Neutral Citation Number: [2020] EWHC 1188 (Admin)

Case No: CO/704/2019

**IN THE HIGH COURT OF JUSTICE**
**QUEEN'S BENCH DIVISION**
**ADMINISTRATIVE COURT**
**SITTING AT BIRMINGHAM CIVIL JUSTICE CENTRE**

Royal Courts of Justice
Strand, London, WC2A 2LL
Date: 13th May 2020

**Before**:

**MR JUSTICE SWIFT**

- - - - - - - - - - - - - - - - - - - - -

**Between:**

**CAROLINE ANN REILLY** **Appellant**
**- and –**

**(1) TEACHING REGULATION AGENCY**
**(2) SECRETARY OF STATE FOR EDUCATION** **Respondents**

- - - - - - - - - - - - - - - - - - - - -

**Alex MacMillan** (instructed by **Spencer Shaw Solicitors**) for the **Appellant**
**Iain Steele** (instructed by **Government Legal Department**) for the **Second Respondent**

Hearing date: 4 February 2020

- - - - - - - - - - - - - - - - - - - - -

# APPROVED JUDGMENT

**Covid-19 Protocol: This judgment was handed down remotely by circulation to the parties' representatives by email, released to BAILII and publication on the Courts and Tribunals Judiciary website. The date and time for hand-down is deemed to be 10:00am on the 13 May 2020.**

**MR JUSTICE SWIFT**

## A. Introduction

1. This is an appeal by Caroline Ann Reilly brought under regulation 17 of the Teachers' Disciplinary (England) Regulations 2012 ("the 2012 Regulations") against a decision of the Secretary of State for Education contained in a document dated 18 January 2019 ("the Decision document").

2. From September 2009 until July 2011 Ms Reilly was employed as the head teacher of a primary school in the west midlands ("the School"). In July 2011 she was dismissed from her position by the School's governors. In June 2010 she had been suspended from her duties as head teacher pending disciplinary investigation. The allegations made arose from her failure to disclose to the School that she was in a relationship with a man, referred to in the documents for the proceedings before me as "A". In February 2009, A had been arrested on suspicion of making and processing indecent images of children. In January 2010 he was convicted of those offences. The disciplinary allegations against Ms Reilly were that by failing to disclose her relationship with A, following his conviction for making and possessing indecent images of children, she had (a) failed to disclose information and material which risked putting the school in breach of its obligation to safeguard the welfare of its pupils; and (b) was guilty of professional misconduct in that the failure to disclose was inconsistent with her contractual obligations to act honestly and with integrity, and to act consistently with the requirement to maintain the relationship of trust and confidence between her and her employer. These matters were considered at a disciplinary hearing on 6 May 2011. At the end of that hearing Ms Reilly was informed she would be dismissed. That decision was confirmed by letter dated 11 May 2011. Ms Reilly appealed against the decision to dismiss. An appeal hearing took place on 12 July 2011. An appeal panel dismissed her appeal and confirmed the decision to dismiss Ms Reilly from her employment. That decision was recorded in a letter to Ms Reilly dated 14 July 2011.

3. By section 141D of the Education Act 2002 "relevant employers", defined to include local authorities and those exercising education functions on behalf of local authorities, must, when they have dismissed a teacher on grounds of serious misconduct, consider whether it is appropriate to provide information about the case to the Secretary of State. By section 141B of the 2002 Act, the Secretary of State may investigate matters that amount to "unacceptable professional conduct" or which could "bring the teaching profession into disrepute". That section further provides that where, following an investigation, the Secretary of State finds there is a case to answer, he must decide whether to make a Prohibition Order against the person concerned. A Prohibition Order prohibits the person subject to it from carrying out teaching work (as defined in section 141A of the 2002 Act). The Secretary of State's powers to investigate and discipline are further detailed in the 2012 Regulations. In short summary, the Secretary of State must inform the teacher of the allegation against her giving her the opportunity to respond, and then decide whether there is a case to go to a Professional Conduct Panel. If there is such a case it is considered by a Panel at a hearing. If the Panel's conclusion is that there has been unacceptable professional conduct, or conduct that may bring the teaching profession into disrepute, the Panel must make a recommendation to the Secretary of State on whether he should make a Prohibition Order. The Secretary of State must consider that recommendation and then decide whether or not to make a Prohibition Order.

