

**IN THE HIGH COURT OF JUSTICE**  
**QUEEN'S BENCH DIVISION**  
**ADMINISTRATIVE COURT**

**IN THE MATTER OF AN APPEAL UNDER THE TEACHERS' DISCIPLINARY**  
**(ENGLAND) REGULATIONS 2012**

Birmingham Civil Justice Centre

Date: 13 October 2016

Before :

**MR JUSTICE PHILLIPS**

Between :

CO/1340/2016

**INAM ANWAR**

**Appellant**

and

- (1) NATIONAL COLLEGE FOR TEACHING  
& LEADERSHIP**  
**(2) THE SECRETARY OF STATE FOR  
EDUCATION**

**Respondents**

CO/1341/2016

**AKEEL AHMED**

**Appellant**

and

- (1) NATIONAL COLLEGE FOR TEACHING  
& LEADERSHIP**  
**(2) THE SECRETARY OF STATE FOR  
EDUCATION**

**Respondents**

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**Richard Thomas** (instructed by **Avril Bailey, National Union of Teachers**) for **Mr Anwar**  
**Mr Ahmed** appeared in person  
**Christopher Gillespie** (instructed by **Nabarro LLP**) for the **Defendants**

Hearing date: 5 July 2016, further written submissions 8 July 2016

**Approved Judgment**

## Mr Justice Phillips :

1. On 9 February 2016 a professional conduct panel (“the Panel”) of the National College for Teaching and Leadership (“the NCTL”) determined, following a joint disciplinary hearing, that Inam Anwar (“Mr Anwar”) and Akeel Ahmed (“Mr Ahmed”) had each been guilty of unacceptable professional conduct and had brought the teaching profession into disrepute. The Panel found (in separate written decisions) that Mr Anwar and Mr Ahmed had each, on or before 31 March 2014, “*agreed with others to the inclusion of an undue amount of religious influence in the education of the pupils at Park View School*”, where each had worked as a teacher until they were suspended in late 2014. In the case of Mr Anwar, the Panel found that the agreement to which he was party extended to Nansen Primary School, of which Mr Anwar was a governor.
2. The Panel further determined that the matters they found proved against Mr Anwar and Mr Ahmed amounted in each case to misconduct of a serious nature and recommended that each be prohibited from teaching in England indefinitely, subject to the right to apply for a review of that prohibition after six years in the case of Mr Anwar and after three years in the case of Mr Ahmed.
3. On 11 February 2016 the Secretary of State for Education accepted the Panel’s recommendation and accordingly made Prohibition Orders against both Mr Anwar and Mr Ahmed under s.141B of the Education Act 2002, the Orders taking effect on 18 February 2016.
4. Mr Anwar and Mr Ahmed (together, “the Appellants”) now appeal pursuant to Regulation 17 of the Teachers’ Disciplinary (England) Regulations 2012. Each appeal names both the NCTL and the Secretary of State as respondents, but, as the NCTL is a government agency which acts on behalf of the Secretary of State, they can be treated as a single party and were so represented for the purposes of the appeals. I will refer to them jointly as “the Respondent”.
5. It is common ground that an appeal under Regulation 17 will be allowed if the decision under appeal was (i) wrong or (ii) unjust because of a serious procedural or other irregularity: CPR 52.11(3). It was also common ground that such an appeal is by way of re-hearing (see *O v Secretary of State for Education* [2014] EWHC 22 (Admin) at §56). Therefore, although the Court will be reluctant to interfere with findings of fact and will accord respect to the expertise of a professional conduct panel on issues of professional judgment (see *Cheatle v GMC* [2009] EWHC 645 (Admin) at §15), it is ultimately for the Court to reach its own view as to whether the decision under appeal was wrong, based on the material which was before the decision-maker.
6. Both of the Appellants contend, as their first ground of appeal, that there was serious procedural impropriety in the Panel’s fact finding process, in particular by reason of a failure to give proper disclosure. Their second ground of appeal is that the Panel’s findings were perverse and took into account irrelevant and improper considerations.<sup>1</sup>

### The relevant background

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<sup>1</sup> The Appellants also each challenge the penalty imposed on them on the ground that it was disproportionate.

