



National College for
Teaching & Leadership

Monzoor Hussain, Hardeep Saini, Arshad Hussain, Razwan Faraz, Lyndsey Clark Professional conduct panel outcome

**Panel decision and reasons on behalf of
the Secretary of State for Education in
respect of applications for the proceedings
to be discontinued**

May 2017

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Professional conduct panel decision

Teachers: Mr Monzoor Hussain, Mr Hardeep Saini, Mr Arshad Hussain, Mr Razwan Faraz and Ms Lyndsey Clark.

Date of determination: 30 May 2017

A. Introduction

A professional conduct panel (“the panel”) of the National College for Teaching and Leadership (“the National College”) convened on 10, 11, & 12 April 2017 and 3, 4 & 30 May 2017 at 53 to 55 Butts Road, Earlsdon Park, Coventry CV1 3BH to consider the cases of Mr Monzoor Hussain, Mr Hardeep Saini, Mr Arshad Hussain, Mr Razwan Faraz and Ms Lindsey Clark.

The panel members were Ms Mick Levens (teacher panellist – in the chair), Ms Gail Goodman (teacher panellist) and Mr Martin Pilkington (lay panellist).

The legal adviser to the panel was Mr Robin Havard of Blake Morgan LLP solicitors.

The presenting officer for the National College on 10, 11 & 12 April 2017 and 30 May 2017 was Mr Andrew Colman, Counsel. On 3 & 4 May 2017, the presenting officer was Mr Chris Gillespie, Counsel.

Neither Mr Monzoor Hussain nor Mr Hardeep Saini were present but both were represented by Mr Andrew Faux, Counsel.

Mr Arshad Hussain was not present but was represented by Ms Melanie McDonald, Counsel.

Mr Razwan Faraz was not present but, on 3, 4 & 30 May 2017, was represented by Ms Claire Darwin, Counsel.

Ms Lyndsey Clark was present and was represented by Ms Katie Langdon, Counsel.

The hearing took place in public and was recorded. The panel's decision was announced in public.

DECISION AND REASONS

1. This is the decision of the Panel in relation to the applications made on behalf of Monzoor Hussain, Hardeep Saini, Arshad Hussain and Lindsey Clark ("the four teachers") for the proceedings against them to be discontinued. It also includes the decision of the Panel in relation to the application made on behalf of Razwan Faraz for the proceedings to be discontinued against him. However, in his case, it is restricted to the claim, which also forms part of the applications put forward by the four teachers, that it should be discontinued on the basis of abuse of process in that it is not possible for the proceedings to continue as it would offend the Panel's sense of justice and propriety given the particular circumstances of this case.
2. In accordance with paragraph 4.54 of the Teachers Misconduct – Disciplinary Procedures, the Panel has jurisdiction to discontinue proceedings when it considers that it would be fair and appropriate to do so.
3. In advance of the hearing of the applications by the four teachers which commenced on 10 April 2017, the Panel had read the written submissions served by those representing the four teachers, the written response served by the NCTL and the documents to which it was referred in the course of the hearing which took place on 10, 11 and 12 April 2017. The Panel had also listened carefully to the oral submissions made on behalf of the four teachers who made this application and also the oral submissions of Mr Colman who appeared as presenting officer for the NCTL to oppose the applications. The applications at that stage were on the basis that it was not possible for the four teachers to receive a fair trial.
4. Whilst Mr Faux made the application on behalf of Mr Monzoor Hussain and Mr Hardeep Saini, and Ms McDonald and Ms Langdon made applications on behalf of Mr Arshad Hussain and Ms Lindsay Clark respectively, there was a substantial amount of overlap and agreement between them with regard to the grounds on which the applications were made.
5. In advance of 3 May 2017, the Panel had deliberated at length upon its decision in respect of the applications made by the four teachers that the proceedings should be discontinued as it was not possible for them to receive a fair hearing. On 3 May 2017, the Panel convened, fully expecting to announce its decision in respect of those applications. However, on the morning of the hearing, certain information was provided to it by the presenting officer appearing for the NCTL on that date, Mr Gillespie, to which the Panel refers in much greater detail later in this decision, which meant that it was not possible for the Panel to announce its decision.
6. As a consequence of the information provided by the NCTL on the morning of 3 May 2017, the scope of the applications made by the four teachers widened to include an application that the proceedings should be discontinued as it would offend the Panel's sense of justice and propriety for it to continue to hear the proceedings against the teachers, taking account of the particular circumstances of the case. This is supported by Mr Faraz.

7. With regard to the legal framework, the Panel accepted the legal advice provided by the Legal Adviser, which had also been accepted by the teachers' representatives and Mr Colman on 12 April 2017, and the teachers' representatives and Mr Gillespie on 4 May 2017, as representing an accurate outline of the issues the Panel is required to determine.
8. In summary, there are now two limbs to the test of whether it would be fair and appropriate for the Panel to discontinue the proceedings against the teachers. The two limbs are not mutually exclusive but are distinct and have to be considered separately.
9. The first limb is where the Panel concludes that it is impossible for the teachers to receive a fair trial. The second limb is where it offends the Panel's sense of justice and propriety to be asked to continue to hear the proceedings against the teachers in the particular circumstances of the case.
10. In considering the first limb, the Panel recognises that the teachers are entitled to a fair trial in accordance with their rights under Article 6 of the European Convention of Human Rights ("ECHR") and also at common law.
11. Article 6 provides that the teachers are entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. However, even if a breach of Article 6 is established, it would not be appropriate to stay or dismiss the proceedings unless (a) the hearing was unfair or (b) it would otherwise be unfair to continue to hear the case against the teachers.
12. In addition, irrespective of any issues with regard to the time it has taken, and will take, before these proceedings reach a conclusion, the Panel has to consider whether the teachers have received, or can now receive, a fair hearing and whether it would be an abuse of the process if it is allowed to continue.
13. The test, which was agreed by the parties, is as set out in the case of *SRA v Manak & Dhillon [2016] EWHC1914 (Admin)*, namely :
14. *"It is uncontroversial that a Court/Tribunal must use its powers and processes to ensure a fair trial. Where (whether as a result of failings by the Prosecutor/Regulator or otherwise) it is not possible to have a fair trial it may be an abuse of process for the trial to continue. At paragraph 347 the Tribunal formulated the test thus, "if the Tribunal consider that it could not ensure that the Respondents received a fair trial, the matter could not be allowed to proceed". I agree, as did the parties, that this was an accurate formulation of the relevant test."*
15. The Panel also took into consideration the public interest in the final determination of these proceedings. The public interest is important not only to protect pupils and the public, to maintain the reputation of the profession and to uphold proper standards of conduct, but also to ensure that the profession is properly regulated. This includes an entitlement of teachers who are the subject of regulatory proceedings to receive a fair hearing. What is of overriding importance, not only for the integrity of the process but, more particularly, for the teachers, is that they should receive a fair hearing and that the process is seen to be fair.

16. Whilst the teachers' representatives have referred to a number of grounds on which they maintain that the proceedings should be discontinued, the development which has provoked the applications is the failure on the part of the NCTL at the outset, and in the course, of the proceedings to fulfil its disclosure obligations. Had it not been for this development, of which the Panel first became aware on 24 November 2016, no such application would have been made prior to the Panel announcing its final decisions in respect of all five teachers on 23 December 2016.
17. Not only does the issue of late disclosure engage limb one, but the overall conduct of the NCTL and its representatives in respect of the process of disclosure has engaged the second limb of the test, namely whether the Panel's sense of justice and propriety has been so offended that, in accordance with paragraph 4.54 of the Teacher Misconduct – Disciplinary Procedures, it would be fair and appropriate to discontinue the proceedings against the teachers.
18. In reaching its decision, the Panel has been referred to the decision of the Privy Council in *Warren and others v HM Attorney General of the Bailiwick of Jersey* [2011] UKPC 10. In due course, the Panel will make further reference to the guidance contained within that decision. However, it states, in summary, that, "*... when considering whether to grant a stay in this category of case, the balance must always be struck between the public interest in ensuring that those who are accused of serious crimes should be tried and the competing public interest in ensuring that executive misconduct does not undermine public confidence in the criminal justice system and bring it into disrepute*".
19. As stated, although late disclosure represents one of the grounds on which the application was made, the teachers' representatives also rely on other grounds, namely the basis on which the hearing was listed (described by the teachers' representatives as "fragmentation"), delay, and the lack of particularisation in the manner in which the NCTL presented its case. It has been argued that, either in isolation or cumulatively, the prejudice caused to the teachers by such issues, both to date and in the future, is such that it would be fair and appropriate for the proceedings to be discontinued.
20. The Panel has considered each of those grounds in turn to determine whether the tests as outlined above in respect of either limb one or limb two or both have been satisfied such that it would be fair and appropriate to discontinue the proceedings.

