Neutral Citation Number: [2025] EWHC 665 (Admin)

Case No: AC-2024-LON-000162

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION
ADMINISTRATIVE COURT

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 20 March 2025

Before :

MRS JUSTICE LANG DBE

- -

Between :

THE KING **Claimant**

on the application of

GLAWDYS LEGER
- and -
SECRETARY OF STATE FOR EDUCATION **Defendant**

- -
- -

Michael Phillips and Roger Kiska (instructed by **Camerons Solicitors LLP**) for the **Claimant**
Jack Anderson and Richard Hanstock (instructed by the **Government Legal Department**) for the **Defendant**

Hearing date: 26 February 2025

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Approved Judgment

This judgment was handed down remotely at 10.30 am on 20 March 2025 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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MRS JUSTICE LANG DBE

Mrs Justice Lang :

1. The Claimant applies for judicial review of the finding, made by a Professional Conduct Panel ("the PCP"), appointed by the Defendant ("the Secretary of State"), that the Claimant was guilty of unacceptable professional conduct, and the Secretary of State's decision, dated 11 December 2023, pursuant to section 141B(1) of the Education Act 2002 ("the EA 2002"), accepting the PCP's recommendation that no prohibition order should be made, but that the finding of misconduct should be published, under regulation 8(5) of the Teachers' Disciplinary (England) Regulations 2012 ("the 2012 Regulations").

2. The Claimant's grounds of challenge may be summarised as follows:

   i) The PCP failed to take proper account of relevant considerations, namely the immediate context in which the Claimant's comments were made.

   ii) The decision was unfair at common law and/or Article 6 ECHR in that crucial findings were made which were not included in the original allegations or evidence, and not put to the Claimant in cross-examination.

   iii) The PCP misdirected itself that there was a duty on the Claimant to provide a broad and balanced curriculum. That duty only applies to schools but not to individual teachers.

   iv) The Panel misdirected itself on Convention Rights under Article 9 and/or Article 10 ECHR.

   v) The decision is incompatible with the Claimant's Article 9 and/or Article 10 ECHR rights in that the interference is not prescribed by law and fails the three-stage test set out in *Purdy v DPP* [2010] 1 AC 345, at [40];

   vi) The interference with the Claimant's Article 9 and/or Article 10 ECHR rights is "not necessary in a democratic society" and fails the four stage test in *Bank Mellat v Her Majesty's Treasury (No 2)* [2013] UKSC 38, [2014] AC 700*,* at [20];

   vii) The publication of the decision is incompatible with the Claimant's rights under Article 8 ECHR and data protection rights.

3. Permission to apply for judicial review was granted on the papers by Sheldon J. on 14 May 2024.

History

4. The Claimant was born in April 1980. She came to the UK for her Postgraduate Certificate in Education in 2008-2009. From 2012 to 2017, she was self-employed teaching French and Spanish in primary schools, and working as a private tutor.

5. In August 2017, she secured a permanent job as a Teaching Assistant at Bishop Justus Church of England School ("the School"), which is a secondary school run by the Aquinas Trust. In November 2017, she successfully applied for the post of French and

Spanish teacher. She also taught some Religious Studies lessons and some PSHE lessons[1].

6. The School's Employee Handbook advises teachers as follows:

> "**Character of the Trust**
>
> As an employee in a Church of England academy you are required to have regard to the Christian character of the Trust and its foundation and to undertake not to do anything in any way contrary to the interests of the Foundation.
>
> Teachers
>
> You are required, if called upon to do so by the Headteacher, to give religious education in accordance with the doctrines of the Church of England and the Trust Deed of the academy. You are also required to take part in and lead acts of religious worship if required by the Headteacher."

7. The School's Religious Studies Policy was referred to at the PCP hearing.

8. The Claimant is a born-again "conservative" Roman Catholic Christian. She explained in her witness statement to the PCP that her faith is a mainstream form of Christianity which affirms the truthfulness of the Bible. The Claimant believes that biological sex is immutable and should not be tampered with, and sexual relationships should only exist within a marriage between a man and a woman. However, she states that she would never condemn or discriminate against anyone whose views differ from hers. As a Christian, she is called upon to love everyone, including people with whom she disagrees.

9. In her witness statement, the Claimant described aspects of the teaching at the School which she considered were not Christian, in particular, LGBTQ+[2] relationships and ideology, and abortion. The School promoted Equality Diversity and Inclusion ("EDI") initiatives and teachers were asked to display "Christian Ethos, Curriculum and Equalities, Diversity and Inclusion" posters in their classrooms. The Claimant did display the poster but then informed Mr Kings, the Chaplain, that she was not willing to continue to do so. The Claimant was frequently expected to share LGBTQ+ information and resources, including videos, with her pupils, in PHSE and Religious Studies lessons. She showed some LGBTQ+ material to her classes, but she found it distressing, misleading, and contrary to her beliefs, and so stopped doing so.

10. The Claimant said that she explained her difficulties to Ms Amosu, Assistant Headteacher and Head of EDI, who suggested that she should not teach these topics. She also informed the Chaplin and Mr Hadaway, Head of Year 8. Mr Hadaway suggested that she should consult the Headteacher and that perhaps he could teach those topics to her class.

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[1] Personal, Social, Health and Economic Education.

[2] Acronym for Lesbian, Gay, Bisexual, Transgender, Queer and the + stands for all other identities.

11. On 8 February 2022, the Claimant was asked to teach Year 7, in a Religious Studies lesson, a segment described as "Human Rights", which included a PowerPoint presentation on LGBTQ+ topics and protected characteristics. On that occasion, she explained her Christian beliefs to the class, and why LGBTQ+ ideology was contrary to those beliefs, and the pupils asked questions about these issues.

12. Pupil A was in the class. According to her witness statement, on a previous occasion she had told her mother that the Claimant was "being transphobic in class and talking how trans people are not in the right mindset and later in life come to know they are wrong and will know their original gender". Her mother advised her to make notes of what was said in class the next time this occurred. About a month later, on 8 February 2022, Pupil A took brief notes of the Claimant's comments and informed her parents. Her mother used the notes as the basis of an email to the School, complaining that the Claimant's comments were "very distressing" to Pupil A "who strongly believes people should be who they are" and she is "exploring who she is – as many children are at this age". Pupil A later referred to her own sexuality in her oral evidence to the PCP.

13. The School took disciplinary proceedings against the Claimant. She was suspended in March 2022 and dismissed in May 2022. The details of the School's disciplinary proceedings were not provided to the Court.

PCP and Secretary of State proceedings

14. The School referred the matter to the Teaching Regulation Agency ("TRA"). On 14 July 2023, the Claimant was sent a letter informing her that her case would be heard by a PCP sitting in public. The Claimant was invited to make an application for all or some of the hearing to be held in private, pursuant to paragraph 5.85 of the Disciplinary Procedures, but did not do so.

15. The PCP comprised two teachers and a lay panellist, assisted by a legal adviser. The hearing, which was held in public, took place over 5 days. The PCP heard evidence from the Claimant, Pupil A and her mother, and three character witnesses. Brief written statements from five other pupils were also in evidence.

16. The allegations and the findings were as follows:

> "You are guilty of Unacceptable Professional Conduct **[Proved]**
>
> and/or conduct which may bring the profession into disrepute **[Not Proved]**
>
> in that:
>
> 1) Whilst working as a teacher at Bishop Justus Church of England School in or around February 2022 you made inappropriate comments whilst teaching a class with words to the effect of:
>
> a. Being and/or LGBTQ+ is 'not fine'; **[Proved]**

b. LGBTQ+ is a sin; **[Proved]**

c. that God should be before LGBTQ+; **[Proved]**

d. God will love you more if you are not LGBTQ+; **[Not Proved]**

e. people will always be seen by God as having their birth gender; **[Proved]**

f. that transgender people are 'just confused' **[Proved]**

2) Your conduct at Allegation 1 was contrary to Fundamental British values in that it lacked tolerance to those with different beliefs. **[Not Proved]**"

17. The PCP considered that the proven comments at 1(a) to (f) were inappropriate for the following reasons:

"Having found that Ms Leger made the comments as set out at particulars 1a, 1b, 1c, 1e and 1f, the panel went on to consider if those comments were inappropriate. In doing so, the panel had regard to the following factors:

1. The duty on teachers and schools to provide a broad and balanced curriculum.

The panel was provided with PowerPoint slides taken from the scheme of work which comprised of a number of lessons. Prior to delivery Ms Leger discussed concerns about LGBT content with the School chaplain. In her statement, she wrote "I remember leaving and saying that this was going too far now and that I am going to tell them (my pupils) the Truth…". The panel noted that Ms Leger was determined to tell the class her views.