(a) Park View School

7. Park View (which has recently changed its name) is a state-funded secondary school located in Alum Rock, Birmingham, an area where the majority of the local population is Muslim. By 2010, in the region of 99% of the pupils at the school were from a Muslim background and most spoke English as an additional language.
8. In 2003 Park View obtained a determination under s.394 of the Education Act 1996 that it was not appropriate for the requirement (to be found in Schedule 19 to the Schools Standards Framework Act 1998) that collective worship be broadly Christian to apply to the school. The determination was renewed in 2008, but ceased to be required in 2012 when, as set out below, Park View became an Academy.

(b) The history of Park View from 1996 to 2013

9. In 1996, following an OFSTED inspection and report, Park View was categorised as a failing school and placed into “Special Measures”, only 7.2% of pupils attaining 5 or more GCSEs at grade C or above. In the following five years Park View was closely monitored and had a rapid turnover of head teachers, totalling five in all.
10. In April 2001 Lindsey Clark OBE (“Ms Clark”) was appointed Head Teacher of Park View, by which time the school’s rating had improved to “Satisfactory”, although requiring improvement. At that time 31% of its pupils were achieving at least 5 GCSEs at grade C or above. Hardeep Saini (“Mr Saini”) was one of three Assistant Head Teachers appointed at about the same time. Monzoor Hussain (“Mr M. Hussain”), who had been a teacher at the school since 1997, was promoted to Assistant Head Teacher in 2006. Mr M. Hussain was also, but separately, a governor of Nansen Primary School (also located in Alum Rock and also a school with a determination, made in 2008, that collective worship need not be broadly Christian).
11. Ms Clark, Mr Saini and Mr M. Hussain remained in the roles described above until March 2012, apparently overseeing considerable improvement and progress at Park View under their leadership. The school gained specialist business and enterprise college status in September 2005. Following an inspection in June 2007, OFSTED judged the school to be “Good”, the report stating that Park View was “*an overwhelmingly good and improving school*”, the joint 15<sup>th</sup> most improved secondary school in the country. The report further stated:

*“The headteacher’s determined and rigorous leadership has been key to sustaining the rapid improvement of the school. She is well supported by her senior leadership team which, through its passionate belief in school improvement, has successfully engaged the staff and raised morale.”*

12. A further interim assessment of Park View in 2010 concluded that standards had been maintained since the 2007 report. In May 2011 the apparent success of the school and its Head Teacher was further recognised when Ms Clark became a National Leader in Education and Park View became a National Support School, expected to support other schools that required improvement.

13. Following an inspection in January 2012, OFSTED determined that Park View was an “Outstanding” school, meriting that classification in each of the four areas considered, placing it in the top 14% of secondary schools in the country. The proportion of pupils achieving five or more GCSE’s at grade C or above had been significantly above average for two consecutive years. OFSTED’s report included the following comments:

*“This is an outstanding school. The headteacher and her team have very high expectations and provide outstanding leadership and management. The school provides an exceptionally caring and supportive environment for students and their families and is an important part of the local community....*

*The headteacher is supported very ably by the deputy headteacher and the leadership team. All staff are focused relentlessly on further improvement and work together outstandingly well. Plans are evaluated rigorously and followed through. Morale is very high. Promotion of equality of opportunity is at the heart of the school’s work, creating a very positive and harmonious atmosphere. Park View is a truly inclusive school in which there is no evidence of discrimination and students, sometimes with major disabilities, are welcomed as members of the school community.*

*The headteacher and other leaders review teachers’ planning, monitor the quality of lessons, and scrutinise students’ work outstandingly well. Teachers have been able to develop their expertise through very well-targeted professional development courses and through opportunities to observe the best practice of their colleagues in the school. The headteacher’s informative reports, together with other relevant information, enable the governing body to monitor progress towards targets within the school development plan.*

*Students make excellent progress in their spiritual, moral, social and cultural development. There is a wide range of opportunities for spiritual development, for example, through the well attended voluntary Friday prayers meeting. Assemblies and tutorials promote a very strong sense of pride in the school community. This contributes very well to students’ keen understanding of their rights and responsibilities, and they are profoundly aware of how their actions can affect others. Students have developed excellent reflective skills through the outstanding opportunities provided by the curriculum.”*

14. Park View became an Academy of Mathematics and Science in April 2012. At that time 76% of its pupils were achieving achieved 5 or more GCSEs at grade C or above, well above the national average.