Listing and delay ("Fragmentation")

21. It is understood by the Panel that it was in February 2015 that the teachers were notified of the NCTL's intention to bring proceedings. Whilst the particulars of the allegations were set out at that time, they were further amended before the substantive hearing commenced in October 2015.
22. Two case management hearings were held on 29 July 2015 and 27 August 2015 at which issues including joinder, listing, disclosure and particularisation of the allegations were raised.

23. The substantive hearing commenced on 19 October 2015 and lasted a total of 34 days.
24. The hearing dates were as follows: 19 – 22 October 2015; 26 October 2015; 28 – 29 October 2015; 12 – 13 November 2015; 23 – 25 November 2015; 30 November 2015; 1 December 2015; 7 – 18 December 2015; 22 – 23 February 2016; 24 – 27 May 2016; 20 – 23 June 2016.
25. Evidence was heard from a total of 32 witnesses to include the respondent teachers. The witnesses were predominantly lay witnesses but the Panel also had the benefit of written and oral evidence from four expert witnesses called by the teachers.
26. The written and oral testimony of the witnesses called by the National College, the respondent teachers and the witnesses called on behalf of the respondent teachers was extensive and detailed. All witnesses were questioned, some extensively so, by between one and five advocates representing the parties, and by the Panel, when necessary.
27. In addition, whilst there was a lack of clarity from the NCTL when the issue was discussed at the case management hearings, ultimately the documents included in the hearing bundle, to include the responses from the teachers and their documents, and the transcripts, ran to in excess of 6,800 pages. These included a number of documents which were disclosed by the parties in the course of the hearing.
28. It was acknowledged at the outset in the course of the case management hearings that the listing of this substantial case was always going to be difficult taking into account the number of witnesses who would have to be called, the fact that it involved five respondent teachers, all of whom denied the allegations, and the fact that it related to three schools. The difficulty of accommodating the availability of the advocates was also recognised.
29. The application for joinder was resisted. However, had the Panel at the CMH not made such a decision, it may have led to five separate hearings at which substantially the same evidence would have been called. Had the application for joinder been rejected, it is likely that the consequences with regard to scheduling and the availability of witnesses to give evidence on a number of occasions in relation to a number of different cases would have been much more complicated and protracted.
30. It had been suggested that it would have been preferable to delay the commencement of the hearing and for the hearing to take place over sequential weeks. Taking account of the availability of advocates and witnesses, there was no indication of when such a hearing could commence and whether it would have been completed before the closing submissions in this case in fact concluded on 23 June 2016.
31. One other feature which prolonged the hearing was the multiplicity of applications made in the course of the hearing. The Panel did not suggest that the parties were not entitled to make such applications. However, applications such as the submissions of no case to answer made at the conclusion of the NCTL's case, and the debate with regard to the admissibility of the Clarke report and the Select Committee report, took a number of days to resolve.

32. The Panel accepted that the listing of the hearing was not ideal but, in its judgment, the decision to list the hearing in this way was not unreasonable taking into account the exceptional circumstances regarding the availability of all concerned and the scale and complexity of the issues involved.
33. Furthermore, whilst again accepting that it was not ideal, the listing of a hearing of this sort in stages was not unique in regulatory proceedings. Indeed, in two of the cases to which reference had been made at this hearing, namely *Viridi v The Law Society* [2009] EWHC 918 (Admin) and *TZ v GMC* [2005] EWHC 1001 (Admin), the Panel noted the dates of hearing were spread over a number of months.
34. A suggestion had been made that the NCTL had been subjected to political pressure and pressure from the media which had had an impact on the way the matter was being pursued. The Panel is not able to comment on whether there is any merit in this submission. However, the Panel is able to state confidently and categorically that it has approached its task with complete impartiality and independence. It is clear that the proceedings have attracted media attention simply by reference to the number of persons from the Press who have attended the hearing. However, the Panel has taken no account of any such coverage even if and when it has become aware of it inadvertently.
35. Reference has also been made to the time taken by the Panel to make its findings of fact and to reach its decisions in respect of the allegations made against the five teachers.
36. By its definition, this was a decision to be made by a Panel of three members as opposed, for example, to a judge sitting alone. There was an enormous amount of material to consider when reaching its decisions in respect of the numerous allegations in respect of each teacher at each school following a hearing lasting 34 days. The Panel considered the evidence in detail and to that extent was assisted by the transcripts which have been produced. Taking account of the scale and complexity of the exercise, whilst the Panel would have wished to announce its decision at an earlier date, it does not consider that the time taken is unduly lengthy or unreasonable. Indeed, one of the advantages of the way in which the matter was listed is that transcripts of the hearing dates were produced. The Panel was able to maintain a clear recollection of the witnesses who gave evidence but, even had this been an issue, it would not have been ameliorated to any extent by the hearing taking place in one block of time taking account of the fact that it took place over 34 days. To that extent, the transcripts were very important when the Panel reached its decisions. Indeed, the parties relied on the transcripts when completing the Scott Schedules which the Panel directed the parties to produce.
37. It is accepted by the Panel that the time it will take to reach a stage at which the Panel can announce its decisions, if these applications are refused, will be further delayed as a consequence of the variety of applications arising out of the late disclosure.
38. However, in its judgment, whilst it is a finely-balanced decision, taking into account the scale and complexity of these proceedings, the time taken, and to be taken, in hearing these proceedings is not such that it infringes the teachers' rights under Article 6

ECHR. Further, even if the Panel found there had been a breach of Article 6, the basis on which the case had been heard did not mean that the teachers could no longer have a fair hearing nor that it would otherwise be unfair to continue with the proceedings against the respondent teachers.

39. The Panel concluded that this submission made by the teachers' representatives did not engage limb two of the test, as described above, regarding whether or not the proceedings should be discontinued.

Lack of Particularity

40. There has been no previous application for the proceedings to be discontinued on the grounds of abuse of process on the basis that the teachers could not understand the case they had to meet.
41. Again, despite the many complaints from the teachers' representatives regarding lack of particularity, had it not been for the concern regarding late disclosure which first became known to the Panel in November 2016, the Panel would have delivered its decisions in respect of all five teachers the following month.
42. However, the Panel accepts that concerns with regard to the difficulty experienced by the teachers and their representatives in understanding the NCTL's case in respect of the allegations and their particulars have been expressed from the outset.
43. In the course of the case management hearing on 27 August 2015, the presenting officer confirmed that the written Opening Note effectively served the same purpose as a Scott Schedule and would cross-refer to the evidence which supported each of the allegations. It only takes a cursory look at the Opening Note to discern that this did not happen to the extent that it should have.
44. Indeed, when Razwan Faraz, Arshad Hussain and Lindsay Clark made submissions of no case to answer at the conclusion of the NCTL's case, the Panel found the exercise of reviewing the evidence in respect of each of the allegations a very difficult and time-consuming one, although not insurmountable. Furthermore, whilst their representatives continually made submissions about the difficulty in understanding the case faced by the respondent teachers, they were nevertheless able to submit lengthy, detailed and relevant statements in response to the NCTL's case and the allegations made against them. They also served a number of statements from both lay and expert witnesses which addressed the nature of the allegations being made against them. The Panel's assessment of the cross-examination of the NCTL's witnesses by those representing the teachers is that it was focussed and relevant to the issues to be determined by the Panel.
45. Finally, the NCTL served a Scott Schedule and the teachers' representatives responded to that Scott Schedule in very considerable detail.
46. The Panel considers that, whilst always a challenging exercise in a case of this complexity, the way in which the allegations were formulated by the NCTL was far from ideal. Mr Colman suggested that neither the parties nor the Panel should fall into the

trap of becoming engaged in, "... a process in which there was myopic focus on the detail instead of a consideration of what the case was really about" (paragraph 47 of the *Manak* decision). The Panel considers that the teachers understood what the case was primarily about, namely the allegation of the existence of an agreement to the inclusion of an undue amount of religious influence in the education of pupils at one or more of three schools. However, the way in which the allegations were particularised meant that there had to be a careful and close scrutiny of the evidence to determine whether, in respect of allegation 1 for example, any of the particulars had been found proved in order then to determine whether the overarching allegation contained in allegation 1 was proved. There is the added complexity that, within certain of the particulars themselves, alleged conduct and alleged events and alleged characteristics were pleaded in the alternative. For example, in respect of particular 1(d), the Panel calculated that, in respect of this particular alone, it is necessary to reach 64 separate decisions. It is simply not possible to take a broad brush approach, particularly as the teachers had responded to each element of the particular.