Following this, Ms Leger decided in lesson 4 on 8 February 2022 to tell her class that she would not be teaching lesson 6 because of LGBTQ+ content, which for religious reasons she could not support.

This resulted in pupils not receiving a balanced curriculum in line with the School's religious education policy, namely

"Religious education will challenge stereotypes, misinformation and misconceptions about race, gender and religion. It seeks to present religions and world views in all their richness and diversity in terms of beliefs, traditions, customs and lifestyle in a sensitive and accurate way in order to encourage a positive attitude towards diversity. All questions, views, and opinions will be treated with sensitivity and respect."

> 2. The uniquely influential role teachers play in views of the world and the risk of introducing bias.
>
> The panel had in mind paragraph 3.32 of the Department for Education departmental advice for school leaders, school staff, governing bodies and local authorities on the Equality Act 2010 and schools, dated May 2014, which stated:
>
> *"3.32 – ...it should be remembered that school teachers are in a very influential position and their actions and responsibilities are bound by much wider duties than this legislation".*
>
> This is relevant when considering Ms Leger's decision only to present her views on this aspect of the curriculum.
>
> 3. Not taking account of other strands of Christian views or of those with no religious views. The panel noted the School's Religious Studies policy, which states:
>
> *"...we not only promote a rigorously academic curriculum but also foster students' curiosity and ability to question critically and think deeply..."*
>
> *"...although the teacher is objective and challenges the students to critically evaluate religious beliefs and practices, we live in a pluralistic society and indeed RS teachers and students are of different faiths and none. Opinions are not accepted freely but challenged and students are encouraged to see how beliefs and ideas impact on everyday life and become actualised in reality."*
>
> Ms Leger's conduct was therefore not aligned with School policy."

18. The PCP found that allegation 2 was not proved because it accepted that the Claimant was tolerant of people from all backgrounds and different beliefs.

19. The PCP found that the proven allegations amounted to unacceptable professional conduct. It stated:

> "The panel was satisfied that the conduct of Ms Leger in relation to the facts found proved, involved breaches of the Teachers' Standards. The panel considered that, by reference to Part 2, Ms Leger was in breach of the following standards:
>
> ▪ Teachers uphold public trust in the profession and maintain high standards of ethics and behaviour, within and outside school, by showing tolerance of and respect for the rights of others
>
> ▪ Teachers must have proper and professional regard for the ethos, policies and practices of the school in which they teach.

> The panel found that Ms Leger's comments lacked respect for the rights of others.
>
> However, the panel did not find that her comments derived from a lack of tolerance. The panel was concerned that in expressing her personal beliefs as the Truth, Ms Leger failed to understand that her position of influence as a teacher could have a disproportionate impact on all pupils in the class.
>
> The panel found that Ms Leger's actions were at risk of upsetting pupils in the lesson. However, the panel was satisfied that Ms Leger had no intention of causing distress to pupils.
>
> In having regard to the ethos, policies and practices of the School, the panel noted that Ms Leger had:
>
> • Previously not shown a video about LGBTQ+ issues to her class; and
>
> • Removed an Equality Diversity and Inclusion (EDI) poster which featured three candles bearing these words but made no reference to LGBT.
>
> The panel found that Ms Leger's choice not to present a balanced view undermined the School community's aspiration to provide a supportive environment for children who may be exploring sexual identity."

20. The PCP heard submissions on the Claimant's behalf in relation to Articles 9 and 10 of the ECHR, and applied the proportionality principles set out in *Bank Mellat,* per Lord Sumption, at [20], stating as follows:

> "1. The panel's objective in this process is sufficiently important to justify the limitation of Ms Leger's rights under Article 9 and 10. The panel considered that its role was to maintain professional standards and to reflect the teacher's position of influence in society.
>
> 2. The panel concluded that the objective is rationally connected. The panel considered that the restriction is not to prevent the teacher from holding, or in line with School policies, sharing her views or those of a specific group. It is about, in doing so, excluding, over a period of time, alternative views.
>
> 3. The panel found that there is no less intrusive measure that could be adopted at this stage of these proceedings, but this is a consideration that the panel will take account of at the next stage.

> 4. In light of the above, the panel was satisfied that a fair balance has been struck between the rights of Ms Leger and the interests of the public/community."

21. The PCP was satisfied that the Claimant's conduct amounted to misconduct of a serious nature which fell significantly short of the standards expected of the profession, and amounted to unacceptable professional conduct.

22. The PCP concluded that, although the conduct was serious, it would not negatively damage public perception of the profession and did not amount to conduct that might bring the profession into disrepute.

23. The PCP considered whether to recommend a prohibition order, but concluded that the nature and severity of the behaviour were at the less serious end of the spectrum and that publication of the findings was sufficient and in the public interest, applying *Bank Mellat* proportionality principles.

24. The PCP made its decision on 13 October 2023. It reconvened on 6 December 2023 to announce its decision in public, following which it made its recommendation to the Secretary of State.

25. On 11 December 2023, Mr Marc Cavey, a decision maker on behalf of the Secretary of State, considered and accepted the PCP recommendation not to make a prohibition order and stated:

> "I agree with the panel that a prohibition order is not proportionate or in the public interest. I consider that the publication of the findings made would be sufficient to send an appropriate message to the teacher as to the standards of behaviour that were not acceptable and that the publication would meet the public interest requirement of declaring proper standards of the profession."

26. Prior to publication, a copy of the decision was sent to the Claimant on 13 December 2023 informing her that the decision would be published within two weeks. No representations were received until after the decision was published.

Statutory framework and guidance

27. Section 141B(1) EA 2002 provides that the Secretary of State has responsibility to regulate teachers' conduct, in particular by investigating cases in which it appears that a teacher "may be guilty of unacceptable professional conduct or conduct that may bring the teaching profession into disrepute".

28. Section 141B(2) EA 2002 provides that where the Secretary of State finds on an investigation of a case under section 141B(1) that there is a case to answer, the Secretary of State must decide whether to make a prohibition order in respect of the person.

29. Schedule 11A to the EA 2002 requires the Secretary of State to make regulations about functions under section 141B. The 2012 Regulations provide for the procedure

by which such decisions are made. Since 2018, the TRA, which is an executive agency of the Department for Education, has administered these arrangements on behalf of the Secretary of State.

30. By regulation 5 of the 2012 Regulations, where it appears to the Secretary of State that the teacher may have committed unacceptable professional conduct in a manner coming within section 141B(1) EA 2002, the teacher is to be informed of the allegation and given an opportunity to respond to it. Where under regulation 5(4) the Secretary of State considers that the matter should be considered by a PCP, such a panel is convened under regulation 6 and its procedure is governed by regulation 7.

31. Regulation 7 of the 2012 Regulations provides that a PCP must consider cases referred to it by the Secretary of State and, where it finds that the teacher has been guilty of, *inter alia*, unacceptable professional conduct, it must make a recommendation to the Secretary of State as to whether a prohibition order should be made.

32. Regulation 8 of the 2012 Regulations provides that the Secretary of State must consider any recommendation before deciding whether to make a prohibition order. Regulation 8(4) provides that where the Secretary of State decides not to make a prohibition order, "the Secretary of State must notify the teacher in writing of the decision, giving reasons for the decision".

33. Regulation 8(5) of the 2012 Regulations provides:

> "The decision of the Secretary of State following the determination of a professional conduct panel must be published".

34. Regulation 11 of the 2012 Regulations provides that the hearing of a PCP must take place in public, subject to limited exceptions set out in regulation 11(3):

> "A professional conduct panel may exclude the public from a hearing or any part of a hearing—
>
> (a) where it appears to the panel to be in the interests of justice or the public interest to do so; or
>
> (b) where the teacher who is the subject of the case requests that the hearing or part of the hearing should be in private and the panel does not consider it to be contrary to the public interest to do so."

35. Regulation 15 of the 2012 Regulations requires the Secretary of State to publish prescribed information in relation to a teacher in respect of whom a prohibition order is made, including the teacher's name, date of birth and Teacher Reference Number; the name of the institution at which they were last employed or engaged; the dates on which the order was made and takes effect; and the reasons for making the order. Regulation 15 ensures the publication of particulars that might not necessarily have featured in the reasoned decision, but which are necessary to enable employers and the public to satisfy themselves that an applicant for a teaching position is not

prohibited from taking it up by reference to the register of prohibited teachers maintained under section 141C EA 2002.