15. At about this time Ms Clark, in her capacity as a National Leader in Education and at the request of the NCTL and the local authority, undertook a rapid high impact intervention at Nansen Primary School. In October 2012 Nansen became a sponsored school, taking its place as an Academy within the Park View Educational Trust. Ms Clark took on the role of Acting Executive Principal of the Trust, Mr Saini became Acting Principal of Park View Academy and Mr M. Hussain became Acting Vice-Principal. One of the teachers at Park View, Arshad Hussain (“Mr A. Hussain”) was appointed Acting Principal of Nansen.

(c) Mr Anwar’s role at Park View and Nansen

16. In 2009 Mr Anwar commenced a Graduate Teacher Programme in Modern Languages at Wolverhampton University, but based at Park View, teaching Urdu and Citizenship. Mr Anwar was invited to stay on at Park View as a Newly Qualified Teacher, teaching GCSE English and Urdu. He was appointed Head of Modern Languages at the school in 2012, remaining in that role until he was suspended from duty in November 2014.
17. Mr Anwar was also a governor of Nansen. In early 2012 Mr Anwar was one of a number of governors who, together with Nansen’s then Head Teacher (referred to in the proceedings as “Witness C”), interviewed candidates for two Deputy Head Teacher posts at Nansen. The other governors involved were Mr M. Hussain, Tahir Alam (Chair of the Park View Educational Trust) and Shahid Akmal (Chair of Nansen’s governing body). One of the successful candidates was Razwan Faraz (“Mr Faraz”).

(d) Mr Ahmed’s role at Park View

18. Mr Ahmed qualified as a teacher in 2006. After completing a Graduate Teaching Programme at another school, in September 2008 he was appointed as a Religious Education teacher at Park View. From his appointment until May 2013 Mr Ahmed was responsible for arranging collective worship at the school, occasionally presenting assemblies himself. In September 2013 he was appointed Head of Personal Development at the school. At that time he was also acting as Head of Religious Education, covering his line-manager’s extended leave. Mr Ahmed was suspended from duty on 29 September 2014.

(e) The “Trojan Horse” letter and its consequences

19. In late November 2013 a letter came into the possession of Birmingham City Council. The letter, the authenticity of which has been questioned, was incomplete, with no address or signature. It appeared to be written to an unnamed person in Bradford, describing a strategy to destabilise a number of schools in Birmingham in order to take them over and run them on strict Islamic principles. The letter was published in the media in March 2014 and attracted considerable publicity and comment. There were several investigation and inquiries. OFSTED inspected a number of schools suspected of being targets of the alleged strategy, including Park View.
20. The OFSTED report on Park View, following an inspection on 5-6 and 17-18 March 2012, downgraded the school from “Outstanding” to “Inadequate”, determining that the school required Special Measures once again. Although it was recognised that the

pupil's achievement and the quality of teaching at the school remained good, the report was highly critical of the safety of pupils and of the school's leadership and management. Among the criticisms made in the report were the following:

*“The academy’s work to raise students’ awareness of the risks of extremism is inadequate....*

*There are few opportunities for students to learn about different types of beliefs and cultures in the older year groups. Students are not taught citizenship well enough or prepared for life in a diverse and multi-cultural society.”*

21. Concerns that there was a concerted attempt to introduce an overly Islamic agenda at Park View/Nansen were fuelled by consideration of posts on a WhatsApp social network entitled “the Park View Brotherhood”, the original membership appearing to limited to male Muslim teachers. Mr Anwar and Mr Ahmed were both members of and contributors to the network.