47. Notwithstanding that, and notwithstanding the fact that this led to both the parties and the Panel taking a substantial amount of time in analysing the evidence, the Panel is satisfied that it has been possible for both it and, more particularly, the teachers to understand the basis of the case brought by the NCTL and for the teachers to respond to it. Just because a case is complex, or just because the NCTL could have put its case in a more defined and clear way, does not mean that the hearing has been unfair. In the circumstances, the Panel is satisfied that, on the basis of this ground, it is appropriate to allow the hearing to proceed. This is so in relation to both limb 1 and limb 2 of the test.

Late Disclosure

48. When considering the issue of late disclosure, it is not in dispute that it is open to the teachers to apply to admit further evidence even at this stage in the proceedings. It is accepted that this option is not available to the NCTL.
49. For there to be a true understanding of what has happened with regard to disclosure, it is necessary to begin by reverting back to the Case Management Hearings ("CMH") which took place on 29 July 2015 and 27 August 2015.
50. Before doing so, the Panel refers to the relevant paragraphs of the Teacher Misconduct – Disciplinary Procedures for the teaching profession ("the Disciplinary Procedures") which concern the process to be followed by the NCTL prior to the commencement of a hearing.
51. As at the time of the commencement of these proceedings, the procedure to be followed at a hearing of a Professional Conduct Panel of the NCTL was governed by the February 2015 version of the Disciplinary Procedures.
52. Paragraphs 4.11 and 12 state:

"4.11 Where a case has been referred to a panel, the NCTL will send a Notice of Proceedings to the teacher at least eight weeks before the hearing date unless otherwise agreed with the teacher"

4.12 The Notice of Proceedings will:

- Specify the address, time and date of the hearing and the identity of the panel members;
- Specify the details of the specific allegation(s) against the teacher;
- Identify the witnesses, if any, that the presenting officer proposes to call to give evidence at the hearing;
- Have annexed to it any relevant documents which are relied upon and in the presenting officer's possession at that time which have not previously been sent to the teacher;
- Set out the requirements of paragraphs 4.20-4.25.

53. At the CMH on 29 July 2015, the presenting officer, Mr Gillespie, indicated that he anticipated there would be approximately 150 pages of witness statements and 1,000 pages of documents although he said that it was unlikely that all such documents would be included in any hearing bundle.

54. Agreed directions were made that, by 12 August 2015, the NCTL must serve on the parties:

- i. an Opening Note
- ii. any further documents on which it intends to rely
- iii. a schedule of unused material
- iv. a proposed timetable for witnesses.

55. At the CMH on 27 August 2015, concern was expressed on behalf of the teachers that the timetable with regard to their obligation to serve their statements and documents had become unrealistic primarily due to the failure on the part of the NCTL to comply with the agreed directions made on 29 July 2015 with regard to disclosure. There was also uncertainty as to the volume of disclosure which was to be made by the NCTL, reference being made to 6,000 pages of documents and 664 pages of witness evidence. It was accepted by the presenting officer at that CMH, Mr Buchanan, that there had not been adherence to the agreed directions ii, iii, and iv of 29 July 2015. He stated that the actual number of documents on which the NCTL would rely would not total more than approximately 355 of the documents contained in certain exhibits and 200 pages from the HR files. As for the witness evidence, Mr Buchanan stated that there was a substantial amount of duplication.

56. As a consequence, the start of the substantive hearing was delayed until 19 October 2015.

57. Prior to the commencement of the hearing, the NCTL also served a Schedule of Unused Material which ran to 421 documents. The importance of this document, and the timing of it being sent to the teachers' representatives, will become apparent.
58. In the course of the hearing, there were various applications for the admission of additional documents all of which were managed as part of the hearing process in accordance with paragraphs 4.18 and 4.19 of the Disciplinary Procedures. Paragraph 4.18 states, *"The Panel may admit any evidence, where it is fair to do so, which may reasonably be considered to be relevant to the case.* Paragraph 4.19 states, *"Evidence not disclosed in accordance with paragraph 4.20 will be admitted only with the permission of the Panel at the hearing."*
59. Paragraph 4.20 sets out certain time limits within which parties are required to serve documents or other evidence on which they intend to rely. Under paragraphs 4.25 and 4.26, the Disciplinary Procedures provide for the Panel having a discretion to admit evidence not served in accordance with the time limits. Such discretion should be exercised if it is in the interests of a fair hearing.
60. One development, which was of concern to the parties (including the presenting officer) and the Panel which related to disclosure, occurred when AC and AD were giving their evidence on behalf of the NCTL. Reference was made to notes that they had made in the course of their inspections of the schools. These notes, which Mr Colman accepted were clearly disclosable, had not been seen by either the presenting officer or the teachers and their representatives. Late disclosure of those notes took place and the teachers' representatives had sufficient opportunity to review that material to consider whether any questions needed to be asked of the witnesses in respect of those notes.
61. In contrast with later developments, this failure by the NCTL to provide proper disclosure to the teachers of these important documents was considered by the Panel, at that stage of the proceedings, to be a mistake. Whilst of concern, it was capable of being remedied at the time so that the hearing was able to continue with the advocates having the ability to make such use of those documents at the time the witnesses gave their evidence.
62. Closing submissions concluded on 23 June 2016, and the Panel commenced its deliberations.
63. The Panel first became aware of the concerns with regard to disclosure on 24 November 2016 when Mr Faraz's representatives sent an email attaching an urgent application for disclosure. In that application, Mr Faraz's Counsel, Ms Darwin, sets out the test for disclosure in these proceedings with which the presenting officer, Mr Colman, subsequently agreed. The application for late disclosure is expressed in both general terms and also it relates specifically to disclosure concerning issues affecting one specific witness, FB, who had given evidence on behalf of the NCTL. Annexed to the application is correspondence which had been passing between Mr Faraz's solicitor and the NCTL as well as Counsel for Mr Monzoor Hussain and Mr Saini, namely Mr Faux, with regard to the NCTL's obligations. It was suggested in both the application and the correspondence that the responses from the NCTL exhibited a

misunderstanding of its disclosure obligations. This concern was repeated by the teachers' representatives in subsequent correspondence with the NCTL and the solicitors instructed to act on its behalf, Nabarro, and at subsequent hearings.

64. As has already been stated in previous decisions, the Panel was ready to announce its final decisions in respect of the allegations against all five teachers on 23 December 2016. It became apparent that, as a consequence of the issues relating to disclosure, this would prove impossible. Indeed, having received on 24 November 2016 the urgent application for disclosure, other categories of documentary evidence were identified by the parties as being potentially disclosable. Amongst those categories were the transcripts of interviews of individuals who had been interviewed by Peter Clarke and others in the course of the investigation which led to the production of the document entitled, "Report into allegations concerning Birmingham Schools arising from the "Trojan Horse" letter" dated July 2014. In this decision, the individuals will be referred to as "the Clarke interviewees" and the transcripts as "the Clarke transcripts". It should be stressed that this was but one category of documentary evidence which the NCTL had failed to disclose but it is at the heart of the failures on the part of the NCTL to meet its disclosure obligations.
65. A hearing was arranged for 20 December 2016 at which the applications for further disclosure could be considered and decisions made not only with regard to disclosure but the future conduct of the proceedings.
66. In advance of the hearing on 20 December 2016, emails were sent to the parties by the solicitors acting for the NCTL, Nabarro, to which were attached by way of late disclosure various additional documents.
67. At the same time, questions were being asked by the teachers' representatives with regard to the Clarke transcripts.
68. On 15 December 2016, Nabarro sent an email to the teachers' representatives confirming that they had reviewed the transcripts of the interviews to determine whether any of them met the test for disclosure, namely whether the content assisted the defence case or undermined the NCTL's case. The transcript of one interviewee was disclosed as an attachment to that email as, even though the NCTL did not consider its content to be either harmful to its case or helpful to the teachers, the interviewee, who had not given evidence in these proceedings, had consented to the release of his transcript. It was described in that email as being, "...*attached and served by way of unused materials.*"
69. Otherwise, Nabarro stated that, "*any transcripts which fall with the category of unused materials have either been provide to you or are those which we intend to apply to the Panel for any order for their release*" (sic).
70. The transcripts of seven Clarke interviewees had been identified by the NCTL as meeting the test for disclosure, three of whom are teachers involved in these proceedings, namely Monzoor Hussain, Hardeep Saini and Lindsay Clark, one of

whom had been a witness for the NCTL in these proceedings and three of whom are interviewees who had not been called to give evidence.