Teachers' Standards

36. Regulation 4 of the 2012 Regulations provides that "any decision made under these Regulations may take into account any failure by a teacher to comply with the personal and professional conduct standards set out in part two of "Teachers' Standards" published by the Secretary of State in July 2011". These standards "define the minimum level of practice expected of trainees and teachers" (paragraph 5). They provide (so far as is material):

> "A teacher is expected to demonstrate consistently high standards of personal and professional conduct. The following statements define the behaviour and attitudes which set the required standard for conduct throughout a teacher's career.
>
> • Teachers uphold public trust in the profession and maintain high standards of ethics and behaviour, within and outside school, by:
>
> • treating pupils with dignity, building relationships rooted in mutual respect, and at all times observing proper boundaries appropriate to a teacher's professional position
>
> • having regard for the need to safeguard pupils' well-being, in accordance with statutory provisions
>
> • showing tolerance of and respect for the rights of others
>
> • not undermining fundamental British values, including democracy, the rule of law, individual liberty and mutual respect, and tolerance of those with different faiths and beliefs
>
> • ensuring that personal beliefs are not expressed in ways which exploit pupils' vulnerability or might lead them to break the law.
>
> • Teachers must have proper and professional regard for the ethos, policies and practices of the school in which they teach and maintain high standards in their own attendance and punctuality."

37. The procedures for decision-making in this context are set out in guidance entitled "*Teacher misconduct: Disciplinary procedures for the teaching profession*", last updated in May 2020. There is also separate guidance, updated in February 2022, entitled "*Teacher misconduct: the prohibition of teachers: Advice on factors relating to decisions leading to the prohibition of teachers from the teaching profession*" ("the

Advice") as well as statutory guidance entitled "*Keeping Children Safe in Education*" ("KCSIE") under section 175 EA 2002, to which schools must have regard in observing their safeguarding duties.

38. The Advice "sets out the factors to be considered by a professional conduct panel" and "provides information about the types of behaviours and actions that would likely cross the 'threshold' between acceptable and unacceptable conduct" (paragraph 1). It provides that "'unacceptable professional conduct' is misconduct of a serious nature, falling significantly short of the standard of behaviour expected of a teacher" to be assessed by reference to the knowledge and experience of the panel, including by reference to all applicable guidance.

Grounds of challenge

39. In considering this challenge, I bear in mind the well-established principles applicable to the Court's consideration of professional disciplinary appeals, summarised by Pepperall J. in *Sutcliffe v Secretary of State for Education* [2024] EWHC 1878 (Admin) at [46.4] – [46.7]. These principles also apply here, although in a claim for judicial review, the claimant must establish a public law error on the part of the decision-maker, or a breach of the Human Rights Act 1998, if human rights are engaged.

40. The PCP had the benefit of hearing the witnesses and had primary responsibility for deciding the disputed facts. Generally, the court will not interfere with a panel's finding of fact unless it is perverse in the sense that there is either no evidence to support the finding, or it is one which no reasonable panel could have reached.

41. Both the PCP and the Secretary of State are experts and informed decision-makers who are well placed to assess whether the proven conduct constitutes unacceptable professional conduct or may bring the teaching profession into disrepute. The court will pay proper deference to their expertise before interfering with the exercise of their professional judgment.

42. The PCP and the Secretary of State are also well placed to assess whether a sanction is necessary in the public interest and the court will pay proper deference and only interfere if satisfied that the decision was wrong.

Ground 1: Context

Claimant's submissions

43. The Claimant submits that the PCP and the Secretary of State took the Claimant's words out of context, and/or failed to take proper account of relevant considerations, namely, the context in which the comments were made. The context was that the Claimant was teaching religious education; it was well-known in the School that she is a Christian; she was responding directly to a pupil's questions about LBGTQ+ issues; and the words were spoken in the course of a single discussion with pupils on 8 February 2022.

44. While the PCP did not accept that her comments were a "one-off incident", it did not have any evidence to the contrary. The PCP "prayed in aid" two incidents, namely, not showing a video about LGBTQ+ issues to her class and removing an EDI poster from classroom. The Claimant submits that these incidents were "nothing to the point, they were not subject to any prosecution and were not subject to any criticism by the school or the TRA prosecutors".

45. The allegations "followed the note scribbled by an 11-year old Pupil A at the lesson". It was not a full note and did not represent a full picture of what the Claimant said or the discussion in class. Other more positive comments from other pupils were not mentioned by the PCP.

46. The Claimant referred to extracts from the Department for Education advice "*The Equality Act 2010 and schools*" (May 2014):

> "Sexual orientation and marriage and civil partnership
>
> 3.24 Schools need to make sure that all gay, lesbian or bi-sexual pupils, or the children of gay, lesbian or bi-sexual parents, are not singled out for different and less favourable treatment from that given to other pupils. They should check that there are no practices which could result in unfair, less favourable treatment of such pupils. For example, it would be unlawful for a school to refuse to let a gay pupil become a prefect because of his sexual orientation.
>
> 3.25 Maintained secondary schools have a legal requirement to teach about the 'nature of marriage' when they are delivering sex education. Many academies (including free schools) also teach about this topic, and when they do so, they must have regard to the Secretary of State's guidance on sex and relationship education. Schools must accurately state the facts about marriage of same sex couples under the law of England and Wales, in a way that is appropriate to the age and level of understanding and awareness of the pupils.
>
> 3.26 Teaching about marriage must be done in a sensitive, reasonable, respectful and balanced way. Teachers are subject to professional requirements, the school curriculum, school policies, and anti-discrimination duties towards colleagues and pupils.
>
> 3.27 No school, or individual teacher, is under a duty to support, promote or endorse marriage of same sex couples. Teaching should be based on facts and should enable pupils to develop an understanding of how the law applies to different relationships.
>
> Teachers must have regard to statutory guidance on sex and relationship education, and to meet duties under equality and human rights law.

Sexual orientation and religion or belief

3.28 There is a relationship between protection because of sexual orientation and protection of religious freedom. Protection in the area of discrimination on grounds of religion or belief and the right to manifest one's religion or belief is set out earlier in this chapter (3.11 – 3.16).

3.29 Many people's views on sexual orientation/sexual activity are themselves grounded in religious belief. Some schools with a religious character have concerns that they may be prevented from teaching in line with their religious ethos. Teachers have expressed concerns that they may be subject to legal action if they do not voice positive views on same sex relationships, whether or not this view accords with their faith. There are also concerns that schools with a religious character may teach and act in ways unacceptable to lesbian, gay and bisexual pupils and parents when same sex relationships are discussed because there are no express provisions to prevent this occurring.

3.30 Schools with a religious character, like all schools, have a responsibility for the welfare of the children in their care and to adhere to curriculum guidance. It is not the intention of the Equality Act to undermine their position as long as they continue to uphold their responsibilities in these areas. If their beliefs are explained in an appropriate way in an educational context that takes into account existing guidance on the delivery of Sex and Relationships Education (SRE) and Religious Education (RE), then schools should not be acting unlawfully.

3.31 However, if a school conveyed its belief in a way that involved haranguing, harassing or berating a particular pupil or group of pupils then this would be unacceptable in any circumstances and is likely to constitute unlawful discrimination.

3.32 Where individual teachers are concerned, having a view about something does not amount to discrimination. So it should not be unlawful for a teacher in any school to express personal views on sexual orientation provided that it is done in an appropriate manner and context (for example when responding to questions from pupils, or in an RE or Personal, Social, Health and Economic education (PSHE) lesson). However, it should be remembered that school teachers are in a very influential position and their actions and responsibilities are bound by much wider duties than this legislation. A teacher's ability to express his or her views should not extend to allowing them to discriminate against others. "

47. The Claimant also referred to statements made by ministers in 2013 when same-sex marriage was legalised. I was shown a press report of a statement by Mr Michael Gove, made on 2 February 2013 when he was the Secretary of State for Education, assuring teachers that they would not be disciplined or dismissed if they told pupils that marriage should be between a man and a woman, provided that they explained that same-sex marriage was legal. The then Minister for Women and Equalities, Ms Maria Miller, stated in the House of Commons that teachers would have to explain the law on marriage, including same-sex marriage, but they would not have to promote it (Hansard HC, second reading of the Marriage (Same Sex Couples) Bill, 5 February 2013).

48. The Claimant also referred to the Department for Education "*Relationships Education, Relationships and Sex Education (RSE), and Health Education: Statutory guidance for governing bodies, proprietors, head teachers, principals, senior leadership teams, teachers*" (13 September 2021) at paragraph 21 which states:

> "All schools may teach about faith perspectives. In particular, schools with a religious character may teach the distinctive faith perspective on relationships, and balanced debate may take place about issues that are seen as contentious."