(f) The charges of unacceptable professional conduct

22. In mid-2015 the NCTL brought charges of unacceptable professional conduct against each member of the Senior Leadership Team (“the SLT”) at Park View and Nansen (comprising Ms Clark, Mr Saini, Mr M. Hussain, Mr A. Hussein and Mr Faraz) and several teachers at Park View, including Mr Anwar and Mr Ahmed.
23. Although the specific allegations of each individual’s participation differed, the overarching charge was that each of them agreed with others to the inclusion of an undue amount of religious influence in the education of pupils. No express agreement or conspiracy was identified: the case was that such an agreement and an individual’s participation should in each case be inferred from their overt actions or inactions.
24. The charges brought against Mr Anwar were as follows:

*“1. On or before 31 March 2014 you agreed with others to the inclusion of an undue amount of religious influence in the education of the pupils at Park View School and/or Nansen primary School (“the School”) by:*

- a. appointing members of staff who might assist with that aim,*
- b. reforming the Park View School’s curriculum to exclude the proper teaching of Sex and Relationship education,*
- c. organising and/or delivering assemblies and/or meetings of an overly religious nature and/or with inappropriate content;*

*2. Your conduct as described in paragraph 1 above tended to undermine tolerance and/or respect for the faith and beliefs of others;*

3. *Your conduct as described in paragraph 1a above was in breach of proper recruitment procedures in that:*

*a. you failed to declare conflicts of interest,*

*b. you failed to prevent discrimination in the appointment process”.*

25. The allegation in paragraphs 1a and 3 of the charges against Mr Anwar related to the appointment of Mr Faraz as Nansen’s Deputy Head Teacher in April 2012. The gist of the NCTL’s case in this respect was that Mr Anwar and Mr M. Hussain had “rigged” Mr Faraz’s interview, ganging up with Tahir Alam and Shahid Akmal to appoint him (rather than a more qualified female candidate) against the contrary views of Witness C (although in the event she abstained from voting on the issue). The NCTL alleged that Mr Anwar and Mr M Hussain knew Mr Faraz well and insisted on appointing him because he would (and in the event did) further their overly religious agenda, in particular by introducing Islamic Assemblies and Friday prayers at Nansen without consulting the Head Teacher or parents. It was further alleged that Mr Anwar failed to disclose his prior dealings with Mr Faraz during the selection process.

26. The charges brought against Mr Ahmed were as follows:

*“1.On or before 31 March 2014 you agreed with others to the inclusion of an undue amount of religious influence in the education of the pupils at Park View School (“the School”) by:*

*a. reforming the School curriculum to exclude the proper teaching of Sex and Relationship education,*

*b. organising and/or delivering assemblies and/or meetings of an overly religious nature and/or with inappropriate content,*

*c. Encouraging the pupils to pray during the school day by:*

*i. the broadcasting of a call to prayer over the School’s public address system*

*ii. the display of posters*

*iii. direct reminders from teachers*

*iv. direct reminders from prefects*

*d. separating boys from girls:*

*i. in some classes*

*ii. in some assemblies*

*iii. socially, by having prefects report contact deemed inappropriate.*

*2. Your conduct as described in paragraph 1 above tended to undermine tolerance and respect for the faith and beliefs of others.”*

27. The allegations in paragraph 1(c)iv and 1(d)iii in the charges against Mr Ahmed were withdrawn before the hearing before the Panel.