71. On 16 December 2016, the NCTL served an application. It stated that a review of all of the transcripts from the Clarke enquiry had been undertaken and the NCTL had formed the view that the transcripts of seven of those interviewed by Peter Clarke, or extracts of them, were potentially of assistance to the defence. However, it was stated that the interviews were conducted on the basis of assurances of confidentiality. Nevertheless, the NCTL invited the Panel to weigh the competing interests in this case and, if the Panel agreed that the public interest in the fair administration of justice outweighed the competing interests, namely the assurances of confidentiality provided to the interviewees, to make an order that the NCTL should disclose to the Defence the materials listed in that application.
72. At the hearing on 20 December 2016, numerous issues were raised by the teachers' representatives with regard to disclosure over and above the transcripts of interviews of witnesses in the Clarke investigation. The presenting officer stated that, over and above those transcripts, the additional documents fell into two categories, those which were in existence prior to the hearing and those which had come into existence following the closing submissions of the parties in June 2016. He recognised that the obligations with regard to disclosure continued throughout the life of the proceedings and accepted that certain material which was in existence prior to the commencement of proceedings should have been disclosed and there had been a failure to do so. In his submissions, the presenting officer said as follows:

"I gave the example of the transcripts of the interviews of witnesses in the Clarke proceedings. As I have set out in our application, those transcripts give rise to difficult conflicts of interest between conflicts of public interest and private interest, and different competing public interests. Those are the matters which we invite you to consider in our first application. I have to say, and I will not go into greater detail than this, that it seemed they also gave rise to some departmental misunderstanding about what material was and was not accessible to the NCTL, at an earlier stage of these proceedings, for which I apologise. That position has been clarified more recently, and so, the material has been available for those presenting the case on behalf of the NCTL to consider, and we have considered it".

73. The presenting officer stated that, having carried out a review of the transcripts of all those interviewed in the course of the Clarke Enquiry, seven satisfied the test for disclosure and, despite the assurances of confidentiality given to them, the public interest in the fair administration of justice outweighed the competing interest of the assurances of confidentiality given to the interviewees and that the transcript should be disclosed. In the course of the hearing, certain of the teachers' representatives invited the Panel to order disclosure of the entirety of the transcripts. There was little resistance to that application. Therefore, for the reasons outlined in that decision, the Panel directed that all of the transcripts should be disclosed. The Panel having made that direction, the presenting officer then stated that, even though no substantive objection had been raised in the course of the hearing, the NCTL would have to review

whether it was in a position to comply with that direction. Again, in the subsequent hearing in February 2017, the presenting officer apologised for not outlining to the Panel during the hearing on 20 December 2016 why a direction for wider disclosure of the Clarke transcripts would cause difficulties. No proper explanation was provided for this omission.

74. Following the hearing on 20 December 2016, the disclosure of a number of transcripts took place on the basis that the interviewees consented to their disclosure. However, certain of the interviewees withheld their consent and therefore the NCTL lodged an application in which it applied for a variation of the directions given by the Panel on 20 December 2016.
75. The application for the directions to be revised took place on 16 and 17 February 2017. At that hearing, not only were the respondent teachers represented but also the Panel allowed representatives from the Unions, NAHT and ASCL, to attend to represent the interests of their members who had been interviewed by Peter Clarke. A representative from Birmingham City Council was also allowed to participate on the basis that the City Council had carried out its own investigation and had conducted some of the interviews jointly with Peter Clarke. Many issues were considered in the course of that hearing, particularly with regard to the extent and effect of any assurances of confidentiality and anonymity which had been provided to the Clarke interviewees.
76. At that hearing, nothing was said to alter the understanding of either the Panel or the teachers' representatives that the failure to disclose any of the Clarke transcripts was as a result of the "*departmental misunderstanding*" described by the presenting officer at the hearing on 20 December 2016.
77. At the conclusion of the hearing on 17 February 2017, the Panel agreed to vary the direction it gave on 20 December 2016. It decided that the direction, that the transcripts of all those interviewed in the course of the Peter Clarke investigation shall be disclosed, should be refined. The direction was amended so that the transcripts to be disclosed were restricted to those Clarke interviewees who had provided written consent to disclosure together with the transcripts of those interviewed in the course of the Peter Clarke investigation who had also given evidence to the Panel in these proceedings.
78. The next stage in these proceedings was the hearing of the application made on behalf of Monzoor Hussain, Hardeep Saini, Arshad Hussain and Lindsay Clark for the proceedings to be discontinued against them. These applications were heard on 10, 11 and 12 April 2017. Unfortunately, due to technical difficulties, no transcript of the hearing on 10 April 2017 is available.
79. At the hearing on 10, 11 and 12 April 2017, the presenting officer endeavoured to provide more detail with regard to the failure by the NCTL to meet its disclosure obligations and his reference at the hearing on 16 December 2016 to, "*departmental misunderstandings*"(sic). He stated that the NCTL was an executive agency of the Department for Education. The Department for Education had attempted to maintain a clear structural division between it and the NCTL to ensure the independence of the

regulatory process and of Professional Conduct Panels. To that extent, the NCTL was separated as an entity within the Department for Education.

80. In the Panel's view, the explanation provided by the presenting officer for the late disclosure was poor. The Panel considered at that time that the NCTL is the regulatory body for the teaching profession which, regardless of its status as a separate entity, sits within the Department for Education. The NCTL had been made aware at the case management hearings in July and August 2015 that the teachers were concerned about disclosure in this case. The NCTL should have been aware of its disclosure obligations throughout these proceedings and it should have ensured that it properly fulfilled those obligations at the correct time. However, once again, at the hearing on 12 April 2017, nothing had been said to affect the understanding and belief of the teachers' representatives and the Panel that the failure of the NCTL to meet its disclosure obligations, in particular with regard to the Clarke transcripts, was caused by departmental misunderstandings within the Department for Education and NCTL. It was understood that the material which the presenting officer accepted should have been disclosed in accordance with the NCTL's responsibilities was held by the Department of Education. Indeed, he said this included not only material which may harm the NCTL's case and/or assist the cases of the teachers but also material which may have assisted the NCTL's case although there was no application by the NCTL to introduce any further evidence.

81. As at 12 April 2017, it had been accepted by the presenting officer, Mr Colman, that there had been failures in the disclosure process but that it was through misunderstanding rather than any deliberate acts or omissions on the part of the NCTL. Indeed, the following exchange took place at that hearing between Mr Colman ("AC") and the legal advisor ("RH"):

"AC: I have – the reason the Panel couldn't decision -, deliver its decision in December has its genesis in the late disclosure of material by the NCTL, and I accepted that we should have had that before, and it should have been disclosed before. And I can say no more about that, except that as soon as we received it, we made every effort to review it as soon as possible, and did it in what in the context was extraordinarily short period of time, given the quantity of material, and have sought to move these proceedings forward since then as productively as we can.

RH: Do, do you mind if I just interrupt? You said you can say no more about -,

AC: I can't – I can't seek to justify the reasons why you did not have the material earlier. We should have.

RH: and it -, can you provide the Panel with an explanation as to how that has come about?

AC: I don't think I can go further than the rather cryptic phrase I used earlier with departmental misunderstandings. Mr Faux, explained that on the defence's part, they have assumed that the Clarke material was not held by the Department for Education but by the House of Commons. It turned out it was held by the Department for Education, and that they should have provided it to those presenting the case for the NCTL earlier.

RH: sorry, who should have provided it?

AC: the DFE

RH: So, departmental understandings are between - ,

AC: between the - , there is a structure in place between the Department for Education and the NCTL put in place to try assure the judicial independence of Panels such as yourself, in that it is a separate executive agency. But it still under the auspices of the DFE. And that's what I – I don't think I can go further really. I think that need to take further instructions if there's anything well-detailed required."(sic).

