APPROVED
THE HIGH COURT

[2018 No. 234 S.P.]

IN THE MATTER OF SECTION 44(5)
OF THE TEACHING COUNCIL ACTS, 2001-2015
AND IN THE MATTER OF A REGISTERED
TEACHER AND ON THE APPLICATION
OF THE TEACHING COUNCIL OF IRELAND

BETWEEN

TEACHING COUNCIL OF IRELAND

APPLICANT

AND
S. R.

RESPONDENT

JUDGMENT of Ms. Justice Faherty delivered on the 13th day of August, 2018.

1. This matter comes before the Court on foot of a Special Summons which issued on 4th May, 2018 by way of application pursuant to s. 44(5) of the Teaching Council Acts 2001-2015 (hereinafter "the Act") to affirm the decision of the applicant (hereinafter "the Teaching Council" or "the applicant") to remove the respondent from the Register of Teachers following an Inquiry before a Panel of the applicant's Disciplinary Committee into allegations of professional misconduct against the respondent.

2. The within application is grounded on the affidavit of Brendan O'Dea, a Deputy Director of the Teaching Council.

Background
3. On 26th September, 2016, the Teaching Council's Executive Committee considered information brought to its attention by the Principal of a named school relating to an alleged incident involving the respondent, then a teacher in the said school, which occurred at the school on 7th March, 2012. The incident involved the alleged sellotaping of the mouths of five pupils in the School.

4. The Executive Committee is the entity established pursuant to s. 24(2) of the Act for the purpose of making complaints on behalf of the Teaching Council to the latter's Investigating Committee.

5. At the meeting of 26th September, 2016, the Executive Committee decided to make a complaint to the Investigating Committee on the basis that it was considered that the complaint brought by the Principal might fall within s. 42(1B) of the Act.

6. Section 42(1B) provides that the Investigating Committee may consider a complaint of professional misconduct notwithstanding that the conduct to which the complaint relates occurred prior to the coming into force of Part 5 of the Act where that conduct:

> "(a) would have constituted a criminal offence at the time that conduct occurred, and
>
> (b) is of such nature as to reasonably give rise to a bona fide concern that the teacher may –
>
> (i) harm any child or vulnerable person,
>
> (ii) cause any child or vulnerable person to be harmed,
>
> (iii) put any child or vulnerable person at risk of harm,
>
> (iv) attempt to harm any child or vulnerable person, or
>
> (v) incite another person to harm any child or vulnerable person.

7. The Investigating Committee met on 10th October, 2016 to consider the complaint made by the Executive Committee. The Investigating Committee decided that the conduct complained of:

> (i) was conduct that would have constituted a criminal offence at the time it occurred; and
>
> (ii) was of such a nature as to reasonable give rise to a *bona fide* concern that the teacher may harm any child or vulnerable person.

The Investigating Committee decided that the complaint related to the fitness to teach of the respondent.

8. Accordingly, it was satisfied that it was entitled to consider the complaint of pre-commencement professional misconduct.

9. At its next meeting on 14th November, 2016, the Investigating Committee clarified that, for the purpose of s. 42(1B) of the Act, the offences which corresponded with the alleged conduct relating to the five children involved were:

> "(i) For each of the children whose mouths [the respondent] allegedly sellotaped, section 2 of the Non-Fatal Offences Against the Person Act, 1997 and section 246 of the Children Act, 2001;
>
> (ii) For the children in respect of whom [the respondent] allegedly instructed to sellotape their own mouths, section 246 of the Children Act, 2001."

10. The Investigating Committee also decided that the procedures established under s. 24 of the Education Act, 1998 had been exhausted.

11. The Investigating Committee met again on 15th May, 2017 and, pursuant to s. 42(9) of the Act, formed the opinion that there was a *prima facie* case to warrant further action being taken in relation to the complaint. It decided to refer the complaint in whole

to the Disciplinary Committee on the ground of professional misconduct.

12. A Notice of Inquiry dated 8th September, 2017 containing the allegations against the respondent was prepared by the Director of the Teaching Council's legal representatives and duly sent to the respondent under cover of letter dated 12th September, 2017. The letter was sent by registered post to the address maintained for the respondent on the Teaching Council's Register and which the respondent herself had included on correspondence which she had furnished earlier on in the complaint process. The letter and Notice of Inquiry were also sent by email to the respondent's email address, as appeared on the applicant's Register, and which was the email address from which the respondent communicated throughout the complaint process.