49. In the light of the Departmental guidance, the PCP and the Secretary of State failed to give proper weight to the context, namely, that the Claimant was teaching a Religious Studies lesson in a Christian school, and that the Claimant was answering a pupil's question.

Conclusions

50. In my judgment, on reading the evidence before the PCP and its decision, it is clear that the PCP properly considered the Claimant's comments in the context of her known Christian beliefs, and took into account that they were made in the context of a discussion about LGBTQ+ rights in a single Year 7 Religious Studies lesson in a Church of England school.

51. Mr Phillips' account of the evidence in his skeleton argument at paragraphs 26 and 27 is incomplete. First, although her comments were a response to questions from pupils, the discussion was initiated by the Claimant. The Claimant's evidence, at paragraph 63 of her witness statement, was that she had viewed the slides provided for the lesson, and they caused her discomfort and concern. She decided that she could not teach anything related to the LGBTQ+ ideology. Therefore she "started the lesson by saying that as a Christian I do not support the LGBT ideology …" and "[t]hen, some pupils ….started to put their hands up and were asking some questions, which I was happy to answer" (*emphasis added*). Second, it is incorrect to assert that the PCP did not have any evidence before them of other similar incidents. Although the PCP was only concerned with the allegations before it, evidence was given by Pupil A that the Claimant had made "transphobic" remarks in a class about a month earlier, as a result of which her mother advised her to take notes in future.

52. Although Pupil A's notes were brief, Pupil A gave oral evidence to the PCP of the context in which the comments were made. The PCP found her evidence to be

"measured and reflective". The brevity of the notes did not cause unfairness as the Claimant accepted that she probably made comments (b), (e) and (f), and appeared only weakly (if at all) to deny comments (a) and (c).

53. The Claimant gave detailed evidence of the context in which the comments were made, both in the lesson itself and events leading up to the lesson, in her witness statement and her oral evidence. The Claimant's decision not to show a video about LGBTQ+ issues to her class and to remove an EDI poster from her classroom was part of the history and the context that the Claimant provided in her own evidence, to explain and justify her actions. As these matters had been raised by the Claimant and were relevant, the PCP and the Secretary of State were entitled to take them into account.

54. I agree with the Secretary of State's submission that the PCP's assessment that the comments were inappropriate expressly engaged with the relevant context, rationally incorporating its views of the Claimant's responsibilities as a teacher in that setting, having regard to the School's own policies. This was indeed a Christian school, but the Claimant's own evidence was that she had been unwilling to support that school's policy. The result was the nuanced finding that while "Ms Leger's comments lacked respect for the right of others" this did not derive "from a lack of a tolerance" nor had she any "intention of causing distress to pupils". That said, her "actions were at risk of upsetting pupils in the lesson" and her "choice not to present a balanced view undermined the School community's aspiration to provide a supportive environment for children who may be exploring sexual identity". It was open to the PCP to conclude that such behaviour amounted to unacceptable professional conduct.

55. In Ground 1, the Claimant disagrees with the findings of fact made by the PCP and the weight that the PCP accorded to certain parts of the evidence. However, these were matters for the PCP to determine.

56. The Claimant has not established any error of law under Ground 1, and therefore Ground 1 does not succeed.

Ground 2: Unfairness

Claimant's submissions

57. The Claimant submits that the decision was unfair at common law and/or Article 6 ECHR in that crucial findings were made which were not included in the original allegations or evidence, and not put to the Claimant in cross-examination.

58. The crux of the PCP's reasoning is the assertion that the Claimant failed to provide a balanced Religious Studies curriculum by failing to impart the alternative view on the LGBTQ+ issues. Instead, from her position of influence as a teacher, she presented "her own personal beliefs as the Truth". In the proportionality analysis conducted by reference to the *Bank Mellat* principles, the PCP considered "the restriction is not to prevent the teacher from holding, or in line with School policies, sharing her views …. It is about, in doing so, excluding, over a period of time, alternative views".

59. The substance of this allegation is new. The Claimant had no notice of it and no opportunity to respond to it.

Conclusions

60. Article 6 ECHR applies to professional disciplinary proceedings where a person is at risk of losing his profession, office or income. The right to a fair hearing includes the requirement for "equality of arms", which means that it is necessary to strike a fair balance between the positions of the parties and each party should be afforded a reasonable opportunity to present their case and not be placed at a disadvantage. Article 6 ECHR mirrors the requirements of common law fairness.

61. The specific factual allegations against the Claimant listed the comments she had allegedly made in the classroom. Once the PCP had determined that the Claimant had made those comments (save for allegation (d)), it had to go on to consider whether the comments were "inappropriate" and amounted to "unacceptable professional conduct" and/or "conduct that may bring the profession into disrepute" and/or that it was "contrary to Fundamental British Values".

62. In doing so, the PCP was entitled, and indeed required, to consider the evidence that the Claimant gave in her witness statement, to explain and justify her actions on 8 February 2022. The Claimant gave a detailed account of the history of events prior to the lesson of 8 February 2022, explaining why, in due course, she had decided not to teach some segments in prescribed lessons which, for religious reasons, she could not support. Instead she had decided to explain her Christian beliefs to the class, because the pupils were being given a "one-sided narrative" (paragraph 35, Claimant's witness statement). She also explained why she was not willing to display the EDI poster in her classroom, which all teachers were asked to do.

63. I accept the Secretary of State's submission that it was not procedurally unfair for the PCP to rely upon these matters, even though they were not pleaded as part of the allegations, because they were part of the Claimant's own case, and set out in her evidence. These matters were plainly relevant as part of the context within which the alleged unprofessional conduct occurred. She was questioned about them at the hearing and explained her reasoning. Her reasoning would not have been any different even if the matters complained of had been included in the allegations. The fact that the Claimant's explanation of the context within which she made her comments may have undermined, rather than assisted, her case does not render it unfair for the PCP to have regard to that explanation.

64. For these reasons, Ground 2 does not succeed.

Ground 3: Broad and balanced curriculum

Claimant's submissions

65. The Claimant submits that the PCP misdirected itself in having regard, as a factor, to "[t]he duty on teachers and schools to provide a broad and balanced curriculum",

when deciding that the Claimant's comments were inappropriate. The duty only lies on the School, not its teachers.

66. Section 79 EA 2002 imposes duties on the Secretary of State, local authorities, school governing bodies and headteachers to exercise their respective functions with a view to securing that the curriculum of the school satisfies the requirements of section 78 EA 2002, in particular, in regard to "functions relating to religious education and religious worship" (section 79(4)).

67. Section 1A of the Academies Act 2010 requires certain academy schools *inter alia*, to have a curriculum which satisfies the requirements of section 78 EA 2002.

68. Section 78 EA 2002 provides:

> "(1) The curriculum for a maintained school or maintained nursery school satisfies the requirements of this section if it is a balanced and broadly based curriculum which—
>
> (a) promotes the spiritual, moral, cultural, mental and physical development of pupils at the school and of society, and
>
> (b) prepares pupils at the school for the opportunities, responsibilities and experiences of later life."

69. Furthermore, there was no evidence to support the finding that the Claimant's conduct was inconsistent with the School's Religious Studies Policy.

Conclusions

70. The statutory duty to have a "broad and balanced curriculum" rests on schools, not individual teachers. But the curriculum has to be delivered by teachers. Generally, teachers are expected to deliver the school curriculum in accordance with school policy and directions given by senior members of staff.

71. The PCP's reference to the duty to have a broad and balanced curriculum was in the context of the Claimant's evidence that she was declining to teach segments of the curriculum addressing LGBTQ+ rights, because of her religious objections to their content.

72. In this context, the PCP was entitled to conclude that the refusal by the Claimant to teach this material was contrary to the School's Religious Studies Policy which refers to the statutory curriculum requirements, and states *inter alia*:

> "**Equal Opportunities**
>
> Religious education will challenge stereotypes, misinformation and misconceptions about race, gender and religion. It seeks to present religions and world views in all their richness and diversity in terms of beliefs, traditions, customs and lifestyle in a sensitive and accurate way in order to encourage a positive

> attitude towards diversity. All questions, views, and opinions will be treated with sensitivity and respect."

73. Having regard to the ethos, policies and practices of the School, the PCP was also entitled to conclude "that Ms Leger's choice not to present a balanced view undermined the School community's aspiration to provide a supportive environment for children who may be exploring sexual identity".