82. In response to the presenting officer's submissions, Ms Langdon, who appeared on behalf of Ms Clarke, stated that she had read the Clarke transcripts which had been disclosed and that she had seen certain of the text before. When she had looked back at the witness statements which had been served by the NCTL in these proceedings, she recognised the same text in those statements.
83. The presenting officer said that it was a comment based on Ms Langdon's impression of similarity between the content of witness statements and the content of transcripts and that it was not surprising that there should be such similarity because it just means that the witnesses' accounts are consistent. As Ms Langdon had not cited to the Panel any more details to show that it was anything more than that, his position remained the same and that Ms Langdon's assertions should be made on the basis of something more than impression.
84. It is fair to say that Ms Langdon was taken to task as she was making such a serious allegation, in effect saying that this failure to disclose was not down to departmental misunderstanding at all, but that the transcripts had been in the possession of the solicitors instructed by the NCTL at the time the witness statements were prepared for the purposes of these proceedings. This was clearly contrary to the statement made to the Panel by the presenting officer on 12 April 2017 as referred to above. Ms Langdon was afforded some time to review the transcripts and the witness statements to find out whether she was able to present to the Panel examples of similarities between the text in both documents. Ms Langdon was unable to do so but did not resile from her position that such similarities existed. Ultimately, Ms Langdon did not pursue those submissions and the presenting officer stated that if such submissions were not being pursued, *"can we not just leave it at that?"*
85. Consequently, in the absence of any evidence to the contrary, the Panel accepted that the failures with regard to disclosure of the Clarke transcripts were caused by misunderstanding on the part of DfE. Indeed, in fairness to Mr Faux who appeared on behalf of Monzoor Hussain and Hardeep Saini, he had stated he was prepared to accept that the failures were on the basis of misunderstanding or mistake.
86. However, whilst this is not the end of the story, as at 12 April 2017, even though the Panel proceeded with its deliberations on the basis of the failures being caused by misunderstanding and mistake, it did not detract from the seriousness of the failure of the NCTL to comply with its disclosure obligations. Furthermore, had it not been for the time that the Panel necessarily had to take in deliberating on its decisions, this

failure by the NCTL to comply with its disclosure obligations may not have come to light. Even at that stage, as at 12 April 2017, the Panel considered the explanation which had been provided by the NCTL was wholly unacceptable, taking into account the scale, profile and importance of these proceedings and the impact they have had on the teachers. On the Panel's understanding as at 12 April 2017 that the failures were due to departmental misunderstandings, its view was that, even on that basis, such failure was simply unacceptable.

87. At the conclusion of the hearing on 12 April 2017, the Panel indicated that it would announce its decision on 3 May 2017. The presenting officer stated that he had another professional commitment beginning on 3 May 2017 and asked the Panel to accept his apologies for his absence on that date.
88. The Panel then carried out detailed deliberations with regard to its decision in respect of the applications of the four teachers for the proceedings against them to be discontinued. The Panel reconvened on 3 May 2017 intending to announce its decision when the hearing commenced at 9:30am.
89. Shortly before the hearing was due to commence, Mr Christopher Gillespie, Counsel, who was appearing in place of Mr Colman as presenting officer, approached the Panel through its legal advisor to indicate that, due to developments which had taken place since 12 April 2017, it was necessary to hand to the Panel a document entitled "*Note to Panel*" dated 1 May 2017. As a result of the issues raised in that Note, it was submitted by Mr Gillespie that the teachers' representatives should have the opportunity to make further submissions to the Panel in support of their applications to discontinue. It was at this stage, and as a result of this development, that Ms Darwin on behalf of Mr Faraz indicated her intention to join the applications made by the four teachers albeit on the restricted basis as outlined above.
90. It is worth pointing out that, despite the seriousness of the revelations contained within the Note, and despite the fact that the presenting officer, Mr Colman, and his colleague, Mr Geering, had appeared on each of the 34 hearing dates up to and including 23 June 2016 together with the additional hearing dates on 20 December 2016, 16 and 17 February 2017 and 10, 11 and 12 April 2017, neither were present nor did anyone from their instructing solicitors, Nabarro, attend.
91. The Note dated 1 May 2017 had been prepared by the firm of solicitors appointed by NCTL to act on its behalf in these proceedings, Nabarro, which, following a merger which took effect on 1 May 2017, had become part of CMS Cameron McKenna Nabarro Olswang LLP ("*CMS*"). For the purposes of this decision, the NCTL's solicitors will from now on be referred to as CMS even though the majority of events took place prior to 1 May 2017 when the firm operated under the title of Nabarro.
92. The Panel considers that the Note raised more questions than answers and was conspicuously lacking in specificity. It professes to be a Note designed to clarify the position for the Panel and teachers in respect of Mr Colman's response to matters raised by Ms Langdon in the hearing on 12 April 2017. It completely fails to provide such clarity.

93. However, it confirmed that CMS had been in possession of 25 of the Clarke transcripts at the outset of their instructions which was prior to the NCTL notifying any teachers, to include the respondent teachers, that there was to be an investigation in respect of their conduct. This is in direct conflict with the understanding both the Panel and the teachers' representatives had been allowed to believe for many months, namely that the transcripts were in possession of the Department for Education or, for example, the House of Commons and "departmental misunderstandings" had led to the failures on the part of the NCTL to meet its disclosure obligations.

94. The Note makes clear that the Clarke transcripts were utilised when the witness statements were being prepared for the purpose of these proceedings. Their importance, therefore, cannot be overstated. The transcripts are clearly relevant and CMS must have looked upon them as relevant as they were being used in the course of the preparation of the witness statements.

95. Paragraph 10 of the Note says as follows:

"10. The particular circumstances of this case, namely that the Clarke witnesses provided information in the belief that they had been assured strict confidentiality and anonymity, presented difficulties. Therefore care was taken to ensure that the statements provided by the witnesses contained all relevant evidence in the proceedings so as to make it available to the teachers and the Panel. No relevant information was deliberately withheld."

96. The Panel found it difficult to reconcile what is said in this paragraph with what has actually happened. For example, by the application served by CMS on 16 December 2016 in advance of the hearing on 20 December 2016, it is accepted that at least seven of the Clarke transcripts were relevant and should be disclosed. It should also not be forgotten that three of the seven Clarke transcripts which were described in the application of 16 December 2016 as relevant, were of Clarke interviewees who had not been called by the NCTL to give evidence in these proceedings. The transcript of one Clarke interviewee who also gave evidence in these proceedings on behalf of the NCTL was also included which suggests that it contained relevant information over and above that which was contained in her witness statement.

97. At paragraph 12 of the Note, CMS say that the Clarke transcripts were provided to Counsel along with other used and unused material in other parallel proceedings in November 2016. By that time, CMS had been in possession of the transcripts since late 2014. Taking account of the submissions made by the presenting officer at the hearings on 20 December, February 2017 and April 2017, and, in the absence of a clear explanation by the NCTL, the Panel has to assume that, even though the transcripts were handed to the presenting officer in November 2016, CMS had not informed the presenting officer at any stage that they had been in possession of the transcripts since late 2014 otherwise the Panel would not have been told at various stages over the next four months that the failure to disclose was as a result of departmental misunderstandings.

98. In any event, the teachers' representatives indicated that there were many questions which needed to be asked of those who had responsibility for the conduct of these proceedings, whether within the NCTL, or at CMS, or the presenting officer who had had conduct of the proceedings throughout.
99. Doing the best that he could, Mr Gillespie invited the Panel to adjourn the hearing until 14 June 2017 so that those who had been involved in the conduct of the proceedings could provide witness statements and then attend to give evidence to explain what had taken place with regard to disclosure.
100. The Panel decided that, taking account of the history to these proceedings, to concede to a request which would lead to a further delay of some six weeks when the conclusion of the proceedings had already been delayed by a number of months due to failures on the part of the NCTL was unrealistic and unacceptable.
101. The Panel therefore directed that witness statements, to include statements of truth, should be served by 10 am on 4 May 2017 from those individuals who could assist with regard to disclosure and that those individuals should then attend on 4 May 2017 to give evidence.
102. On 4 May 2017, the Panel and the teachers' representatives were served with a witness statement from the partner at CMS with conduct of the matter. She confirms that it was on 14 October 2014 that Nabarro received 25 of the Clarke transcripts to include transcripts of 10 interviewees who went on to be witnesses for the NCTL in these proceedings. This pre-dated by approximately 3½ months the date on which the witness statements were signed and finalised.
103. Despite the fact that the Panel had directed witnesses to attend to give evidence, the partner was not in attendance. The reason given for her non-attendance was that she had to attend a partners' meeting.
104. In the course of the hearing on 3 and 4 May 2017, Mr Gillespie accepted that, in the course of the various hearings including, and since, the hearing on 20 December 2016, the Panel and the teachers' representatives had listened to submissions on the issue of disclosure which were not correct and that the Panel had been misled.
105. The Panel sought clarification in particular with regard to paragraph 10 of the Note dated 1 May 2017. It was accepted by Mr Gillespie that one interpretation of CMS's approach was that it sought to circumvent a disclosure requirement by making sure that everything they considered relevant was included in the witness statement. Mr Gillespie stated that the decision to withhold disclosure of the transcripts was not, *"...an unconscious decision. It was misguided perhaps, but the intention was to make sure that what had been said to the Clarke Enquiry, insofar as it was relevant to what was then going to be before the Panel, was contained within the witness statement now, I'm not attempting to justify that."* He went on to say, *"it was not done in a way, I hope, to frustrate the proceedings. It was trying to balance a number of different issues and maybe getting the balance wrong."*