4. In this case, the School provided information to the Secretary of State about Ms Reilly's misconduct. The Secretary of State having considered the matter in accordance with the 2012 Regulations referred it to a Professional Conduct Panel. By letter dated 24 January 2013 Ms Reilly was informed that the hearing would take place between 3 and 5 April 2013. In fact, the Panel hearing was adjourned several times: first because a witness was unavailable; and then, at Ms Reilly's request, pending determination of Employment Tribunal proceedings in which she claimed that the School's decision to dismiss her was unfair. It took some time to resolve the unfair dismissal claim, which was ultimately dismissed by the Supreme Court in a judgment handed down 14 March 2018.

5. By a letter dated 22 May 2018, Ms Reilly was informed that the Panel hearing would take place on 14 -17 January 2019. The allegations for consideration were set out in that letter as follows.

> "The Panel will hear an allegation that you are guilty of unacceptable professional conduct and/or conduct that may bring the profession into disrepute in that you:
>
> 1. Failed to disclose your relationship with a convicted sex offender A to your employer despite the advice you received from the Director of Operations and Performance at the National Probation Service dated 17 February 2010;
>
> 2. Mislead (sic) the investigation by stating you were advised that there was no reason for you to disclose that you had a relationship with a convicted sex offender to your employer;
>
> 3. Failed to demonstrate insight into how your relationship with a convicted sex offender may have impacted on your role as Head Teacher;
>
> 4. Your conduct at paragraphs 1 and 2 was dishonest."

6. The hearing took place as scheduled, but in Ms Reilly's absence. The proceedings were completed within two days; the Professional Conduct Panel made a recommendation to the Secretary of State that a prohibition order should be made with a provision for review after two years. The Secretary of State's decision was made 18 January 2019. The operative part of the decision reads as follows:

> "**This means that Ms Caroline Reilly is prohibited from teaching indefinitely and cannot teach in any school, sixth form college, relevant youth accommodation or children's home in England.** She may apply for the prohibition order to be set aside, but not until 18 January 2021, two years from the date of this order at the earliest. This is not an automatic right to have the prohibition order removed. If she does apply, a panel will consider whether the prohibition order should be set aside. Without a successful application, Ms Caroline Reilly remains prohibited from teaching indefinitely.

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

7. In this appeal, Ms Reilly pursues two grounds of appeal: first that the hearing in January 2019 ought not to have gone ahead in her absence; second that the decision to make the Prohibition Order was wrong.

## B. Decision

### *(1) The decision of the Professional Conduct Panel to proceed even though Ms Reilly was absent.*

8. On 3 January 2019 Ms Reilly sent an email to the Panel. She stated she intended to represent herself at the hearing, but was not fit to attend; she stated she did not think she would be fit to attend a hearing in January or February 2019. She asked for the hearing to be rescheduled. Later the same day, Mr Graham, a senior caseworker, replied asking Ms Reilly to explain the reasons why she was unfit to attend the hearing. Ms Reilly's response, just over an hour later was as follows:

> "I am currently feeling unfit to attend.
>
> I cannot provide any confidential medical information as I have been advised otherwise.
>
> I do not know what documentation you would require."

On Monday 7 January 2019 Clare Hastie, a solicitor at Kingsley Knapley, a firm retained by the Panel, sent an email to Ms Reilly. She explained that the request to adjourn needed to be considered by the Panel. She suggested the matter be considered at a hearing by telephone sometime that week. She asked Ms Reilly to provide copies of any documents relied on in support of the application to adjourn the hearing. Ms Reilly replied on 8 January 2019. She stated that because she was unemployed she could not obtain a Fit to Work Note; she said she had no money to pay for a doctor's letter or medical certificate. She said she would not be fit enough either for the Panel hearing or to participate in the proposed phone hearing. She said she was not refusing to attend. She went on to state "I would really appreciate being left alone for at least six weeks to aid my current situation". On Thursday 10 January Ms Hastie sent a further email. That email made it clear that the decision on Ms Reilly's application to adjourn the panel hearing remained outstanding. As to provision of information to explain why Ms Reilly was unable to attend the Panel hearing, Ms Hastie wrote this:

> "It would assist the Panel in their decision making if you could provide medical evidence from your GP or another medical practitioner confirming your current health condition and the impact of this condition on your ability to participate in the hearing. We are not requesting that you obtain a Fit to Work Note. Your GP will be able to provide a letter for the purposes of the hearing. We note the comments you make about the fee that the GP may charge for this. We would be willing to contact

> your GP and obtain the requested information on your behalf. We would seek your written consent to do so beforehand and would only pursue this course of action if it would assist you in obtaining the relevant documentary evidence."

Ms Reilly sent an email in reply on Friday 11 January 2019 (the working day before the first day set for the hearing). She repeated that she was not unwilling to attend the hearing, but was unfit to attend. In response to the offer Ms Hastie had made in her email, Ms Reilly replied,

> "I have also considered your request for my signed and written consent to access medical evidence.
>
> I am not giving any signed or written consent to my personal and confidential medical records or medical evidence.
>
> I have looked at the TRA Disciplinary Regulations and cannot see any reference to support your request for my consent to my personal and private medical data.
>
> The ICO have informed me that under the GDPR you would need a Lawful Basis under Article 6 and a Special Category under Article 9."

9. There were two further emails that day: first from Ms Hastie pointing out that in the absence of evidence to explain why Ms Reilly was unfit to attend the hearing, the Panel could decide to proceed with the case in Ms Reilly's absence, and then this from Ms Reilly.

> "… The Panel will need to be informed that there is a waiting time of at least 2 weeks for a GP appointment. There would be a further wait of up to a week to receive a private medical report which would also incur a charge.
>
> At this stage I am feeling harassed and intimidated by you and the content of your emails. You are pressurising me to attend the GP surgery and obtain a private medical report at a cost that I cannot afford. Your alternative solution of giving you signed written consent to access a medical report, feels like coercion; in fact it feels as if I am being bullied into doing as you want, following a specific course of action."

10. Ms Reilly was not present on 14 January 2019 at the commencement of the hearing. The Panel considered whether to proceed in Ms Reilly's absence, and decided to go ahead with the hearing. The reasons for that decision are set out in the Decision document (dated January 2019, which contains both the decision of the Panel and the decision of the Secretary of State). They are to the following effect. (1) The Panel satisfied itself that Ms Reilly had been given proper notice of the hearing in accordance with regulation 19 of the 2012 Regulations, and paragraphs 4.11 – 4.12 of the guidance document issued by the Secretary of State dated April 2018 titled "Teacher

misconduct: disciplinary procedures for the teaching profession". (2) The Panel noted that there was no evidence to explain why Ms Reilly was unfit to attend the hearing. (3) The reasons state that the Panel "had regard to the requirement that it is only in rare and exceptional circumstances that a decision should be taken in favour of the hearing taking place". (4) The Panel noted that it already had a detailed witness statement from Ms Reilly in response to the allegations; and noted that it was due to hear evidence from two witnesses, who could be asked questions. (5) The Panel noted that the hearing had been adjourned on earlier occasions, and the reasons then record "in light of the lack of any evidence the Panel was not persuaded that an adjournment would result in the teacher attending at a later date". (6) The Panel's reasons then concluded as follows:

> "The Panel had regard to the seriousness of this case, and the potential consequences for the teacher. It accepted that fairness to the teacher is of prime importance. However, by taking such measures referred to above, the Panel considered that it could address that unfairness in so far as is possible. The Panel took account of the inconvenience and adjournment would cause to the witnesses, the seriousness of the allegation and the public interest, and considered on balance that the hearing should proceed today."