(g) The proceedings

28. The NCTL decided that the proceedings against the five members of the SLT would be joined together and heard at the same hearing before one panel (“the SLT proceedings”). The proceedings against Mr Anwar, Mr Ahmed and a third teacher at Park View would be joined together, but would be heard separately, before a different panel to the one hearing the case against the SLT<sup>2</sup>. A third set of proceedings, against four other teachers at Park View, would be heard before a yet further panel (“the Islam proceedings”).
29. Each of the five members of the SLT served a substantial witness statement in answer to the charges against them, providing detailed accounts of the history of their leadership at Park View and Nansen and answering the detailed allegations concerning the curriculum (in particular relating to sex and relationship education), Islamic assemblies, the call to prayer and segregation by gender. Ms Clark’s statement was 48 pages, Mr Sinai’s was 84 pages, Mr M. Hussain’s was 98 pages, Mr A Hussain’s was 82 pages and Mr Faraz’s was 32 pages. Mr M Hussain provided his account of the appointment process in relation to Mr Faraz, including the disclosure he said he and Mr Anwar made as to their prior knowledge of Mr Faraz, and disputing Witness C’s account. Mr Faraz provided a detailed account of his role at Nansen, contending that he had introduced Islamic Assemblies at the request of the governors of the school and in liaison with Witness C.
30. The SLT also served reports from experts in the fields of Sociology, Religious Education and issues relating to the British Muslim community, as well as a statement from a former Chief Education Officer for Birmingham. Such material was, it appears, aimed at addressing the issue of what constituted an undue amount of religious influence in the context of a state school where the vast majority of pupils were from a Muslim background.
31. None of the material served by the SLT was disclosed by the NCTL to Mr Anwar and Mr Ahmed. Indeed, the proceedings against Mr Anwar and Mr Ahmed were conducted without reference to the charges levelled against their superiors, the SLT. The Panel stated in its decisions in both cases that it “*was aware of other cases brought by [the NCTL], but had no knowledge at all as to the names of the teachers or the allegations they faced*”.
32. The hearing of the proceedings against Mr Anwar and Mr Ahmed took place on 12-15 and 19-22 October 2015, and 4-5 and 21 January 2016. The Panel’s decision and recommendations were read out on 9 February 2016.

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<sup>2</sup> The proceedings against the third teacher were not, in the event, heard with those against Mr Anwar and Mr Ahmed.



33. The SLT hearing commenced on or about 21 October 2015 and has still not concluded. It appears that the hearing has already lasted at least 33 days, spread over several months. I am informed that a decision is expected on 23 December 2016. The Islam proceedings are, I am told, due to recommence in October 2016.
34. During the course of Mr Anwar and Mr Ahmed's hearing, the following applications (among others) were made:
- i) On about 22 October 2015 (just after the SLT proceedings had commenced) Mr Anwar applied for a direction that the NCTL disclose Mr Faraz's witness statement and other documents recently produced by Mr Faraz in the STL proceedings. The Panel refused the application on the grounds that it was made too late.
  - ii) On 22 December 2015 Mr Ahmed wrote asking for an adjournment of the hearing (due to re-commence on 4 January 2016) pending the conclusion of the SLT hearing. On 4 January 2016 Mr Anwar supported that application on the ground of his understanding that Mr Faraz had made an application in the SLT hearing that he had no case to answer. Mr Anwar also applied for a direction that the NCTL disclose the transcripts of the SLT hearing to that date and the expert reports relied upon in that hearing. The Panel refused each of the above applications, holding that it would determine the case based on the evidence put before it by the NCTL's Presenting Officer (Mr Gillespie, who has also appeared as Counsel for the Respondent in these appeals) and by Mr Anwar and Mr Ahmed. The Panel further took the view that it had been open to Mr Anwar and Mr Ahmed to adduce expert evidence had they seen fit to do so.
  - iii) At the conclusion of the case, presumably on 21 January 2016, Mr Anwar applied to adduce in evidence a statement from Mr M. Hussain, presumably his statement in the SLT proceedings or a similar document. The Panel allowed the application.

(h) The Panel's decision

35. In the case of Mr Anwar, the Panel found:
- i) that Mr Anwar had appointed Mr Faraz with the aim of the inclusion (by Mr Faraz) of an undue amount of religious influence in the education of pupils at Nansen and without disclosing his prior knowledge of Mr Faraz;
  - ii) that Mr Anwar had changed the curriculum for sex and relationship education to the extent of failing to teach contraception and safe sex, but not that he had distributed or used a handout promoting the view that a married man has an entitlement to sexual intercourse with his wife, the latter allegation not being proved;
  - iii) that the allegation that Mr Anwar organised and delivered assemblies of an overly religious nature was not proved;

- iv) that, in view of the above findings (in particular Mr Anwar's role with others in the appointment of Mr Faraz) and supported by the mindset shown by his participation in the WhatsApp group, Mr Anwar had agreed with others to the inclusion of an undue amount of religious influence at Park View and Nansen, tending to undermine tolerance and/or respect of the faith and beliefs of others.
- v) that whilst Mr Anwar "*was not a member of the [SLT] at Park View and did not set the ethos of the school, he was nevertheless a willing contributor to, and supporter of, the direction of travel of the school*".