106. Later on, Mr Gillespie said, "*the inference concerned it be drawn that faced with those two alternatives, someone took the decision to put what they considered to be relevant material into a witness statement. Mainly without revealing the fact that that person had given evidence and that there was a transcript of that evidence to the Clarke Enquiry*". Mr Gillespie then admitted that such a decision would have to have been made when the person taking the statement was in possession of the Clarke transcript.
107. Taking all matters into account, the Panel is satisfied that the Clarke transcripts, whether used or unused, were deliberately withheld from disclosure. Indeed, the Panel finds it striking that there is no mention of the Clarke transcripts in the Schedule of Unused Material served by CMS prior to the commencement of the hearing on October 2015. This is despite the fact that CMS clearly understood the status of this category of document as, in an email from CMS on 15 December 2016, the transcript of a Clarke interviewee was, "*...attached and served by way of unused materials*". This is also despite the fact that the evidence of that particular Clarke interviewee was not considered to be relevant as his name does not appear in the list of Clarke interviewees in the NCTL's application of 16 December 2016.
108. Having set out the relevant background, the Panel now turns to each limb of the test to determine whether or not it would be fair and appropriate to discontinue these proceedings.

Limb 1 – Does it remain possible for the teachers to receive a fair hearing?

109. The NCTL has accepted that the late disclosure is of material which may be relevant to the extent that it may damage the NCTL's case and/or assist the teachers' cases. The teachers' representatives suggest that the amount of further disclosure runs to 7,500 pages. However, this includes the transcripts of the evidence in parallel proceedings against other teachers who, whilst not members of the Senior Leadership Team at the schools under scrutiny in these proceedings, were facing allegations of a similar type.
110. The Panel is prepared to accept the submission of Mr Colman that the amount of material which should have been disclosed but which the NCTL has failed to disclose runs to some 1,600 pages. This is still a very substantial amount of material.
111. In their written submissions which they both developed orally, Mr Faux and Ms Langdon provided examples of the way in which they say the teachers have been disadvantaged by the late disclosure. It was submitted by Mr Faux, Ms McDonald and Ms Langdon that, had they had this material at the time it should have been disclosed, it may have affected the way in which the teachers presented their cases and/or opened up other areas for cross-examination of witnesses called by the NCTL.
112. By way of observation, whilst the Panel acknowledged that primary responsibility for ensuring that there has been full and proper disclosure rested with the NCTL, it notes that, during the hearing, none of the teachers have applied for

disclosure of any specific category of document which has now belatedly been disclosed. There has been much debate at recent stages of the hearing about the disclosure of the Clarke transcripts, to which reference is made in the Clarke report itself. Whilst undoubtedly the NCTL should have dealt with the issue of disclosure of those transcripts at the outset, and without prompting from the teachers' representatives, rather than being required to do so since November 2016, no application for disclosure of those transcripts was made prior to, or during the substantive hearing. This included the time at which the parties argued whether or not the Clarke report should be admitted as evidence, the Panel's decision in relation to that issue having been announced on 24 November 2015.

113. In his written submission, Mr Faux refers to summaries of what the additional material illustrates as being relevant to the teachers' cases and how it could have been utilised when challenging the NCTL's case.
114. In a schedule to her written submissions, Ms Langdon has provided extracts from the documents which, in her submission, support the examples on which she relies.
115. At the hearing in April 2017, Mr Colman provided a bundle containing extracts of the documents which related to the examples provided by both Mr Faux and Ms Langdon, although both confirmed that they did not intend at that stage to apply for such documents to be admitted into evidence.
116. Throughout its consideration of the submissions of the teachers' representatives, and the examples outlined, the Panel assessed whether the non-disclosure has caused any prejudice to the teachers and, if so, whether it is possible for such prejudice to be remedied so that the teachers could still receive a fair trial.
117. The Panel has reviewed very carefully all of the examples which have been provided. Whilst it is not practical for the Panel to set out its findings in respect of each and every example outlined, the Panel considers that it would be illustrative of its approach to outline its views on the consequences of the late disclosure of material relating to the evidence of GD, RB, ST, AC and SW.
118. From the extract from the transcript of the interview of GD by GM recently disclosed, it is suggested that GD had seen media coverage of what is alleged to have been taking place at the schools which may have influenced her. It is also submitted that she has described Hardeep Saini in a way which revealed a certain mindset which again may cast doubt on her reliability.
119. The Panel agrees that these and, no doubt, other passages could, and would, have been put to GD in order to test, and potentially undermine, her credibility and reliability. However, if they applied for this evidence to be admitted, the teachers' representatives would be in the position of being able to make submissions on how such evidence undermined her reliability with very limited opportunity for the NCTL to challenge those submissions.

120. In his oral response, Mr Colman invited the Panel to conclude that, even though GD may have looked at the articles in the press, it did not mean that her evidence was not her own. That may be so, but no doubt the Panel would be invited to draw adverse inferences from such material when considering the extent to which GD was providing her evidence in an objective and balanced way. The same was true when considering the evidence she gave in support of the allegations against Mr Saini.
121. Ms Langdon indicated that it would be necessary for her to apply to recall a number of the NCTL's witnesses, no doubt GD being one of them, in order to explore this new evidence. However, the Panel would need to be convinced that this was necessary. As stated, Ms Langdon could make forceful submissions, without having to apply to recall GD, that this late disclosure showed that the evidence of GD could not be relied upon. Indeed, if anyone might need to recall any of the NCTL's witnesses in order to clarify their evidence, it would be Mr Colman. However, it is very unlikely that any such application from the NCTL would find any favour with the Panel and Mr Colman has already confirmed that he did not intend to apply for leave to submit any further evidence.
122. As for the material relating to RB, this centred around the Senior Leadership Team at Park View Educational Trust ("PVET") being placed under considerable pressure to absorb into PVET other schools such as Nansen, Golden Hillock and Al Furqan. The Panel did not believe it was disputed that the Senior Leadership Team was under significant pressure and that its resource had been stretched to an unacceptable level as a result of them being encouraged to take the schools into the Trust. Submissions could no doubt be made that RB's evidence supported that view.
123. The same could be said in respect of the evidence of ST. It has been submitted by Ms Langdon that the extract from the transcript of her interview showed that ST had direct and first hand involvement in the potential inclusion in PVET of other schools including Al Furqan. ST sets out how challenging this process was and she also had knowledge of Nansen and Golden Hillock. Again, the Panel has concluded that the same submissions could be made as in the case of RB. As stated, the Panel does not recall that there is any material dispute with regard to the pressure that was being brought to bear on the Senior Leadership Team throughout the time of the creation of the Trust and the subsequent proposals for the inclusion of other schools within the Trust. The Panel also recalls the evidence of Ms Clark that it was she who concluded that it would not be appropriate for Al-Furqan to be included in the Trust.
124. AC was cross-examined at length in the course of the hearing with regard to her level of knowledge of the reasons for the Education Funding Agency carrying out an inspection of Park View, Nansen and Golden Hillock. At one stage, under cross-examination, AC seemed to accept that she may have read an article in the Sunday Times with regard to the Trojan Horse letter and what was happening at PVET. Had the emails which had recently been disclosed, and which had been shown to the Panel, been available at the time she gave evidence, the Panel considered it was reasonable to assume that, taking account of the thoroughness of the cross-examination, these emails would have been put to her to suggest that she had greater knowledge than she was prepared to admit with regard to the reasons for the inspections taking place.

However, as in the case of GD, the teachers' representatives now have the opportunity to apply for those emails to be introduced into evidence and to make submissions to the Panel that their content illustrated that she had much greater knowledge than she was prepared to admit of the reasons for the inspections taking place. No doubt it would be argued that this further undermined her credibility and the reliability of her evidence.

125. Finally, the Panel noted the difference in content between the statement that SW had provided for the purpose of these proceedings and the content of her interview for the purposes of the Clarke Report. It is not surprising that the teachers' representatives were content for the statement of SW to be read into evidence as its content was not controversial. In her interview for the purposes of the Clarke Report, SW goes into considerably more detail about SACRE and her role within it. In particular, it is suggested by Ms Langdon that the account SW gave to Peter Clarke conflicts with the evidence of NCTL witnesses who had been saying that it was wrong for collective worship to be solely about Islam when a school had a determination but SW, who had been with SACRE for 9 years, said that it was acceptable.

