 8 years ago an "early bath" was something that happened in other schools.

In response to questions from Ms McDonald, Witness P stated:

- Dame Maureen Brennan was the best Headteacher he had worked with. She coached him and mentored him and gave him opportunities that no course could ever offer. She provided the direction of his moral compass.
- She spoke of the pupils as her "babies".
- She is loud, but he would not say intimidating. She is a modest person, but has a way of asking the most difficult question in a professional way.

29 December 2012**Witness O**

Witness O confirmed and read his statement found at Pack 3, Pages 103A to 103M. In response to questions from Mr Faux, Witness O stated:

- He is Leader of Walsall Council and a Governor at Barr Beacon School.

- He was aware of the findings made by the Panel in relation to each teacher. However, this did not affect the comments made in his statement about the teachers. He could say this absolutely and unequivocally.

In his closing submission, the Presenting Officer said that the Panel had to consider the protection of the public interest and its three strands. As to the protection of pupils and others, this was not a case in which there is any suggestion of harm to children. The case was more about upholding proper standards of professional conduct. The aggravating features were the number of pupils involved and the lateness of the admissions of the three teachers. The need to maintain public confidence is a matter that the Panel can properly take into account. The reputation of the profession is more important than the fortunes of any individual member of the profession.

In her closing submission, Ms McDonald said that the Panel had heard evidence from three Governors at Barr Beacon School, in addition to oral evidence from Witness P and Witness L. The attention of members of the Panel was drawn to the letter from Individual J of Walsall Children's Services. Serco at Pack 3, Page 99 in which she confirmed that the audit of attendance registers and procedures at Barr Beacon School found no irregularities and that they had "full confidence" in Dame Maureen Brennan. Further that she had seen the evidence of the "impressive improvements" at Barr Beacon School since Dame Maureen Brennan had become the Headteacher. Reference was also made to the letter from Individual K, Senior Children's Services Improvement Adviser for Walsall Council at Pack 3, Page 153 relating to the improvement in GCSE examination results at Barr Beacon. The Panel would also find in Pack 4, Page 228 a response from a parent who was asked to give evidence against Dame Maureen Brennan. He refused to do so and described her as "a treasure". The finding of dishonesty made is very difficult for a woman of enormous integrity. Things will not be the same again for her and this is a consequence of this hearing. Dame Maureen Brennan has very high personal standards which she fell short of and she has to live with the responsibility she feels for involving her two Deputies. As to the finding of dishonesty, the circumstances are truly exceptional. There is clear evidence that as soon as the matter came to light, Dame Maureen Brennan changed her practice and the Panel can be confident that there will be no repetition. There is a public interest in such a gifted and talented teacher being able to continue in practice.

In his closing submission, Mr Faux referred to the decision in **Paul Davies -v- The General Teaching Council for Wales [2008] EWHC 1175 (Admin)** in which a primary school teacher was sent to prison for dangerous driving, but the school decided to keep his job open for him. Mr Faux said that the High Court allowed an appeal against the imposition of a prohibition order recognising that the Panel had not dealt with the employer's views and support. As to the findings of dishonesty, the finding in relation to Mrs Shelley Derham was very limited. Even though the finding in relation to Mrs Linda Westwood was somewhat broader, the Panel still had to consider how culpable they were. Their actions were deliberate but they both have previous good characters. The guidance refers to acting under duress. It is correct to say that, as Deputy Headteachers they were expected to challenge things, but the Panel had to consider the whole culture at the school. The Panel had to have regard to the issue of proportionality. This is a European concept which means that an

official measure should not have any greater effect on private interests than is necessary for the attainment of the objective. In terms of protecting the public interest, the Panel should bear in mind that there is no risk of the conduct being repeated. There is also a public interest in the teachers being able to continue their work at Barr Beacon School.

F. Panel's Recommendation to the Secretary of State

“The Panel has given very careful consideration to the Teaching Agency’s guidance on the issuing of prohibition orders, but recognised that, ultimately, we were obliged to exercise our own judgement.

The Panel was mindful that the aim of a prohibition order is to protect the public interest rather than to be punitive. The public interest includes protection of children and other members of the public, the maintenance of public confidence in the teaching profession and the declaration and upholding of proper standards of conduct.

The Panel has applied the principle of proportionality. In doing so the Panel had regard to the teachers’ rights to practise their profession and whether it was necessary to restrict those rights in order to protect the public interest.

The Panel considered factors which may be incompatible with being a teacher. The Panel then went on to consider mitigating factors relevant to the appropriateness of prohibition.