36. In the case of Mr Ahmed, the Panel found:

- i) that Mr Ahmed had changed the curriculum for sex and relationship education to the extent of failing to teach contraception and safe sex, but not that he had distributed or used a handout promoting the view that a married man has an entitlement to sexual intercourse with his wife, the latter allegation not being proved;
- ii) that Mr Ahmed had organised and delivered assemblies which were overly religious in nature;
- iii) that Mr Ahmed had encouraged pupils to pray during the school day (a fact he did not deny);
- iv) that Mr Ahmed had separated boys and girls in some classes and some assemblies;
- v) that, in view of the above findings and supported by the mindset shown by his participation in the WhatsApp group, Mr Ahmed had agreed with others to the inclusion of an undue amount of religious influence at Park View, tending to undermine tolerance and/or respect of the faith and beliefs of others.
- vi) That, although Mr Ahmed was not a member of the SLT and was acting on instructions, "*he was a willing participant in furthering the religious influence in the school and that his actions were deliberate.*" The Panel did not accept Mr Ahmed's assertion that he was subject to duress from senior teaching colleagues.

37. The Panel expressly stated in each decision, when pronounced on 9 February 2016, that the allegations were "*in no way concerned with extremism*". It appears that this wording troubled the Head of the Department for Education's Due Diligence and Counter Extremism Group, Hardip Begol. He asked for publication to be delayed pending "clarification". With the apparent agreement of the Chair of the Panel, the decisions were amended prior to publication so as to state that the allegations against Mr Anwar and Mr Ahmed were "*in no way concerned with violent extremism*".

The first ground of appeal: serious procedural irregularity

38. Mr Ahmed, who appeared in person (although he had been represented by counsel for part of the hearing before the Panel) submitted that that NCTL should have proceeded first against the SLT rather than against the Appellants. His case was that the SLT was

a “strong staff” which viewed itself as following established guidelines, had received considerable praise from OFSTED for its approach to improving Park View, including Islamic Assemblies and Friday prayers, and that he was only following the SLT’s directions and instructions in performing his role. He submitted that it was unfair to determine the charges against him prior to making any findings against the SLT.

39. Mr Richard Thomas, counsel for Mr Anwar (who did not appear below), joined in criticising the NCTL’s decision to proceed first against the Appellants, separately from the proceedings against the SLT. He pointed out that the principal questions in both sets of proceedings were (i) whether there was an undue amount of religious influence in the schools, a complex question requiring some careful analysis in the context of schools where the vast majority of pupils were from a Muslim background and (ii) whether there was an improper agreement between teachers (and governors) in that regard. The role of the SLT was central to a proper consideration of both of those questions. Mr Thomas further pointed out that the principal finding against Mr Anwar was that he joined in appointing Mr Faraz in order that Mr Faraz would pursue an improper agenda at Nansen, a finding made prior to any determination that Mr Faraz was guilty of pursuing such an agenda and in isolation from the case brought against Mr Faraz and Mr M Hussain.
40. Mr Thomas, however, stopped short of submitting that pursuing the Appellants separately and in advance of the SLT proceedings in itself amounted to a serious procedural irregularity. Mr Thomas’ principal submission on this ground of appeal (supported by Mr Ahmed) was that, if the NCTL decided to pursue concurrent proceedings, giving rise to an obvious risk of unfairness and inconsistent findings, it was obliged to give the fullest disclosure, including material from the SLT proceedings, but in fact disclosed only one document from those proceedings. Mr Thomas contended that the NCTL should have disclosed at least the following:
- i) the witness statements served by each member of the SLT in early October 2015 and the transcripts of their oral evidence;
  - ii) the expert evidence served by the members of the SLT;
  - iii) email exchanges between Mr Faraz and Witness C, disclosed by Mr Faraz in the SLT proceedings, including an email dated 9 June 2012 in which Mr Faraz stated:

*“In terms of collective worship for the non-Muslim children, I was under the impression that you were going to speak to the parents of these children to discuss the provision of collective worship and decide upon what provision is appropriate for them in school. My apologies if I have misunderstood this. I havent put together a rota for them but can do so on Monday, I wouldve sent one today but cannot remember who the teachers are right now. Besides it would be too late to expect the teacher to deliver it on Monday. Also, I’m not too familiar with the requirements for Christian collective worship, perhaps it would be better for Hilary and Brian to create the*

*framework for this act of worship. I think it is necessary for purposes of accuracy and quality that the acts of worship for Christians are thought out and planned. In my experience from Adderley, the unfortunate thing was that the acts of worship for Christians was not on par with that of Muslims and this was something I always took issue with. Unfortunately nothing was done about it, but lessons have been learnt and I'm eager for all children from the various faiths to have appropriate and high quality acts of worship according to their background and parent/guardian wishes."*

- iv) evidence from the SLT hearing, including Witness X, a former pupil at Park View called by Mr Faraz, who stated that Mr Anwar did (contrary to the Panel's findings) teach contraception to his SRE class. That evidence was apparently given on 26 May 2016, postdating the Panel's decision, but Mr Thomas submitted that it should have been disclosed for the purposes of the appeals.
41. Mr Gillespie acknowledged that bringing concurrent sets of proceedings in relation to an alleged conspiracy or agreement at one school was not ideal and that it would perhaps have been better if all of the teachers had been dealt with at one time. However, the NCTL had formed the view that one set of proceedings against all of the teachers would have been unwieldy. He submitted that the decision to have separate hearings was not open to challenge and that the order of the hearings was irrelevant because there is no mechanism to adduce the findings of one panel in proceedings before a different panel. He stressed that it had always been open to the Appellants to call any evidence they saw fit, including from the SLT and from experts. He also submitted that it was not a case where a teacher was arguing that they were only following orders (although, as I understand it, Mr Ahmed was indeed mounting such a defence). As for pursuing Mr Anwar separately from Mr Faraz and Mr M. Hussein, Mr Gillespie accepted that Mr Anwar might have benefitted from their presence and that it might be viewed as "Hamlet without the Prince", but submitted it was a matter of fine judgment and that the proceedings could not be said to be so flawed as vitiate the Panel's findings. Mr Gillespie further pointed out, in written submissions served after the oral hearing, that Mr Anwar and Mr Ahmed, far from seeking to have their cases joined with those of other teachers, had even objected to their cases being determined together, an objection which the Panel overruled.
42. As for disclosure, Mr Gillespie stressed that there was no formal test for disclosure by the NCTL, but that he had given careful consideration to the question by reference to the obligations of disclosure both in civil proceedings and upon a prosecutor in criminal proceedings. He emphasised that he was not the presenting office in the SLT proceedings and that materials adduced in those proceedings were only seen by him towards the end of the initial 8 days of the hearing in the proceedings against the Appellants. Mr Gillespie submitted as follows:
- i) the witness statements served by the members of the SLT were bare denials of the allegations against them and therefore not disclosable. Mr Gillespie did not specifically address the relevance of the transcripts of their evidence, but I assume he took the same view of those documents;