126. In exercising its judgment in reaching a decision on whether it remains possible for the teachers to receive a fair hearing, the Panel wishes to stress that it recognises that this is a wholly unsatisfactory situation. Clearly, what should have happened is that the NCTL, with the assistance of its lawyers, should have fulfilled its responsibilities with regard to disclosure before the hearing commenced. The material disclosed since November 2016 which, by the NCTL's own admission, is capable of assisting the teachers' case or damaging that of the NCTL, should have been available to the teachers when preparing their defences to the allegations prior to the commencement of the hearing in October 2015. It should also have been available when testing the evidence of the NCTL's witnesses.

127. Nevertheless, the Panel considers the risk of any disadvantage or serious prejudice to the teachers' cases can be minimised through the process outlined above and with the Panel using appropriate case management. The teachers can apply to admit evidence out of the material disclosed by the NCTL since November 2016. A hearing can then be arranged as soon as practicably possible to enable the teachers' representatives to make oral submissions on the effect this new material has on the NCTL's case.

128. Consequently, notwithstanding the difficulties and complexities which have beset these proceedings, the Panel has concluded that it remains possible for the teachers to receive a fair hearing.

Limb 2 – is it fair and appropriate to discontinue these proceedings for abuse of process on the grounds that it offends the Panel's sense of justice and propriety to be asked to continue to hear the case against the teachers given the particular circumstances of the case?

129. The Panel understands entirely, and shares, the frustration and unhappiness at the present situation which had been caused by the NCTL's accepted failure to fulfil its responsibilities with regard to disclosure, a process which is critical in any proceedings but particularly so in proceedings of this size, complexity and importance.
130. As stated, the Panel is prepared to accept the submission of Mr Colman that the amount of material which should have been disclosed but which the NCTL failed to disclose ran to some 1,600 pages. However, not only does this represent a very substantial amount of material, but also the vast majority of it should have been disclosed, or, at the very least, the existence of it made known, to the respondent teachers prior to the commencement of the hearing in October 2015. The most serious and obvious examples of this are the Clarke transcripts but it should be stressed that the failures are by no means restricted to them.
131. The Panel relies on its outline of the background set out above but the Panel identified a number of issues which were a cause of great concern.
132. We now know that the NCTL and its solicitors knew of the existence of the Clarke transcripts at the very latest by October 2014. Indeed, by that time, the NCTL solicitors were in possession of 25 of the Clarke transcripts.
133. Many of the witness statements on which the NCTL rely were prepared with the benefit of the Clarke transcripts and it was the solicitors who decided what should be included in those witness statements and what should not.
134. Prior to certain of the NCTL witnesses signing their witness statements for the purposes of these proceedings, they were in possession of the transcripts of the interviews they gave in the course of the Clarke enquiry.
135. There was much discussion, and much concern expressed by the teachers' representatives, at the CMHs in July and August 2015 with regard to disclosure but at no stage did the NCTL lawyers make any reference to the fact that they had in their possession 25 of the Clarke transcripts.
136. There has been no explanation with regard to whether any review was undertaken regarding the balance of the Clarke transcripts which, it is understood, would number a further 25, to determine their relevance, ie whether it would assist the teachers' cases or undermine the NCTL's case. They were clearly available to the NCTL's solicitors for them to carry out such a review.
137. To support the seriousness of the previous omission, in the application lodged by the NCTL's lawyers dated 16 December 2016, the content of the transcripts of three Clarke interviewees who did not appear as NCTL witnesses are deemed by the NCTL to contain information which is relevant, ie it may assist the teachers' case or damage the NCTL's case.

138. Despite the obvious relevance of the transcripts, they are not included in the Schedule of Unused Material served on the teachers' representatives prior to the commencement of the hearing in October 2015.
139. On an analysis of paragraph 10 of the Note to Panel dated 1 May 2017 and the submissions made by Mr Gillespie on 4 May 2017, the Panel finds that the decision to make no reference at all to the existence of the Clarke transcripts, despite the fact that a number of them have been used by CMS in the preparation of the witness statements, was deliberate. The decision not to include any reference to the Clarke transcripts in the Schedule of Unused Material was also deliberate.
140. The Panel notes that, once the overall relevance of the Clarke transcripts became known to the teachers' representatives, a transcript which the NCTL considered to be irrelevant (i.e. it was not one of the seven transcripts included in the application of 16 December 2016) was nevertheless disclosed as an attachment to an email to the parties on 15 December 2016. It was, "*...attached and served by way of unused materials*".
141. If that was the basis on which it was disclosed, it makes it even more difficult to understand why the existence of the Clarke transcripts was not made known through their inclusion in the Schedule of Unused Material.
142. Through correspondence with the teachers' representatives, the NCTL and its representatives knew of the concerns with regard to failures in respect of disclosure prior to the Panel being notified of the urgent application for disclosure on 24 November 2016. Whilst the disclosure failures extend beyond them, there has been an understandable preoccupation with the treatment of, and state of knowledge of everyone with regard to, the Clarke transcripts.
143. Despite the hearing on 20 December 2016, the two day hearing on 16 and 17 February 2017 at which no less than nine advocates appeared before the Panel, and three more days of debate on 10, 11 and 12 April 2017, it was only on the morning of 3 May 2017 that the Panel and the teachers' representatives started to understand the true position with regard to the Clarke transcripts.
144. Even then, when the Panel directed that statements should be served by those who were able to assist the Panel with regard to the history of disclosure, the partner at the NCTL's solicitors, CMS, provided a statement which, like the Note, raised more questions than answers.
145. In spite of the critical stage reached in the proceedings, the partner failed to attend and the reason for such failure was that she was attending a partners' meeting. At the very least, the Panel finds that to be disrespectful but, more fundamentally, it meant that the Panel and the teachers' representatives were deprived of the opportunity of making further enquiries, and seeking further clarification, of what exactly had gone on when decisions were being taken in late 2014 and 2015 regarding the whole topic of disclosure.

146. It was suggested by Mr Gillespie that, even had the partner attended, she would not have been able to provide any clarification over and above what is said in her statement. The Panel rejects that submission. There were clearly a number of questions which could have been asked, perhaps the most important of which was the reasons for the decisions taken with regard to disclosure, or rather non-disclosure, of the Clarke transcripts in advance of the commencement of the hearing in October 2015. As for the NCTL, it was suggested to the Panel that there was only one person who could assist the Panel and he was abroad. Taking into account all the circumstances of this exceptional case, the Panel does not find this to be a satisfactory response.
147. Furthermore, the Panel is struck by the fact that, had it not been for Ms Langdon raising this issue, for which she was given a torrid time, both the Panel and the other teachers' representatives were prepared to accept that the disclosure failures were as a consequence of mistake and misunderstanding on the part of the Department for Education and NCTL.
148. The Panel considers that the Clarke transcripts were and are highly relevant. At the very least, they should have been included in the Schedule of Unused Material. Had they been so, and if the teachers' representatives had asked, in say August or September 2015, for copies of the Clarke transcripts to be provided to them, at that stage, the NCTL could have raised their concerns with regard to the assurances of confidentiality and anonymity which it says had been provided to the Clarke interviewees. No doubt the type of hearing which took place on 16 December 2016 and, more particularly, 16 and 17 February 2017, could have taken place in or about September 2015, ie before the hearing commenced on 19 October 2015.
149. As stated, the Panel and the teachers and their representatives have been approaching this issue on the basis that this failure was a consequence of "*departmental misunderstandings*". The Panel is prepared, on balance, to find that, up to 12 April 2017, Mr Colman was working on the same assumption although it is surprising to say the least that, when he was provided with certain of the Clarke transcripts in November 2016, Mr Colman neither asked, nor was told, when CMS had come into possession of them.
150. The Panel does not consider that Mr Colman would have set out to mislead the Panel and the parties deliberately in such a serious manner. In support of this finding, the Panel notes that it was at the conclusion of the hearing on 12 April 2017 that enquiries must have been made by or on behalf of Mr Colman which revealed that the Clarke transcripts had been in the possession of CMS since October 2014 and this led to the Note to the Panel of 1 May 2017 (which we were told was dated incorrectly and should have been dated 2 May 2017). Had Mr Colman looked to mislead the Panel deliberately, no such enquiries would have been made and the Panel and the teachers' representatives would have been none the wiser.
151. However, it is most unsatisfactory that the hearing concluded on 12 April 2017, all parties knowing that the Panel would then deliberate at length on what are complex and important applications. The Panel had reached a decision on what it had heard up

to and including 12 April 2017 and nothing whatsoever was said until the Panel reconvened on 3 May 2017 with a prepared and detailed decision, ready to announce it to the parties. It is suggested by Mr Gillespie that there were many discussions and to-ing and fro-ing in the intervening period. That may be, but, first, it is completely unsatisfactory that the Panel was not notified by, say, the end of the week commencing 10 April 2017 that there were issues that would have to be canvassed on its return and, secondly, that the Panel was being invited to conclude that it was in a position to proceed with further submissions on the applications to discontinue purely on the strength of the Note.