74. For these reasons, Ground 3 does not succeed.

Ground 4, 5 and 6: Articles 9 and 10 ECHR

Claimant's submissions

75. The Claimant submits that the PCP misdirected itself in law when it stated:

> "The panel received submissions in relation to the interference with Ms Leger's rights under the European Convention on Human Rights, specifically Article 9 (right to freedom of thought, conscience and religion) and Article 10 (right to freedom of expression). The panel noted the submissions made and the content of the judgments referred to. In particular, the panel was referred to the case of Ngole v University of Sheffield [2019] EWCA Civ 1127. The panel noted that it had a distinct and fact specific task to assess the conduct of Ms Leger as a teacher. The panel noted that in Ngole, the court stated -
>
> "The right to freedom of expression is not an unqualified right: professional bodies and organisations are entitled to place reasonable and proportionate restrictions on those subject to their professional codes; and, just because a belief is said to be a religious belief, does not give a person subject to professional regulation the right to express such beliefs in any way he or she sees fit".
>
> A central principle of relevant case law relating to interference with an individual's convention rights, and one to which this panel had regard, is that the rights under Article 9 and Article 10 are qualified rights. The rights can be qualified and restricted provided that the restrictions are in accordance with the published law and principles, and pursues a legitimate aim to protect health, morals and public order (by way of example). In regards to freedom of expression, it is established that this can and should be qualified if it has the potential to impact upon the provision of public services or the performance of a professional person's function."

76. The Claimant submits that the PCP mischaracterised the fundamental importance of protecting Convention rights and giving effect to legislation in a way which is compatible with Convention rights (section 3(1) Human Rights Act 1998). The PCP

placed all the emphasis on the "legitimate aim" and glossed over the high hurdles of "prescribed by law" and proportionality. In so far as it did apply a proportionality test, it failed to take into account the competing interests involved or to consider whether less intrusive means were available to minimise the interference.

77. The "prescribed by law" requirement was not met because there is no domestic legal basis for the interference with the Claimant's rights under Article 9 and Article 10 ECHR. The EA 2002, the 2012 Regulations and the Teachers' Standards are not sufficiently precise and foreseeable for a teacher in the Claimant's position.

78. The PCP erred in applying the proportionality principles set out in *Bank Mellat*. In considering the second principle, the PCP identified the goal as preventing the exclusion of alternative viewpoints. This was demonstrably false as previous actions by the Claimant, such as removing an EDI poster and not showing a LGBTQ+ video to pupils, were accommodated by the School and therefore could not have been against the School policies. Moreover, the School itself was promoting inclusivity and LGBTQ+ themes. Nothing that the Claimant did took away from that.

79. The PCP erred when applying the third *Bank Mellat* principle, finding that publishing its adverse findings was the least intrusive means of interfering with the Claimant's Article 9 and 10 rights. Arguably, publication of a misconduct finding has a similar effect to a prohibition order, because it makes it difficult, if not impossible, to obtain new employment.

80. The PCP erred in its proportionality assessment by not balancing the competing interests. It should have considered the severity of the impact of publication upon the Claimant, which is arguably more severe than a criminal conviction. It should also have considered the fact that she could not, in good conscience, teach the lesson on 8 February 2022 because it included references to LGBTQ+ ideology. As submitted under Ground 3, the PCP erred in subjecting the Claimant to a professional standard framed by the School's duty to have a broad and balanced curriculum. It gave that obligation, and the importance of maintaining professional standards, excessive weight.

Law

81. Article 9 ECHR provides:

> "1. Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public and in private, to manifest his religion or belief, in worship, teaching, practice and observance.
>
> 2. Freedom to manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others."

82. Article 10 ECHR provides:

> "1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers …
>
> 2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary."

83. Both parties agreed that the approach to be taken was helpfully set out by Lord Hope in *R (Purdy) v DPP*, at [40], [41]:

> "40 The Convention principle of legality requires the court to address itself to three distinct questions. The first is whether there is a legal basis in domestic law for the restriction. The second is whether the law or rule in question is sufficiently accessible to the individual who is affected by the restriction, and sufficiently precise to enable him to understand its scope and foresee the consequences of his actions so that he can regulate his conduct without breaking the law. The third is whether, assuming that these two requirements are satisfied, it is nevertheless open to the criticism that it is being applied in a way that is arbitrary because, for example, it has been resorted to in bad faith or in a way that is not proportionate. I derive these principles, which have been mentioned many times in subsequent cases, from *Sunday Times v United Kingdom* (1979) 2 EHRR 245, para 49 and also from *Winterwerp v The Netherlands* (1979) 2 EHRR 387, para 39; *Engel v The Netherlands (No 1)* (1976) 1 EHRR 647, paras 58—59 which were concerned with the principle of legality in the context of article 5(1), *Silver v United Kingdom* (1983) 5 EHRR 347, paras 85—90; *Liberty v United Kingdom* (2008) 48 EHRR 1, para 59 and *Sorvisto v Finland* (Application No 19348/04) (unreported) given 13 January 2009, para 112.
>
> 41 The word "law" in this context is to be understood in its substantive sense, not its formal one: *Kafkaris v Cyprus* (2008) 25 BHRC 591, para 139. This qualification of the concept is important, as it makes it clear that law for this purpose goes beyond the mere words of the statute. As the Grand Chamber said in that case, in paras 139—140, it has been held to include both enactments of lower rank than statutes and unwritten law.

> Furthermore, it implies qualitative requirements, including those of accessibility and foreseeability. Accessibility means that an individual must know from the wording of the relevant provision and, if need be, with the assistance of the court's interpretation of it what acts and omissions will make him criminally liable: see also *Gulmez v Turkey* (Application No 16330/02) (unreported) given 20 May 2008, para 49. The requirement of foreseeability will be satisfied where the person concerned is able to foresee, if need be with appropriate legal advice, the consequences which a given action may entail. A law which confers a discretion is not in itself inconsistent with this requirement, provided the scope of the discretion and the manner of its exercise are indicated with sufficient clarity to give the individual protection against interference which is arbitrary: *Goodwin v United Kingdom* (1996) 22 EHRR 123, para 31; *Sorvisto v Finland*, para 112."

84. In *Bank Mellat*, Lord Sumption reviewed the authorities on the requirements of proportionality and summarised their effect as follows:

> "20. ….. the question depends on an exacting analysis of the factual case advanced in defence of the measure, in order to determine (i) whether its objective is sufficiently important to justify the limitation of a fundamental right; (ii) whether it is rationally connected to the objective; (iii) whether a less intrusive measure could have been used; and (iv) whether, having regard to these matters and to the severity of the consequences, a fair balance has been struck between the rights of the individual and the interests of the community. These four requirements are logically separate, but in practice they inevitably overlap because the same facts are likely to be relevant to more than one of them."

85. The Claimant cited *Lee v Ashers Baking Co Ltd* [2018] UKSC 49, [2020] AC 413, at [52], [53], per Lady Hale:

> "52. ….. The right to freedom of expression does not in terms include the right not to express an opinion but it has long been held that it does. A recent example in this jurisdiction is *RT (Zimbabwe) v Secretary of State for the Home Department (United Nations High Comr for Refugees intervening)* [2013] 1 AC 152. The issue was whether asylum seekers should be sent back to Zimbabwe where they would face a real risk of persecution if they refused to demonstrate positive support for the then regime in that country. Citing, among other cases, both *Kokkinakis v Greece* 17 EHRR 397 and *Buscarini v San Marino* 30 EHRR 208, Lord Dyson JSC held that the principle applied as much to political opinions as it did to religious belief: "Nobody should be forced to have or express a political opinion in which he does not believe"(para 42).

> 53 The respondent suggests that the jurisprudence in relation to "compelled speech" has been developed principally in the United States as a result of the First Amendment. There is indeed long-standing Supreme Court authority for the proposition that "the right to freedom of thought protected by the First Amendment against state action includes both the right to speak freely and the right to refrain from speaking at all": see *Wooley v Maynard* (1977) 430 US 705, 714, per Burger CJ, citing *West Virginia State Board of Education v Barnette* (1943) 319 US 624, 633—634. But in the light of *Laramore* and *RT (Zimbabwe)*, and the Strasbourg case law on which they are based, it cannot seriously be suggested that the same principles do not apply in the context of articles 9 and 10 of the Convention."

86. In *R (Ngole) v University of Sheffield* [2019] EWCA Civ 1127, the Court of Appeal held that removal of the appellant from an MA course in social work because of his social media posts to the effect that homosexuality is a sin, was a disproportionate interference with his rights under Article 10 ECHR. The Court found that the interference was prescribed by law and the maintenance of confidence in the social work profession was a legitimate aim. It stated, at [5(4)]:

> "The right to freedom of expression is not an unqualified right: professional bodies and organisations are entitled to place reasonable and proportionate restrictions on those subject to their professional codes; and, just because a belief is said to be a religious belief, does not give a person subject to professional regulation the right to express such beliefs in any way he or she sees fit."