- ii) the expert reports did not go to the crucial issue of what the Appellants did in this case and whether that evidenced a broad agreement as alleged. Further, the Appellants were at liberty to adduce their own expert evidence;
  - iii) Mr Faraz' email in fact demonstrated that there was no collective worship for non-Muslim pupils at Nansen as at June 2012 and no email went out to parents about participation in Islamic Collective Worship until September 2013. To the extent that it suggested that he had an open mind as to such matters, it was flatly contradicted by Witness C's evidence, which the Panel regarded as credible;
43. I accept that, even though the NCTL was alleging an overarching conspiracy or agreement, it was not obliged to include all the teachers alleged to have been involved in one joint hearing. Indeed, it made sense to proceed against all the members of the SLT at one hearing and to deal with certain other teachers separately and subsequently, assuming that case had been proved against the SLT. However, I have considerable doubt as to the fairness of proceeding first against teachers such as the Appellants, in advance of what Mr Gillespie himself referred as the "main" hearing against the SLT. I have equal doubt as to the fairness of proceeding against Mr Anwar separately from and before the proceedings against Mr Faraz. The risk of inconsistent decisions, casting serious doubt on the fairness of the findings against the Appellants, is obvious and, indeed, such an outcome remains a distinct possibility.
44. However, it is unnecessary for me to express a concluded view as to whether the structure and timing of proceedings amounted to a serious procedural irregularity because I am satisfied that, having chosen to pursue the Appellants separately, the NCTL was obliged to disclose material from the SLT proceedings which might assist the Appellants' case or damage its own and that, in the absence of voluntary disclosure, the Panel should have directed that it be given. I do not accept Mr Gillespie's approach to the identified documents for the following reasons:
- i) The witness statements served by the SLT cannot, on any basis, be regarded as mere denials. They made reference to the history of Park View (as set out above), the progress made there prior to 2014 and the previous OFSTED reports, seemingly crucial background in a proper understanding of the approach of the SLT and the teachers reporting to them. Perhaps not surprisingly, the Panel did not refer to such matters in their decisions relating to the Appellants. The statements also give detailed accounts of the approach of each member of the SLT to the detailed allegations made in the proceedings, including assemblies, Friday prayers and the appointment of Mr Faraz. But even if the statements were little more than denials, the very fact that each member of the SLT denied the same allegations as made against the Appellants was highly relevant information for the Appellants and the Panel to receive. Indeed, by email dated 15 October 2015 (in the middle of the initial hearings before the Panel), the NCTL disclosed the SLT statements to the teachers in the Islam proceedings, referring to the NCTL's ongoing duty of disclosure and stating that the statements "*are disclosed on the basis that they contain denials that there was in existence an agreement to allow the inclusion of an undue amount of religious influence at the school*". In my judgment it is plain beyond contradiction that similar disclosure should have been made to

the Appellants and that the Panel should have so directed the presenting officer.

- ii) For similar reasons, the expert reports served in the SLT proceedings should have been disclosed. The question of what constituted an undue amount of religious influence was plainly a major issue in the SLT proceedings and the Appellants should have been made aware of the nature and extent of the arguments and evidence being advanced by the SLT in that regard. The fact that the Appellants could have served their own reports does not absolve the NCTL of their disclosure obligation. Indeed, if the Appellants had seen the expert reports they might have sought to call those or other experts;
  - iii) Mr Faraz's email of 9 June 2012 is plainly capable of being viewed as evidence that Mr Faraz did not have the improper agenda alleged by the NCTL. It is no answer to say that the Panel accepted Witness C's evidence, because it did so without sight of the email (and without reading Mr Faraz's written statement or a transcript of his oral evidence).
45. The failure of the NCTL to give (and of the Panel to order) the disclosure outlined above was, in my judgment, a sufficiently serious procedural irregularity to render the proceedings against the Appellants unjust. On that basis both appeals must be allowed.

#### The second ground: perverse findings and irrelevant and improper considerations

46. In view of my conclusion above it is unnecessary for me to consider the detailed but secondary arguments advanced by the Appellants as to why the Panel's findings of fact and/or their judgments as to whether those facts amounted to undue religious influence were wrong. Indeed, as the result of my finding above may be a new hearing, it would be inappropriate for me to express a view as to the underlying merits of the allegations.

#### Conclusion

47. For the reasons set out above these appeals are allowed and the Prohibition Orders made against the Appellants will be set aside. In the event that the NCTL invites me to order a new hearing I will hear further argument from the parties in that regard, as well as on any other consequential issues which arise.