11. The submission for Ms Reilly before me is that the Panel's decision to proceed in her absence was perverse. I accept that the Panel's reasons for this decision as set out in the Decision document are a little hard to follow. The way they are presented is more stream of consciousness than structured reasoning and consideration. For example, having stated that a hearing should proceed in a party's absence only in "rare and exceptional circumstances", what follows does not, in terms, seek to explain which of the matters that are then set out (alone or taken together) comprise a situation that is "rare or exceptional". In short, this part of the Decision document is ramshackle. Moreover, I struggle to see the source for the Panel's self-direction that it should proceed in the absence of a teacher "only in rare and exceptional circumstances". The Panel's reasons suggest that the authority for this proposition lies in the judgment of the Court of Appeal in *General Medical Council v Hayat* [2018] EWCA Civ 2796. But that is not so. The material of parts of the judgment of Coulson LJ in that case are at paragraphs 30 – 43. There is no reference there to the criterion identified by the Panel in this case. Rather, Coulson LJ approves the approach stated by Sir Brian Leveson P at paragraphs 17 – 23 of this judgment in *General Medical Council v Adeogba* [2016] 1 WLR 3867. That approach can be summarised in this way. If a Panel is satisfied a teacher has had notice of a hearing, the discretion whether or not to proceed must then be exercised having regard to all circumstance known to the Panel. Fairness to the teacher is a prime consideration; but the public interest must also be considered. In this context the relevant public interest is that in the effective prosecution of disciplinary proceedings in the teaching profession. Where there is good reason not to proceed, the case should be adjourned; where there is not, it is only right that the hearing should proceed.

12. In this appeal, the issue for me is whether the conclusion reached by the Panel was wrong. When an appeal is directed to a decision taken in the exercise of a discretion, such as a decision on an application to adjourn, an appeal court should not intervene unless the course taken by the first instance decision maker lies beyond the area of judgment reasonably available to it.

13. In some respects the Panel's reasoning on the question whether or not to proceed in Ms Reilly's absence is defective. The Panel appears to mis-state (albeit in Ms Reilly's favour) the test to be applied on the application to adjourn; and there is little attempt to tie the list of matters referred to as having been "noted" by the Panel to any logical chain of reasoning, or balance of matters for or against adjournment. However, the Panel did conclude that an adjournment would not result in Ms Reilly's attendance on another date. Given the correspondence between 3 and 11 January 2019 that was a conclusion the Panel was entitled to reach. Ms Reilly had been given more than ample opportunity to explain the circumstances of the illness that she said prevented her from attending the hearing, yet she provided no explanation. Ms Reilly's emails suggest she was seeking to avoid the disciplinary process rather than engage with it in the way to be expected of a qualified teacher. The Panel was entitled to conclude from those emails that Ms Reilly was unwilling rather than unable to engage with and participate in the disciplinary process. That was sufficient for the Panel to conclude that no good reason had been shown why the hearing should be adjourned, and that, if an adjournment was allowed, there was no prospect she would attend a future hearing. If this is taken to found the Panel's reasoning, the final paragraph of this part of the decision becomes more readily explicable: from the premise that Ms Reilly would not attend a future hearing, the Panel reasoned that it could still undertake a fair consideration of the complaints against her: (a) on the basis of the explanation she had already provided both in response to the matters raised by the Secretary to State and in response to the substantially identical circumstances considered in the course of the School's disciplinary hearings; and (b) taking account of any further information provided by the witnesses who were due to give evidence to the Panel.

14. Mr MacMillan who appears for Ms Reilly in this appeal makes a further point. This concerns the procedure by which Ms Reilly's request to adjourn was determined. He submits Ms Reilly should have been given notice of any submissions to be made to the Panel by the Presenting Officer about whether or not to allow the application to adjourn. I do not accept Mr MacMillan's submission. Ms. Reilly was given the opportunity to take part in a hearing by phone prior to 14 January 2019 to consider her request to adjourn. She declined that opportunity. She had been told, prior to 14 January, that if she did not provide information about the ill health that prevented her from taking part in the disciplinary hearing, the Panel might decide to go ahead in her absence. She provided no information. All this being so, it was not unfair for the Panel, on the first day set for the hearing, to adopt the procedure it did to decide the adjournment application. Given the content of the emails sent by Ms Reilly from 3 January 2019 it is fanciful to suggest she was disadvantaged by not being told prior to 14 January, precisely what would be said by the Presenting Officer to the Panel about whether or not the application to adjourn should be granted. Ms Reilly had had more than ample opportunity to make her case on this issue.