87. However, the Court held that the University adopted an untenable position that any expression of disapproval of same-sex relations on social media, no matter how mildly expressed, was a breach of professional guidelines. At no point did the University make it clear to the appellant that it was the manner and language in which he had expressed his views that was the real problem and that his views were not a bar to practice as a social worker provided those views did not affect his work or mean that he would or could discriminate (at [5]).

88. In *Şahin v Turkey* (2007) 44 EHRR 5, the ECtHR (Grand Chamber) held that exclusion of students from University courses when wearing an Islamic headscarf was not a violation of Articles 8, 9, 10 or 14 ECHR. The Claimant referred to the general principles set out at [104]-[107], in particular, the duty of the State to be neutral and impartial and to ensure mutual tolerance between opposing groups (at [107]). In reaching its decision, the Court drew on principles established by the case law:

> "111. The Court also notes that in the decisions of *Karaduman v Turkey* (App. No. 16278/90, 3 May 1993) and *Dahlab v Switzerland* (App. No. 42393/98, 15 February 2001) the Convention institutions found that in a democratic society the State was entitled to place restrictions on the wearing of the Islamic headscarf if it was incompatible with the pursued aim

> of protecting the rights and freedoms of others, public order and public safety. In the *Karaduman* case, measures taken in universities to prevent certain fundamentalist religious movements from exerting pressure on students who did not practise their religion or who belonged to another religion were found to be justified under Art.9(2) of the Convention. Consequently, it is established that institutions of higher education may regulate the manifestation of the rites and symbols of a religion by imposing restrictions as to the place and manner of such manifestation with the aim of ensuring peaceful co-existence between students of various faiths and thus protecting public order and the beliefs of others. In the *Dahlab* case, which concerned the teacher of a class of small children, the Court stressed among other matters the "powerful external symbol" which her wearing a headscarf represented and questioned whether it might have some kind of proselytising effect, seeing that it appeared to be imposed on women by a religious precept that was hard to reconcile with the principle of gender equality. It also noted that wearing the Islamic headscarf could not easily be reconciled with the message of tolerance, respect for others and, above all, equality and non-discrimination that all teachers in a democratic society should convey to their pupils."

89. In *Sutcliffe*, the High Court dismissed an appeal by an evangelical Christian teacher against a prohibition order. The teacher had strong and sincerely held religious beliefs about gender identity and homosexuality and he repeatedly and deliberately, in breach of the school's policy, refused to refer to transgender pupils by their preferred pronouns, misgendered a transgender male pupil in class and expressed his negative views on homosexuality without regard for the impact that might have on transgender, gay and lesbian pupils. When the teacher was interviewed on television, his remarks enabled others in the school to identify the transgender pupil concerned.

90. Pepperall J. held:

> "60. …. The right to manifest one's religion and beliefs under article 9(2) and the right to exercise one's freedom of speech under article 10(2) of the Convention are qualified rights. It is fundamental that teachers should not only educate but that they should at all times treat the children in their care with dignity and respect and that they should safeguard their well-being. Insofar as the Teachers' Standards qualify a teacher's right to manifest their religion or beliefs and their freedom of expression, I have no doubt that such restrictions are proportionate in the sense identified in *Bank Mellat v HM Treasury (No 2)* [2014] AC 700 in that:
>
> 60.1 the objectives of treating children with dignity and respect and of safeguarding their well-being are sufficiently important to justify the limitations;

60.2 the standards are rationally connected to such objectives;

60.3 a less intrusive measure could not be used without unacceptably compromising the achievement of the objectives; and

60.4 the importance of such objectives to the extent that the standards contribute to their achievement outweighs their effects on the teacher's rights.

61. By virtue of their immaturity and inexperience of the world, children and young people are vulnerable and many children struggle as they navigate adolescence. Whatever a teacher's religious or philosophical beliefs about the immutability of a person's gender or the morality of homosexuality, it is their professional obligation:

61.1 to treat their pupils with dignity and respect; and

61.2 to safeguard the well-being of all children in their class.

Further, teachers must understand that adolescence may be particularly difficult for children who either identify as transgender or are questioning their gender identity (such as pupil A), or who identify as gay, lesbian or bisexual or are questioning their sexuality (such as pupil B).

62. Just because misgendering a transgender pupil might not be unlawful does not mean that it is appropriate conduct for a teacher or that, when done repeatedly and deliberately both in class and on national television in breach of the school's instructions and ethos such that distress is caused to the child, it cannot amount to professional misconduct.

63. In my judgment, the panel correctly identified its role when it observed:

"Broad representations were made on behalf of Mr Sutcliffe that this case related to issues of freedom of expression and speech in the abstract. It was not the function of this panel to assess such broader issues. The panel has no role in determining the veracity, reasonableness or otherwise of Mr Sutcliffe's beliefs.

……

The panel was mindful of Mr Sutcliffe's strong and sincere religious beliefs rooted in his deep faith which led him to have a personal conviction against using preferred pronouns. Mr Sutcliffe has a right to hold this belief. It is the manner in which Mr Sutcliffe chose to manifest this belief to which objection could justifiably be taken if he failed to have regard to pupil

> A's dignity, to treat him with respect, or to safeguard pupil A's well-being.""

91. In *Higgs v Farmor's School* [2025] EWCA Civ 109, the Court of Appeal held that the appellant had been unlawfully discriminated against when she was dismissed by her school employer by reason of her social media posts objecting to Government policy on sex education in primary schools because of its promotion of gender fluidity and its equation of same sex marriage with marriage between a man and woman. Her views fell within the protected characteristic of "religion or belief" under the Equality Act 2010. Neither the language of the posts nor the risk of reputational damage to the school were capable of justifying her dismissal. The Claimant referred to passages in the judgment of Underhill LJ at [27], [30] – [35], and [74].

92. The Claimant also referred the Court to further authorities, including *Bumbeş v Romania* (2022) App. No. 18079/15, at [62] and [92]; *Handyside v UK* [1976] ECHR 5, at [49]; *R (European Roma Rights Centre) v Immigration Officer at Prague Airport* [2004] UKHL 55, at [82]; *R v Commission for Racial Equality, ex parte Westminster City Council* [1985] ICR 827; *Bayatyan v Armenia* [2012] 54 EHRR 15, at [26]; *R (Miller) v College of Policing* [2020] EWHC 225 (Admin), at [250]; *Case of Biblical Centre of the Chuvash Republic v Russia*, application no. 33202/08, 12 June 2014, at [58]; *Manoussakis v Greece* App. No. 18748/91, 26 September 1996; *A v Norway* App. No. 28070/06, 9 April 2009; *Olsson v Sweden* 130 Eur. Ct. HR (Ser.A), at [30]; *Metropolitan Church of Bessarabia* v *Moldova* 2001-X11 Eur. Ct. H.R. 81, 111; *Sunday Times v UK* (1979-1980) 2 EHRR 245; *Zana v Turkey* 1997-V11 Eur. Ct. J.R. 2533, 2548; *Oleksander Volkov v Ukraine* App. No. 21722/11, 9 January 2013; *NŠ v Croatia* App. No. 36908/13, 10 September 2020; and *RT (Zimbabwe) v Secretary of State for the Home Department* [2012] UKSC 38, [2013] 1 AC 152.

Conclusions

93. In my view, the Claimant's primary submission that the PCP misdirected itself on the requirements of Article 9 and Article 10 ECHR is ill-founded. Where it is claimed that a decision breaches Convention rights, the question is whether it did so or not: see *Belfast City Council v Miss Behavin' Limited* [2007] UKHL 19, [2007] 1 WLR 1420.

94. In any event, the PCP correctly directed itself on the law in the passages set out at paragraph 75 above. The passage cited from *Ngole* succinctly captured the relevant principles. Later in its ruling, the PCP correctly directed itself in accordance with the proportionality principles in *Bank Mellat* (see paragraph 95 below). I note that, as well as receiving submissions on Articles 9 and 10 of the ECHR from the parties, the PCP's legal adviser gave its members (who are not legally qualified) detailed advice, which was agreed in advance with the legal representatives.

95. The Claimant submits that the Secretary of State's interference with Articles 9 and 10 ECHR was not prescribed by law. I do not accept that submission. Applying the relevant legal principles, as set out in the judgment of Lord Hope in *Purdy* (paragraph 83 above), the legal basis for the interference is the statutory scheme for the regulation of teachers set out in the EA 2002 and the 2012 Regulations (see paragraphs 27 - 35 above). The Teachers' Standards and the Advice provide guidance on the standards of behaviour required, and what amounts to teacher misconduct (see

paragraphs 36 – 38 above). Given the discretion and evaluative judgment which is appropriately conferred on the PCP and the Secretary of State, it is not possible to set out every possible eventuality in advance (*Ngole* at [87]). The statutory scheme, read together with the guidance, meet the requirements of accessibility and foreseeability.