152. It must have been obvious to the NCTL and its representatives that this was a most serious development. To find that it had not been considered necessary for either Mr Colman (who in fairness had said that he was unavailable) or Mr Geering or anyone from CMS, or anyone from the NCTL, to attend on 3 May 2017 to assist the Panel, however uncomfortable that process may have been, is simply unacceptable.

153. It was then suggested by Mr Gillespie that the whole issue should be put off for another six weeks so that the NCTL and its lawyers could have time to prepare witness statements and then attend to attempt to persuade the Panel that there were proper explanations for the failures which had taken place. The Panel believes that it should have been alerted to the issue before 3 May 2017 and the NCTL should have taken steps to provide a full and proper explanation for these failures at the hearing on that date. Again, in the Panel's view, it shows a lack of appreciation not only for the seriousness of the situation but also for the impact this must be having on the teachers.

154. Even had the NCTL been allowed a further six weeks to put together witness statements to endeavour to explain the failures, it would still remain the case, as conceded by Mr Gillespie, that the Panel and the teachers have listened to submissions which did not reflect the true position and the Panel has been misled.

155. The Panel also finds it quite extraordinary that, despite making the submissions that he did in December 2016, February 2017 and April 2017, it was not until sometime after the conclusion of the hearing on 12 April 2017 that Mr Colman, the presenting officer throughout the 34 days of the hearing which commenced 18 months ago, became aware that the Clarke transcripts had been in the possession of his instructing solicitors since October 2014.

156. The Panel also wishes to comment on the assertion at paragraph 7 of the Note where it says that the Panel is aware that the NCTL has never sought to rely on the findings of Peter Clarke in these proceedings and it has been provided solely as background to the matters. The Panel does not accept that description of the way in which the NCTL has treated the Clarke report. It is true that this is how its status is described in the Opening Note of Mr Colman but it is the Panel's view that the content of the Clarke report has grown in importance to the NCTL as the hearing progressed. There is no clearer illustration of this than the fact that the Clarke report is referred to in the NCTL's Scott Schedule as one of three categories of evidence on which the Panel is invited to rely when considering whether allegation 1 has been found proved.

157. It is also relevant to the Panel that these clear and admitted failures with regard to disclosure have not been discovered by the NCTL or its representatives and then volunteered to the Panel and the teachers. At each stage, whether by the application lodged on 24 November 2016 or following Ms Langdon's submissions on 12 April 2017, the true picture has had to be extracted.
158. Much of this development occurred after the Panel had received confirmation that the NCTL representatives had professed to have met their disclosure obligations.
159. The Panel is aware that it has gone into very considerable detail in outlining its findings. It considers it is particularly important in this case that the parties fully understand the rationale for its decision.
160. Due to the NCTL's failures with regard to the important process of disclosure, the Panel has been thwarted not once, but twice, in announcing important decisions to the parties, leading to further delays. Indeed, the first occasion related to the announcement on 23 December 2016 of its overall findings in respect of the allegations.
161. This case has been described by Mr Colman as probably the most complex that the NCTL has ever had to deal with. The Panel does not doubt that this is correct even without the developments that have taken place since November 2016.
162. Those developments with regard to disclosure and the new and disturbing information which has come to light since 12 April 2017 have added, quite unnecessarily, many additional layers of complexity to this case. That has already had the consequence of adding a further five months to these proceedings, with the teachers facing the prospect of having to endure the proceedings for a number of months in the future before the hearing can be brought to a conclusion.
163. The Panel knows that it must carry out a balancing exercise when considering where the public interest lies.
164. Mr Colman says the following in his Opening Note: *"This case is not about an evil plot to indoctrinate young people in extremist ideologies. It is about a failure to respect diversity..... They [the teachers] were not malicious or ill-willed but they believed that the best way to educate the children of their community was to make them mirror their vision of good Muslims."*
165. The allegations faced by the teachers in these regulatory proceedings, which are strenuously denied, are undoubtedly serious. The public interest in the protection of pupils and the public, the maintenance of the reputation of the profession and upholding proper standards of conduct means that it is important that these proceedings should be allowed to progress so that the Panel is able to announce its decisions with regard to those allegations.
166. However, it is also crucial that there is public confidence in the proper regulation of the profession and that there is trust in the integrity of the process.

167. It is for the Panel to exercise its discretion in a judicial way to decide, in the particular circumstances of this case, whether there has been an abuse of process such that it offends the Panel's sense of justice and propriety to be asked to continue to hear the case against the teachers. The Panel has to ask itself whether the manner in which this case has been pursued undermines public confidence in the regulatory system and brings it into disrepute.
168. Mr Gillespie invites the Panel to conclude that even though the most recent development is highly regrettable, it does not change the position that existed at the conclusion of the hearing on 12 April 2017 and that it would be fair for the hearing to proceed. The Panel disagrees. It may be that a process has been identified by which the late disclosure can be accommodated so that any risk of the teachers being disadvantaged or suffering serious prejudice is reduced to a minimum. However, clearly what should have happened is that proper disclosure should have taken place prior to the commencement of the hearing in order to nullify the potential risk of any disadvantage to the teachers. It cannot possibly be said that the failures have had no influence on the proceedings at all. The Panel considers they have had a significant influence which has caused the Panel to consider adaptive procedural processes through which the consequences of the failures may be addressed.
169. The Panel has deliberated as to whether the failures by the NCTL to comply with its disclosure obligations are as a result of bad faith and whether there has been any improper behaviour on the part of anyone involved in the presentation of this case either within, or acting on behalf of, the NCTL. The Panel is not satisfied that there is sufficient evidence to illustrate bad faith. However, there appears to have been a significant breakdown in communication between those responsible for the conduct of this case. The Panel has also found the deliberate decision to withhold, and not declare the existence of, the Clarke transcripts prior to the commencement of proceedings to represent an extraordinarily serious error of judgement as opposed to bad faith.
170. However, it is not necessary for the Panel to find that there has been bad faith for it to conclude that it would be fair and appropriate to discontinue these proceedings. As stated, it has to conclude that, weighing all the circumstances of this particular case in the balance, it would offend the Panel's sense of justice and propriety to allow this hearing to proceed any further.
171. This is not a case of a procedural error being made by the NCTL which it then discovers, brings immediately to the attention of the parties and remedies. There have been serious failures with regard to disclosure, which are far-reaching and extend over the entire life of this case. Such failures arise out of decisions which were consciously made, and affect core evidence on which the NCTL has relied. The Panel now knows, belatedly and only by chance, that these serious failures have beset these proceedings from the very outset.
172. It is fundamental to the proper administration of justice that the Panel must be able to rely on the regulatory authority acting in a way which ensures the integrity of the process. Sadly, it is accepted by those presenting the case on behalf of the NCTL

that the Panel, the teachers and their representatives have been told matters which misrepresented the true position and that they have been misled.

173. Even now, once the failures have been identified, the Panel considers that there has been a lack of candour and openness with regard to the underlying reasons for those failures and a lack of cooperation in assisting the Panel to get to the bottom of what has happened. There have been a number of occasions, whether at hearings or via correspondence, when the NCTL, through its legal representatives, could have alerted the Panel and the teachers' representatives to the status of, and decisions made in respect of, the Clarke transcripts and other documents which should have been disclosed.

174. In exercising its judgment, the Panel has at no stage sought to reach a decision which is designed to punish the NCTL for its failures. The Panel understands that a decision to stay, or discontinue, proceedings should only be taken in exceptional circumstances. The Panel also takes fully into account the investment in these proceedings, in terms of time, emotion and money and the genuine public interest and importance in knowing the findings of the Panel in respect of the allegations which have been made. However, the Panel has decided that, in the particular circumstances relating to this case, there has been an abuse of the process which is of such seriousness that it offends the Panel's sense of justice and propriety. What has happened has brought the integrity of the process into disrepute. In such circumstances, the Panel finds that the stage has been reached where it would be fair and appropriate for these proceedings as against Monzoor Hussain, Hardeep Saini, Arshad Hussain, Razwan Faraz and Lindsay Clark to be discontinued.

175. Consequently, in accordance with paragraph 4.54 of the Teacher Misconduct – Disciplinary Procedure Rules, these proceedings are discontinued.