*(2) The decision to make a Prohibition Order*

15. Although the right of appeal provided under the 2012 Regulations is a right of appeal against the decision of the Secretary of State to make a Prohibition Order, in this case at least it is not realistic to draw any clear line between the Secretary of State's decision and the Panel's reasons for recommending that the Secretary of State make a Prohibition Order. As the part of the Decision document that sets out the Secretary of State's reasons makes clear, the conclusions reached by the Panel on the four allegations made against Ms Reilly were the premises for his conclusion that it was appropriate to make a Prohibition Order.

16. Mr MacMillan on behalf of Ms Reilly, submits that the conclusions reached by the Panel on each of the four disciplinary allegations were flawed. The first allegation was that Ms Reilly failed to disclose her relationship with A to the school "despite the advice … received from the Director of Operations and Performance at the National Probation Service dated 17 February 2010". Mr MacMillan challenges the suggestion that "advice" was given and submits that Ms Reilly was under no statutory requirement to disclose her relationship with the School. The second allegation was that Ms Reilly had "misled" the School's disciplinary investigation "by stating [she had been] advised that there was no reason … to disclose…" her relationship with A. Mr MacMillan submits that Ms Reilly had not misled the investigation. The third allegation stated that Ms Reilly had "failed to demonstrate insight into how [her] relationship with [A] may have impacted on [her] role as Head Teacher". Mr MacMillan's submission is that the conclusion that Ms Reilly lacked insight is flatly contradicted by the steps she did take, relied on against her for the purposes of the second allegation, to ask various organisations whether she should tell the School about her relationship with A. The fourth allegation was that Ms Reilly's failure to disclose her relationship with A had been "dishonest", and that when she "misled" the School's disciplinary investigation that too had been dishonest. Mr MacMillan submits there was no sufficient basis for the finding of dishonestly.

17. There are significant criticisms that can be levelled not only at the Panel's reasoning but also at the way the Secretary of State, through his Teaching Regulation Agency, approached the task of formulating and determining the disciplinary allegations against Ms Reilly. Most importantly, the formulation of the complaints and the Panel's reasoning when addressing those complaints is over-complicated. This problem starts with the formulation of the disciplinary allegations. The true point arising from Ms Reilly's conduct was not complex. As head teacher of a primary school she had failed to disclose to the School's governors the relationship she had (personal, not professional) with a person convicted of creating and possessing indecent images of children. Did that amount either to serious misconduct or conduct that might bring the teaching profession into disrepute? However, rather than state that matter in a plain and straightforward way, it was addressed through four overlapping, elaborate, and to my mind, unnecessarily grandiose allegations. The first allegation is framed by reference to "advice" given by the National Probation Service. The substance of this is that in February 2010 shortly after A had been sentenced, Ms Reilly wrote to the Probation Service raising a complaint about the arrangements in place to monitor A. On 17 February 2010, Mr Bates the Probation Service Director of Operations replied. His letter contained the following passage.

> "I accept that I do not know the full facts of the matter at this stage and I can understand your sense of anger that my "private, home and work life were going to be intruded upon" however you will understand that A is convicted sex offender now under our supervision for three years. I do not know the nature of your relationship with this man and whether or not it extends to more than friendship I do believe however that if you have not already done so, it would be wise for you to disclose this relationship to the education authorities whether by way of discussion with your Chair of Governors or some other route."

This final sentence was relied on as the "advice" for the purposes of the first allegation. Yet this led only to a sterile debate over whether Mr Bates' comment could be construed as formal or material advice. That served only to draw attention away from the true issue: whether as head teacher, Ms Reilly realised or ought to have realised that she should have told the School about her relationship with A. The point made by Mr Bates at the end of his letter was significant only because it was an indication that Ms Reilly either did realise, or ought to have realised she needed to tell her governors about that relationship.