96. In my judgment, the PCP properly addressed and applied the proportionality test.

97. In considering whether the Claimant's behaviour amounted to unacceptable professional conduct, the PCP concluded that she was in breach of the Teachers' Standards. Her comments lacked respect for the rights of others. She risked upsetting her pupils and she failed to understand the impact that her position of influence as a teacher could have upon them. The PCP also concluded that the Claimant did not have proper and professional regard for the ethos, policies and practices of the School because she did not provide her pupils with the prescribed LGBTQ+ and EDI information and teaching. Her "choice not to present a balanced view undermined the School community's aspiration to provide a supportive environment for children who may be exploring sexual identity".

98. The PCP specifically addressed and applied the principles in *Bank Mellat* when deciding whether to make a finding of unacceptable professional conduct and stated as follows:

> "1. The panel's objective in this process is sufficiently important to justify the limitation of Ms Leger's rights under Article 9 and 10. The panel considered that its role was to maintain professional standards and to reflect the teacher's position of influence in society.
>
> 2. The panel concluded that the objective is rationally connected. The panel considered that the restriction is not to prevent the teacher from holding, or in line with School policies, sharing her views or those of a specific group. It is about, in doing so, excluding, over a period of time, alternative views.
>
> 3. The panel found that there is no less intrusive measure that could be adopted at this stage of these proceedings, but this is a consideration that the panel will take account of at the next stage.
>
> 4. In light of the above, the panel was satisfied that a fair balance has been struck between the rights of Ms Leger and the interests of the public/community."

99. The PCP went on to consider whether a prohibition order or publication of its adverse findings would be appropriate and proportionate.

100. The PCP stated as follows:

> "The panel had regard to the particular public interest considerations set out in the Advice and, having done so, found

a number of them to be relevant in this case, namely, the maintenance of public confidence in the profession, declaring and upholding proper standards of conduct within the teaching profession and that prohibition strikes the right balance between the rights of the teacher and the public interest, if they are in conflict.

The panel considered that public confidence in the profession could be seriously weakened if conduct such as that found against Ms Leger were not treated with the utmost seriousness when regulating the conduct of the profession.

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

In view of the clear public interest considerations that were present, the panel considered carefully whether or not it would be proportionate to impose a prohibition order, taking into account the effect that this would have on Ms Leger.

In carrying out the balancing exercise, the panel had regard to the public interest considerations both in favour of, and against, prohibition as well as the interests of Ms Leger. The panel took further account of the Advice, which suggests that a prohibition order may be appropriate if certain behaviours of a teacher have been proved. In the list of such behaviours, the one that was relevant in this case was:

▪ serious departure from the personal and professional conduct elements of the Teachers' Standards.

Even though some of the behaviour found proved in this case indicated that a prohibition order would be appropriate, the panel went on to consider the mitigating factors. Mitigating factors may indicate that a prohibition order would not be appropriate or proportionate.

There was evidence that Ms Leger's actions were deliberate. The panel did not accept that this was a one-off incident. Ms Leger's actions needed to be seen in the context of the ethos, policies and practice of the School, as noted earlier in the panel's decision.

However, the panel found Ms Leger had no intention of causing distress or harm to pupils.

There was no evidence to suggest that Ms Leger was acting under duress.

> The panel was provided with a number of character references. The panel also heard live evidence from three character witnesses. ……
>
> The panel went on to discuss whether it would be proportionate to conclude this case with no recommendation of prohibition, considering whether the publication of the findings made by the panel would be sufficient.
>
> The panel was of the view that, applying the standard of the ordinary intelligent citizen, the recommendation of no prohibition order would be both a proportionate and an appropriate response. Given that the nature and severity of the behaviour were at the less serious end of the possible spectrum and, having considered the mitigating factors that were present, the panel determined that a recommendation for a prohibition order would not be appropriate in this case. The panel considered that the publication of the adverse findings it had made was sufficient to send an appropriate message to the teacher as to the standards of behaviour that are not acceptable, and the publication would meet the public interest requirement of declaring proper standards of the teaching profession. The panel considered that this was the least intrusive measure that could be imposed on the facts of this case (as per Principle 3 of the Bank Mellat principles)."

101. In my view, the Claimant's criticisms of the PCP's findings do not disclose any error of law, as opposed to mere disagreement.

102. In regard to the second principle, the PCP was entitled to find that the restriction was not to prevent the Claimant from holding or, in line with School policies, sharing her views, or those of a specific group, but rather that in doing so, she was excluding alternative views. The Claimant's decision not to teach the prescribed lesson on LGBTQ+ issues was contrary to School policies and ethos. The fact that other teachers were complying with School policies was beside the point.

103. The PCP plainly did balance the competing interests, as can be seen from the text of their decision set out, at paragraphs 98 and 100 above.

104. The only sanctions available to the PCP were a prohibition order with publication of the decision or no prohibition order with publication of the decision. The statutory scheme does not make provision for any other sanctions, such as a reprimand or a suspension. A prohibition order which prevents a teacher from teaching indefinitely is plainly much more severe than publication of the decision. The Secretary of State's current policy is to cease to publish a decision after two years, after which time it cannot be accessed even by employers.

105. I agree with the Secretary of State's submission that what is striking about the decision is the effort that the PCP made to ensure that its findings went no further than it considered justified.

106. The Secretary of State considered the PCP's findings and recommendation and addressed the question of proportionality again. She accepted the recommendation of the PCP.

107. In my judgment, the PCP and the Secretary of State correctly applied the proportionality test and the outcome was proportionate in all the circumstances.

108. For these reasons, Grounds 4, 5 and 6 do not succeed.

Ground 7: publication of decision

Claimant's submissions

109. The Claimant submits that the publication of the full decision on the Secretary of State's website, including the Claimant's name, was in breach of the Claimant's right to a private life under Article 8 ECHR.

110. Restrictions on professional life may fall within the scope of professional life where they have repercussions on the way in which the individual forges his or her social identity through the development of relationships with others. The protection of personal identity, honour and reputation all fall within the scope of Article 8 ECHR: see *Case of A. v Norway*, Application No. 28070/06, 09 April 2009, at [63] – [64]. Article 8 also applies to state published reports which have the effect of injuring someone's business reputation and requires a proportionality assessment. The limits of acceptable criticism in such reports are less for private individuals, as is the case in the instant matter, than may be the case for businessmen actively involved in the public affairs of large companies: see *Case of Fayed v the United Kingdom*, Application No. 17101/90, 21 September 1990, at [75].

111. Dismissal from office or restrictions imposed on access to a profession can be an interference with private life: see *Sidabras and Džiautas v Lithuania*, Application Nos. 55480/00 and 59330/00, ECHR 2004-VIII, at [49]; *Case of Oleksandr Volkov v Ukraine,* Application No. 21722/11, 09 January 2013, at [165] – [166].

112. It is convenient to mention here that the Secretary of State referred to *Denisov v Ukraine*, Application No. 76639/11, 25 September 2018 where the ECtHR identified two different approaches to interference with private life in the employment context: first, where private life (e.g. sexual orientation) was the reason for the interference (the reasons-based approach); or second, where a measure such as dismissal affects a person's private life (the consequences-based approach). In the latter class of case, the effects must reach a sufficient level of seriousness or severity (at [103] – [113]).

113. The Claimant submits that the publication was prejudicial. It affects her ability to find alternative employment, as any potential employer will be able to access the decision. Her reputation has been damaged and she has been exposed to public embarrassment and scrutiny for doing nothing more than expressing her deeply held Christian beliefs.

114. The Claimant submits that the interference with her Article 8 ECHR rights is not prescribed by law, because regulation 8(5) of the 2012 Regulations does not specify the inclusion of the name of the teacher. It cannot be justified under Article 8(2). It

does not serve any of the legitimate aims set out in Article 8(2) and it is a disproportionate act of shaming.

Conclusions

115. Article 8 ECHR provides:

> "1 Everyone has the right to respect for his private and family life, his home and his correspondence.
>
> 2 There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

116. It was common ground that professional reputation can be protected as an aspect of private life. In *Wallace v Secretary of State for Education* [2017] EWHC 109 (Admin), Holgate J. observed that published findings of unacceptable professional conduct were likely to affect a teacher's reputation and to some extent employment prospects, and should be regarded as a considerable sanction in itself (at [79]). Whilst there was no evidence that the Claimant had sought and failed to find employment as a consequence of the decision or its publication, it is reasonable to assume that it would count against her. For the purposes of this claim, I consider that there was an interference with the Claimant's private life.