13. The Notice of Inquiry advised the respondent, inter alia, of the five allegations against her, namely that on 7th March, 2012, she applied sellotape and/or caused sellotape to be applied to the mouths of five named pupils in the School. She was advised that the allegations of professional misconduct, taken individually and/or cumulatively and/or in combination, amounted to professional misconduct on her part. The respondent was advised that she had the right to be represented during the course of the Inquiry. She was further advised of the range of sanctions that might be applied should she be found guilty of professional misconduct.

14. The panel of the Disciplinary Committee (hereinafter "the Panel"), charged with conducting the Inquiry, held a preliminary hearing on 18th September, 2017. The respondent did not attend the preliminary hearing and was not represented. The Panel considered written submissions from the respondent and some of the witnesses concerned, and heard oral submissions from the Director of the Teaching Council's legal representatives. As disposed to by Mr. O'Dea, the function of the Director in the context of an Inquiry is to present the evidence in support of the complaint.

15. The Panel duly decided the Inquiry would be by way of oral hearing and would take place in public.

16. On 2nd October, 2017, the respondent deleted her email address which was recorded on the Register maintained by the applicant. She did not enter a replacement email address.

17. On 3rd October, 2017, the respondent wrote to the applicant's representatives stating that her preference in terms of communication was via post only and that she did not welcome any further email correspondence in respect to the matter from the Teaching Council or its legal representatives. In this regard, the respondent included on her letter her address, which was the same address as maintained on the Register and which is the address set out in the "Confirmation of Teacher Status" document as exhibited by Mr. O'Dea in his affidavit.

18. A second preliminary hearing was held by the Panel on 26th October, 2017. The respondent did not attend and was not represented. The Panel considered further written submissions from the respondent and some of the witnesses concerned who were minors, and heard oral submissions from the Director's legal representatives. A decision was made by the Panel to anonymise the name of the respondent, the minor witnesses, the Principal of the School and the name and location of the School for the purpose of the Inquiry.

19. The Inquiry was duly heard before the Panel on 8th November, 2017. The respondent was not present and was not legally represented at the Inquiry. At the outset of the Inquiry, the Panel was provided with the core book of documentation. Further documentary exhibits were produced during the hearing. Oral evidence was adduced before the Panel and witnesses were examined. A transcript of the evidence adduced before the Inquiry was prepared.

20. In accordance s. 43(17)(b) of the Act, following the completion of the Inquiry, the Panel prepared a report dated 9th November, 2017 ("the Report"). The Panel found that allegations 1 to 5 of the Notice of Inquiry were proven as to fact. The Panel found that each of the allegations taken individually amounted to professional misconduct. It also found that taken cumulatively, or in combination, the allegations amounted to professional misconduct.

21. By letter dated 22nd November, 2017 sent by registered post and email, the applicant's legal representatives furnished the respondent with the exhibits from the Inquiry, the transcript and a copy of the Report. She was informed that the Panel would consider any submissions received from both her and the Director and that it may decide to impose sanction in accordance with s. 44(1) of the Act. The respondent was informed that the Panel would decide whether it wished to receive oral or written submissions in relation to sanction.

22. By letter dated 5th January, 2018, the Panel invited the Director and the respondent to make written submissions on sanction by 22nd January, 2018. No substantive submissions made by the parties in relation to sanction, save an earlier communication from the respondent on 11th December, 2017.

23. The Panel's decision as to sanction, pursuant to s. 34(1)(a) of the Act, was to remove the name of the respondent from the Register and that she would not be eligible to apply, under s. 31 of the Act, to be restored to the Register for a period of one year, beginning on the date of removal.

24. By letter dated 16th March, 2018, sent by registered post, the applicant provided the respondent with a copy of the Panel's decision in relation to sanction, pursuant to s. 44(2) of the Act.

25. The letter was addressed to the respondent's address as appeared on the Register. The letter informed the respondent that she had 21 days from the date of service of the letter to apply to the High Court for annulment of the Panel's decision.

26. As disposed to by Mr. O'Dea in his affidavit, delivery of the letter and the enclosed decision on sanction was attempted by An Post on 20th March, 2018. This delivery was unsuccessful. The correspondence was returned to the offices of the Teaching Council on 27th March, 2018.

27. On 23rd March, 2018, the applicant, via email, provided the respondent with a copy of the 16th March, 2018 letter, together with a copy of the Panel's decision in relation to sanction. The email was addressed to the respondent's email address as listed on the Register and which the respondent had deleted and not replaced in October, 2017.