We considered the position of each teacher separately, whilst recognising that there were factors common to them all.

Dame Maureen Brennan

The Panel recommends to the Secretary of State that no sanction is appropriate in this case.

In reaching this decision, the Panel recognises that any finding of dishonesty against a teacher is very serious. Dishonest conduct, (especially where there have been serious consequences, it had been repeated and/or covered up) is a factor that may be considered incompatible with being a teacher. There is no doubt that the dishonest conduct continued over a 3 year period and involved a number of pupils. However, without condoning the conduct in question, the Panel has concluded that there are a number of mitigating factors in this case that are relevant to the seriousness of the behaviour, including :

- The dishonest behaviour did not involve and was not motivated by any personal financial gain.
- Although the conduct may have prevented the intervention of other agencies, it was recognised that there was no suggestion of any harm to children.

- When appointed as Head at Hillcrest, Dame Maureen Brennan introduced practices regarding attendance which had been in operation in her previous school.
- We also heard some evidence that the practice of “early baths” was more widespread across the Authority at the time.
- There can be no doubt that Hillcrest proved very challenging in many areas to the School Leadership Team and attendance was one element of a much wider picture of school improvement.

In addition to the above factors, which relate specifically to the circumstances of the behaviour in question, there are other exceptional factors which, in the Panel’s view, make it inappropriate to impose a prohibition order, namely:

- All of the behaviour in question took place prior to April 2007, before she moved to Barr Beacon School. There is no evidence of repetition since she moved to Barr Beacon School where she is still the Headteacher.
- The Panel heard clear and convincing evidence from more than one source that, as soon as concerns about the inappropriate coding came to light, Dame Maureen Brennan introduced a robust attendance recording system at Barr Beacon School, which is subject to independent auditing. Indeed, we heard from Witness M, Chair of Governors at Barr Beacon School that the audits were acceptable and that he has no concerns about attendance, registers or data collection at the school. The Panel is satisfied that there is no likelihood of the behaviour being repeated.
- Dame Maureen Brennan has expressed remorse for her conduct, which the Panel have no doubt is genuine, and has demonstrated insight into her failings.
- Dame Maureen Brennan has an impeccable previous history. Furthermore, since joining Barr Beacon she has taken another school from Special Measures to one described as “good and is well positioned to improve further” (as stated in the Ofsted Report January 2011).
- The case was presented by the Teaching Agency on the basis that the behaviour in question was not an indictment on the significant achievements made by her.
- We have heard evidence that Dame Maureen Brennan has provided leadership and support to schools in difficulty throughout the borough.
- The Panel has heard and read an overwhelming number of positive testimonials from pupils, parents, Governors and other educational professionals.
- The Ofsted Report for January 2011 states “the Headteacher is an inspirational figure for her students, staff and the community”.

In assessing the need to protect the public interest, we have had regard to the public interest considerations referred to in the guidance. The Presenting Officer has acknowledged that this is not a case about the protection of children or others. We agree with this.

There is a public interest in declaring and upholding proper standards of conduct. The Panel is conscious that this public hearing has resulted in a finding of

unacceptable professional conduct. This is a significant finding and, in the Panel's view, satisfies the need to publicly declare and uphold proper standards of conduct.

The Panel is also conscious of the need to maintain public confidence in the teaching profession. However, in view of the exceptional mitigating circumstances that we have identified it is not necessary, in the public interest, to impose a prohibition order. Furthermore, it would be disproportionate to do so.

We would go further and say that, in the light of the exceptional achievements of Dame Maureen Brennan, there is a public interest in her being able to continue her inspirational leadership as a Headteacher.

Mrs Shelley Derham

The Panel recommends to the Secretary of State that no sanction is appropriate in this case.

In reaching this decision, the Panel recognises that any finding of dishonesty against a teacher is very serious. Dishonest conduct, (especially where there have been serious consequences, it had been repeated and/or covered up) is a factor that may be considered incompatible with being a teacher. However, without condoning the conduct in question, the Panel has concluded that there are a number of mitigating factors in this case that are relevant to the seriousness of the behaviour, including :

- Mrs Derham only had overall responsibility for attendance for two terms in 2005 and the Summer Term of 2007.
- The dishonest behaviour did not involve and was not motivated by any personal financial gain.
- Her motivation was confined to trying to do the best for pupils in her charge.
- Although the conduct may have prevented the intervention of other agencies, it was recognised that there was no suggestion of any harm to children.
- Mrs Derham had been a teacher at Hillcrest prior to the school going into Special Measures and had witnessed the transformation of the school under the leadership of Dame Maureen Brennan. She may have been accepting of the changes introduced and less likely to question individual practices.
- There can be no doubt that Hillcrest proved very challenging in many areas to the School Leadership Team and attendance was one element of a much wider picture of school improvement.