18. A similar point arises on the second allegation. For the purposes of the School's disciplinary hearing Ms Reilly had produced a number of emails in support of her case that she had received advice to the effect that she was not required to tell the School about her relationship with A. Those emails do not make out that case. Some of the emails were between Ms Reilly and the Disclosure and Barring Service. But there is no email in which Ms Reilly sets out her position clearly, and asks directly whether she should tell the School about her relationship with A. The consequence was that in the disciplinary process Ms Reilly failed to satisfy the School's disciplinary panel on this important part of her response to the charges against her. However, the second allegation formulated by the Secretary of State characterises this as an attempt to "mislead" the School. That characterisation is inapt. Moreover, it is also unnecessary. The only material point was that Ms Reilly did not receive the advice she had claimed to have received, and in those circumstances could not explain her conduct on the basis she had sought advice from an appropriate person and had acted upon it.

19. The third allegation was put in terms of a failure to "demonstrate insight". On the facts of this case, that is an over-elaborate way of saying that by failing to disclose her relationship with A to the School, Ms Reilly's conduct fell below the standard reasonably to be expected of a competent primary school head teacher. However, the way in which the allegation was put led the Panel also to consider whether Ms Reilly's misconduct extended to failure in the course of the School's disciplinary procedure to admit the complaints against her. While it is the case that if a person charged with misconduct then accepts that the misconduct has occurred that is capable of being mitigation, the converse is not true. Just because a person charged with misconduct fails to admit her misconduct, that will not aggravate the misconduct alleged to have taken place. The risk that was run by the use of the jargon phrase "lack of insight" was of confusion between the latter (inappropriate consideration), and the former (appropriate consideration).

20. The fourth allegation, that Ms Reilly's conduct in respect of the first and second allegations was "dishonest", was at the least, clumsy. The substance of the allegation was that Ms Reilly's failure to tell the School about her relationship with A was the result of conscious choice rather than error. Thus, it was not just that Ms Reilly ought to have realised that a competent head teacher would have disclosed her situation to her employer, but rather that Ms Reilly did realise that she should, but chose not to. Putting the matter in terms of "dishonesty" failed to capture the substance of the situation and added an unnecessary layer of complication.

21. It may be hoped that on future occasions the Secretary of State, or more precisely those advising him, will adopt a clearer, more direct and simpler approach to formulating disciplinary charges and setting out the reasons that explain whether such charges are upheld or dismissed. However, what is important in the case at hand is whether any of the criticisms I have set out are material either to any of the submissions made by Mr

MacMillan on behalf of Ms Reilly or to any other matter that would require this appeal to be allowed.

22. I have carefully considered each of the points raised in Mr MacMillan's submissions. I do not think that any of them identifies any error that requires the Secretary of State's decision to make a Prohibition Order to be set aside. The first submission was to the effect that Ms Reilly was subject to no statutory obligation to disclose her relationship with A the School's governors. This may well be so, but it is not a matter that was material. Neither the Panel nor the Secretary of State relied on any conclusion that Ms Reilly was subject to any such obligation. While, as I have explained, much (in my view too much) attention was paid by the Panel to whether or not the letter from the Probation Service amounted to "advice", the true issue arising was whether on the basis of that letter or otherwise, Ms Reilly as a head teacher of a primary school ought to have realised or did realise that she should have told the School's governors about her relationship with A. Despite the reservations set out above, I accept that the substance of the Panel's conclusion, acted on by the Secretary of State, was that Ms Reilly did realise this. I consider that was a conclusion that the Panel was both entitled to reach and was correct to reach.

23. The second submission was that Ms. Reilly did not "mislead" the School's disciplinary hearing. Putting the matter in terms of whether the Panel was "misled" mischaracterised what had happened. However, the Panel's reasoning did recognise the real point, namely that Ms Reilly had failed to make good her case that she had received advice to the effect that she did not need to disclose her relationship with A to the School's governors. She could point to no clear statement to that effect. When sending emails asking advice on the point, she had not set out clearly what her circumstances were. Rather than provide any explanation for her failure to tell the School's governors those emails, as written, only help to make it clear that Ms Reilly did recognise that her relationship with A was a matter of concern.