117. I refer to my consideration of the legal principles on the requirement that an interference is prescribed by law in set out in *R (Purdy) v DPP* at paragraph 83 above. In my judgment, publication of the full decision in the Claimant's case, including her name, was clearly prescribed by law. Regulation 8(5) of the 2012 Regulations provides:

> "The decision of the Secretary of State following the determination of a professional conduct panel must be published".

118. Publication of the decision in full is consistent with the fact that public notice of PCP hearings is given in advance and hearings are held in public. Regulation 11 of the 2012 Regulations provides that the hearing of a PCP must take place in public, subject to limited exceptions set out in regulation 11(3):

> "A professional conduct panel may exclude the public from a hearing or any part of a hearing—
>
> (a) where it appears to the panel to be in the interests of justice or the public interest to do so; or
>
> (b) where the teacher who is the subject of the case requests that the hearing or part of the hearing should be in private and

> the panel does not consider it to be contrary to the public interest to do so."

119. It is noteworthy that the Claimant, who was legally represented throughout, did not ask the PCP to sit in private at any stage, although she was given the opportunity to apply for a hearing in private in the letter of 14 July 2023 from the TRA. The letter also explained that the decision would be announced in public and, if adverse, published on the Secretary of State's website. In the decision letter of 13 December 2023, the Claimant was notified that the decision would be published by 29 December 2023. She did not raise any objection to this. There had been press coverage of her dismissal from the School and the Claimant actively participated in coverage of the story by the Daily Mail.

120. The requirement to publish the full decision is confirmed in the Explanatory Memorandum to the 2012 Regulations, which states at paragraph 8.2 that "… we revised the Regulations in order to provide that the full decision be made public, including the rationale for why that decision was reached".

121. In *Wallace* the High Court considered that there were essentially two possible outcomes where misconduct within section 141B(1) EA 2002 is established: the making of a prohibition order, or publication of a finding of misconduct. The Court characterised publication as being a "lesser sanction", noting, at [78], that the decision "… will include details of the findings of misconduct proved…". Bare publication of the fact that a decision had been made, without identifying the decision, or the person concerned, or the reasons for it, would not amount to a sanction.

122. The Secretary of State submitted, in the alternative, that even if it were not obligatory to publish the full decision, the Secretary of State was entitled to publish the decision and the reasons for it, for policy reasons, which are considered in more detail below.

123. On 9 January 2024, the TRA published a revised policy in regard to publication:

> "In 2023, TRA reviewed the policy which underpins how we publish information related to teacher misconduct cases. From 9 January 2024 all published decisions in which there is a finding of serious misconduct but no prohibition order imposed will be removed from GOV.UK automatically 2 years after the decision was first published. The details of these no prohibition order cases will no longer be accessible to employers when completing their safer recruitment checks as laid out in Keeping Children Safe in Education statutory guidance."

124. The reasons for publication were explained by Ms Sarah Buxcey, Head of the Teacher Misconduct Unit at the TRA, in her witness statement, as follows:

> "**The public interest in publication**
>
> 32. Providing information about teacher misconduct decisions and the reasons for them benefits the public, the teaching profession and employers by helping them to understand the standards that are expected of teachers. Publicity about

decisions where a teacher has committed serious misconduct (whether or not a prohibition order is made) maintains confidence in the teaching profession, helps to illustrate what breaches of teaching standards may (or may not) result in an adverse finding or prohibition (whether lifelong or reviewable) and is consistent with the principle of open justice.

33. It is of paramount importance that children and young people are protected when they are at school and college and that there are robust arrangements to safeguard and educate pupils and students effectively. Publication equips employers to make informed judgements on the suitability of applicants applying for teaching positions, in line with the 'safer recruitment' principles set out in ['Keeping children safe in education 2023: Statutory guidance for schools]. It is clearly in the public interest for all those who use the services of teachers (including schools and other educators, as well as parents who engage tutors) to know whether the said individual has a finding of serious misconduct against them by their regulator. Where a teacher is found guilty of serious misconduct, a check of the list of prohibited persons alone would not provide the reasons why a prohibition order was (or was not) made in light of this finding. Employers may use these published decisions to help them to assess the suitability of a given candidate for a particular role, providing a more objective basis for their decision-making than might otherwise be available from other sources (such as media coverage or referees). Publishing these details equips schools, colleges and others to make informed judgements about safeguarding risk and suitability – which may well support teachers found guilty of serious misconduct to return to teaching where a prohibition order was not made.

34. Publicity thus serves to maintain the standards expected of the teaching profession and to safeguard the safety and wellbeing of pupils, teachers and other members of the public. Further, the publication of sufficient information about regulatory decisions to ensure that the public and the profession is able to understand how and why regulatory decisions are made is an essential element in ensuring that the regulator can be held to account and that the public can have confidence in the teaching profession. In cases in which no prohibition order is made the published information will be removed from the gov.uk website after a period of two years.

35. There are mitigations in place to prevent the publication of information where the benefits of publication are outweighed by competing considerations. This may lead to the exclusion from publication of (for example) personal data relating to third parties (such as the names of persons other than the teacher), or sensitive personal data (such as health information), where

> these are not directly relevant to the decision. TRA may also choose to redact certain information from the published document, if it determines that it is not in the public interest to disclose this. Teachers or other persons may apply to restrict certain material from publication, which will lead to the decision maker weighing the proportionality and impact of redacting the information against the public interest in publishing it. Whether or not an application is made, the PCP may make suggestions to the decision maker that certain information is redacted. In this case, the PCP did not make any such suggestion.
>
> 36. Publication of decisions and reasons therefore ensures informed and robust judgements about the suitability of an individual for a specific post. In this case, for the reasons outlined above, the public interest in publishing the findings in the context of the proven allegations weigh significantly in favour of publication. The publication of the findings is a lesser sanction than making a prohibition order but supports the safeguarding and wellbeing of pupils, the maintenance of public confidence in the profession and the upholding of proper standards of conduct within the teaching profession."

125. In my judgment, the regulatory aims of publication, as described above, advance the legitimate aims in Article 8(2) of advancing public safety, the protection of health and morals and the protection of the rights and freedoms of others.

126. The PCP specifically addressed and applied proportionality principles in *Bank Mellat* when deciding whether to impose a prohibition order or the lesser sanction of publication. The PCP stated as follows:

> "The panel had regard to the particular public interest considerations set out in the Advice and, having done so, found a number of them to be relevant in this case, namely, the maintenance of public confidence in the profession, declaring and upholding proper standards of conduct within the teaching profession and that prohibition strikes the right balance between the rights of the teacher and the public interest, if they are in conflict.
>
> The panel considered that public confidence in the profession could be seriously weakened if conduct such as that found against Ms Leger were not treated with the utmost seriousness when regulating the conduct of the profession.
>
> The panel was of the view that a strong public interest consideration in declaring proper standards of conduct in the profession was also present as the conduct found against Ms Leger was outside that which could reasonably be tolerated.
>
> …..

> The panel went on to discuss whether it would be proportionate to conclude this case with no recommendation of prohibition, considering whether the publication of the findings made by the panel would be sufficient.
>
> The panel was of the view that, applying the standard of the ordinary intelligent citizen, the recommendation of no prohibition order would be both a proportionate and an appropriate response. Given that the nature and severity of the behaviour were at the less serious end of the possible spectrum and, having considered the mitigating factors that were present, the panel determined that a recommendation for a prohibition order would not be appropriate in this case. The panel considered that the publication of the adverse findings it had made was sufficient to send an appropriate message to the teacher as to the standards of behaviour that are not acceptable, and the publication would meet the public interest requirement of declaring proper standards of the teaching profession. The panel considered that this was the least intrusive measure that could be imposed on the facts of this case (as per Principle 3 of the Bank Mellat principles)."

127. The Secretary of State accepted the PCP's recommendation, concluding:

> "I consider that the publication of the findings made would be sufficient to send an appropriate message to the teacher as to the standards of behaviour that were not acceptable and that the publication would meet the public interest requirement of declaring proper standards of the profession."

128. In my judgment, the PCP and the Secretary of State made a lawful decision that publication of the findings was a justifiable and proportionate sanction for her unacceptable professional conduct. There was no breach of Article 8 ECHR.

129. For these reasons, Ground 7 does not succeed.

Final conclusions

130. The claim for judicial review is dismissed.