In addition to the above factors, which relate specifically to the circumstances of the behaviour in question, there are other exceptional factors which, in the Panel's view, make it inappropriate to impose a prohibition order, namely:

- All of the behaviour in question took place prior to September 2007, before she moved to Barr Beacon School. There is no evidence of repetition since she moved to Barr Beacon School, where she is still Deputy Headteacher.
- The Panel heard clear and convincing evidence from more than one source that the Leadership Team at Barr Beacon School, of which Mrs Derham is a part, introduced a robust attendance recording system, which is subject to independent auditing. Indeed, we heard from Witness M, Chair of

Governors at Barr Beacon School that the audits were acceptable and that he has no concerns about attendance, registers or data collection at the school. The Panel is satisfied that there is no likelihood of the behaviour being repeated.

- Mrs Derham has expressed remorse for her conduct, which the Panel have no doubt is genuine, and has demonstrated insight into her failings.
- Mrs Derham has an impeccable previous history. She has a truly impressive record of achievement throughout 34 years in teaching.
- The case was presented by the Teaching Agency on the basis that the behaviour in question was not an indictment on the significant achievements made by her.
- The Panel has heard and read an overwhelming number of positive testimonials from pupils, parents, Governors and other educational professionals. A previous colleague, who is now a Headteacher, said that “Shelley Derham is an outstanding Deputy Headteacher who has made a difference to so many children’s lives.”
- We heard from Witness N, Governor at Barr Beacon, that Mrs Derham is the “lynchpin of safeguarding within school” and that it is apparent “how much effort, attention and compassion is displayed by Shelley” when talking about safeguarding.

In assessing the need to protect the public interest, we have had regard to the public interest considerations referred to in the guidance. The Presenting Officer has acknowledged that this is not a case about the protection of children or others. We agree with this.

There is a public interest in declaring and upholding proper standards of conduct. The Panel is conscious that this public hearing has resulted in a finding of unacceptable professional conduct. This is a significant finding and, in the Panel’s view, satisfies the need to publicly declare and uphold proper standards of conduct.

The Panel is also conscious of the need to maintain public confidence in the teaching profession. However, in view of the exceptional mitigating circumstances that we have identified it is not necessary, in the public interest, to impose a prohibition order. Furthermore, it would be disproportionate to do so.

We would go further and say that, in the light of the exceptional achievements of Mrs Derham, there is a public interest in her being able to continue her role to inspire and improve the life chances of pupils in her charge.

Mrs Linda Westwood

The Panel recommends to the Secretary of State that no sanction is appropriate in this case.

In reaching this decision, the Panel recognises that any finding of dishonesty against a teacher is very serious. Dishonest conduct, (especially where there have been serious consequences, it had been repeated and/or covered up) is a factor that may be considered incompatible with being a teacher. There is no doubt that the dishonest conduct continued over a 3 year period and involved a number of pupils

However, without condoning the conduct in question, the Panel has concluded that there are a number of mitigating factors in this case that are relevant to the seriousness of the behaviour, including :

- The dishonest behaviour did not involve and was not motivated by any personal financial gain.
- Although the conduct may have prevented the intervention of other agencies, it was recognised that there was no suggestion of any harm to children.
- Mrs Westwood followed Dame Maureen Brennan to Hillcrest from Great Barr School. She assisted in the introduction and maintenance of attendance procedures which had been in operation in her previous school.
- We also heard some evidence that the practice of “early baths” was more widespread across the Authority at the time.
- There can be no doubt that Hillcrest proved very challenging in many areas to the School Leadership Team and attendance was one element of a much wider picture of school improvement.

In addition to the above factors, which relate specifically to the circumstances of the behaviour in question, there are other exceptional factors which, in the Panel’s view, make it inappropriate to impose a prohibition order, namely:

- All of the behaviour in question took place prior to April 2007, before she moved to Barr Beacon School. There is no evidence of repetition since she moved to Barr Beacon School, where she is still Deputy Headteacher.
- The Panel heard clear and convincing evidence from more than one source that the Leadership Team at Barr Beacon School, of which Mrs Westwood is a part, introduced a robust attendance recording system, which is subject to independent auditing. Indeed, we heard from Witness M, Chair of Governors at Barr Beacon School that the audits were acceptable and that he has no concerns about attendance, registers or data collection at the school. The Panel is satisfied that there is no likelihood of the behaviour being repeated.
- Mrs Westwood has expressed remorse for her conduct, which the Panel have no doubt is genuine, and has demonstrated insight into her failings.
- Mrs Westwood has an impeccable previous history. She has a truly impressive record within the teaching profession during her 34 years in teaching across 8 schools.
- The case was presented by the Teaching Agency on the basis that the behaviour in question was not an indictment on the significant achievements made by her.
- The Panel has heard and read an overwhelming number of positive testimonials from pupils, parents, Governors and other educational professionals. One of her current colleagues has described how “she manages staff tremendously and gives them belief to be truly successful in their roles”. A Councillor and Member of the Interim Executive Board (set up by the Secretary of State) at Barr Beacon stated that Mrs Westwood “was totally professional and extremely hard working and totally committed to achieving the best outcomes for her students”. She was also described as “a superb Deputy”.

In assessing the need to protect the public interest, we have had regard to the public interest considerations referred to in the guidance. The Presenting Officer has acknowledged that this is not a case about the protection of children or others. We agree with this.

There is a public interest in declaring and upholding proper standards of conduct. The Panel is conscious that this public hearing has resulted in a finding of unacceptable professional conduct. This is a significant finding and, in the Panel's view, satisfies the need to publicly declare and uphold proper standards of conduct.

The Panel is also conscious of the need to maintain public confidence in the teaching profession. However, in view of the exceptional mitigating circumstances that we have identified it is not necessary, in the public interest, to impose a prohibition order. Furthermore, it would be disproportionate to do so.

We would go further and say that, in the light of the exceptional achievements of Mrs Westwood, there is a public interest in her being able to continue her role to inspire and improve the life chances of pupils in her charge."

Secretary of State's Decision and Reasons

I have given very careful consideration to these cases and to the recommendations of the panel.

Although each teacher faced two allegations and the cases share much in common, I have, as the panel has done, considered each teacher separately.

Dame Maureen Brennan

I support the recommendation of the panel. The panel did find the facts of allegation 1 to be proven and that those facts amounted to unacceptable professional conduct. The panel also found that the facts found proved amounted to dishonest action.

The panel has applied the principle of proportionality as well as the test that the purpose of a prohibition order is to protect the public interest rather than be punitive. The panel has also given careful consideration to appropriate mitigation.

The panel have clearly stated that although the findings of fact did amount to dishonest conduct that on balance a number of other factors also come into play. The panel has set those out very clearly and I do not need to reiterate them here.

The panel has also been clear that in making a finding of unacceptable professional conduct the panel has satisfied the requirement to uphold standards of professional conduct in the public interest.

I support their view that a prohibition order for this teacher, in the light of the wider and exceptional mitigating circumstances would not be proportionate or in the public interest.

Mrs Shelley Derham

I support the recommendation of the panel. The panel did find the facts of allegation 1 to be proven and that those facts amounted to unacceptable professional conduct. The panel also found that the facts found proved amounted to dishonest action.

The panel has applied the principle of proportionality as well as the test that the purpose of a prohibition order is to protect the public interest rather than be punitive. The panel has also given careful consideration to appropriate mitigation.

The panel have clearly stated that although the findings of fact did amount to dishonest conduct that on balance a number of other factors also come into play. The panel has set those out very clearly and I do not need to reiterate them here.

The panel has also been clear that in making a finding of unacceptable professional conduct the panel has satisfied the requirement to uphold standards of professional conduct in the public interest.

I support their view that a prohibition order for this teacher, in the light of the wider and exceptional mitigating circumstances would not be proportionate or in the public interest.

Mrs Linda Westwood

I support the recommendation of the panel. The panel did find the facts of allegation 1 to be proven and that those facts amounted to unacceptable professional conduct. The panel also found that the facts found proved amounted to dishonest action.

The panel has applied the principle of proportionality as well as the test that the purpose of a prohibition order is to protect the public interest rather than be punitive. The panel has also given careful consideration to appropriate mitigation.

The panel have clearly stated that although the findings of fact did amount to dishonest conduct that on balance a number of other factors also come into play. The panel has set those out very clearly and I do not need to reiterate them here.

The panel has also been clear that in making a finding of unacceptable professional conduct the panel has satisfied the requirement to uphold standards of professional conduct in the public interest.

I support their view that a prohibition order for this teacher, in the light of the wider and exceptional mitigating circumstances would not be proportionate or in the public interest.

NAME OF DECISION MAKER: Alan Meyrick

Date : 30 November 2012