24. Mr MacMillan's third submission was that the Panel reached contradictory conclusions on the second and third allegations. I do not agree. The facts relating to the second allegation, which considered the matter subjectively, from Ms Reilly's point of view, showed that Ms Reilly did realise that her relationship with A was, at the least, problematic. The third allegation rested on a different premise – whether, objectively Ms Reilly ought, as head teacher of a primary school, to have realised her relationship with A needed to be brought to the attention of the School's governors. The Panel's answer to that question (accepted by the Secretary of State) was yes. There was no inconsistency between that conclusion and the conclusion on allegation two. The respective allegations looked at the matter from different perspectives. I am also satisfied that the third allegation formulated in terms of a lack of "insight" did focus only on whether objectively, Ms Reilly ought to have realised she needed to disclose her relationship with A to the School's governors. It did not stray into the altogether more difficult territory where a failure to accept an allegation of misconduct may itself be characterised either as an aggravating factor, or as an additional form of misconduct.

25. Mr MacMillan's final submission was that there was no sufficient basis for the conclusion in respect of the first and second allegations that Ms Reilly had acted "dishonestly". This is the part of the reasoning in the Decision document that is most problematic. The suggestion of dishonesty aggravates an allegation of misconduct. But in this case where the misconduct alleged was failing to disclose information, what was relevant was not really whether the failure could be labelled "dishonest" but rather whether the failure was deliberate rather than merely negligent. The Panel's reasoning

as to whether Ms Reilly had acted dishonestly is artificial, at least in terms of the application to the facts of this case of any legal definition of dishonesty. Ultimately, the Panel concluded that Ms Reilly had acted dishonestly because she had acted deliberately. Later in its reasoning, the Panel refers to this as an "offence of dishonesty" not amounting to "serious dishonesty". To my mind that observation only serves to underline that whether or not Ms. Reilly had acted dishonestly was not really to the point; rather the issue was whether or not she had acted intentionally when she decided not to disclose her relationship with A. Mr MacMillan's submission is that the conclusion of dishonesty is inappropriate. I agree, but only to the extent that the legal notion of dishonesty is inapt to capture the Panel's conclusion that Ms Reilly's conduct was aggravated because it was deliberate. Thus, although this allegation was mis-formulated in that it applied an inappropriate label, and although that mis-formulation fed into the Panel's reasoning, I do not consider the Panel fell into any material error. The substantive conclusion reached was that Ms Reilly had acted deliberately. That was a relevant aggravating feature; and the conclusion on that matter was certainly one that the Panel was entitled to reach.

26. I have considered two further points. The first is whether the errors I have identified were such as to put Ms Reilly at any material disadvantage: specifically, did she have a fair opportunity to understand and respond to the substance of the case against her, regardless of the precise manner in which the allegations were formulated? My conclusion is that Ms Reilly did have a fair opportunity to respond. I have been shown a copy of the "Notice of Proceedings" form. That document is a table prepared in anticipation of the Panel's hearing. One column of the table sets out questions posed in relation to the hearing and the issues to be determined, the other is for the teacher's responses. One question asked is whether the allegations are admitted. Ms Reilly completed this form on 7 September 2018, providing a fairly detailed indication of her response to the allegations of misconduct made against her. I am satisfied from her response that she understood that the issues included both whether she realised she should have told the School's governors about her relationship with A, and whether as head teacher she ought to have realised that she should have told them. The second matter I have considered is whether, looked at overall, the Secretary of State was right to make the Prohibition Order he made. I am satisfied that the decision to make the Prohibition Order rested on conclusions: (a) that a reasonably competent head teacher would have disclosed a relationship with a person convicted of making images and possessing indecent images of children; and (b) that Ms Reilly realised this but nevertheless chose not to inform the School's governors. Based on those conclusions, and giving due allowance for the Secretary of State's assessment of the actions necessary to maintain standards in the teaching profession and those required to maintain public confidence in the integrity of that profession, I am satisfied that the Prohibition Order was correctly made.

27. In the premises, this appeal is dismissed.