28. On 26th March, 2018, the applicant's legal representatives instructed RB Legal Services Limited to personally serve the respondent with a copy of the letter dated 16th March, 2018, together with a copy of the Panel's decision in relation to sanction. RB Legal Services Limited were instructed to serve the respondent at the address retained by the applicant for the respondent. Enclosed with the letter of instruction to RB Legal Services Limited was a letter from the applicant's legal representatives to the respondent dated 26th March, 2018, listing the documents with which she was being served.

29. On 29th March, 2018, the applicant advised the respondent by email that, later that day, a copy of the 16th March, 2018 letter, together with the Panel's decision in relation to sanction, would be left at the address which the applicant retained for the respondent.

30. Additionally, on 29th March, 2018, the applicant's legal representatives emailed the respondent a copy of the letter dated 16th March, 2018, together with a copy of the Panel's decision in relation to sanction. The email again confirmed that both the letter and decision on sanction would be served later that day by leaving the documents at the respondent's address as appeared on the applicant's Register.

31. On 6th April, 2018, the applicant's legal representatives were furnished with a report from Richard Ballagh of RB Legal Services Limited, dated 3rd April, 2018, in relation to the attempts made to serve the respondent with a copy of the letter dated 16th March, 2018 together with a copy of the Panel's decision on sanction. Mr. Ballagh's report outlines that unsuccessful attempts were made to personally serve the respondent at her registered address on 26th March, 2018, and on two occasions on 28th March, 2018. The report goes on to state that on 29th March, 2018, at 9:45pm, Mr. Ballagh attended at the respondent's registered address and put through the letter box of the property a copy of the letter dated 16th March, 2018 together with a copy of the Panel's decision in relation to sanction. Mr. Ballagh's report also states that when he attended the property on 29th March, 2018, a lady spoke to him from the window of the property and informed him that she was not the respondent and asked that he would not to leave anything for the respondent in the letterbox. Mr. Ballagh's report confirms that the documents were posted through the letterbox of the property and photographs were taken of this being done.

32. According to Mr. O'Dea, on 29th March, 2018, the respondent logged into the online service of the applicant's website and deleted her address which was retained by the applicant on the Register. She did not insert a new address.

33. The respondent had 21 days to appeal to the High Court from the decision of the Teaching Council. In his affidavit, Mr. O'Dea states that this period commenced on the date on which the applicant, by notice in writing, provided the respondent with a copy of the decision in relation to sanction. He avers that the date on which the respondent was provided with a copy of the sanction decision was 29th March, 2018. He further avers that the respondent has not applied to the High Court pursuant to s. 44(3) of the Act for annulment of the decision and that the period of 21 days for her to appeal to the High Court has now expired.

The relevant statutory provisions
34. Section 44(5) of the Act provides as follows:

"[Where a registered teacher does not apply to the High Court under *subsection (3)* for annulment of the decision (other than a decision to advise, admonish or censure under *subsection (1)(d)* or a decision *under subsection (1A)],* the Council shall, within 21 days of the expiry of the period for making an application under that subsection or such further period as the High Court considers just and equitable in the circumstances, apply *ex parte* to the High Court for confirmation of the decision and, where the Council so applies, the Court, on the hearing of the application shall unless it sees good reason to the contrary, confirm the decision or may give such other directions to the Council as the Court considers appropriate and may make such order as to costs as it considers appropriate."

Section 44(6) provides:

> "The decision of the High Court on an application under this section shall be final save that, by leave of the High Court or [Court of Appeal], an appeal by the Council or the registered teacher, from that decision, shall lie to the [Court of Appeal] on a specified question of law."

35. Thus, as can be seen, s. 44(5) of the Act is the statutory basis for the within application and the Court must confirm the decision of the Teaching Council unless it sees good reason to the contrary.

The findings of professional misconduct
36. Each of the five allegations of professional misconduct made against the respondent with regard to the five named students at the School were found by the Panel to be proven as to fact to the criminal standard.

37. In summary, in relation to each of the individual allegations, the Panel found the evidence of each individual student whose mouth was sellotaped or caused to be sellotaped, the evidence of student witnesses to each individual sellotaping incident and the evidence of the Principal of the School to be credible. It also found, in relation to each individual allegation, as follows:

> "2. In her evidence the Principal who took all of these students for a class in the intermediate aftermath of the events complained of, was given consistent accounts of what had happened to the students concerned and found a number of them to be visibly upset. She reacted with a sense of urgency, arranged for letters to be sent to each student's parents on the same day, told the teacher not to return to the school and reported the matter appropriately to the relevant authorities.
>
> 3. None of this evidence was challenged by cross-examination. No contradictory evidence was adduced.
>
> 4. In exchanges by correspondence in advance of the Inquiry the teacher made a detailed submission, dated 26th April 2017, setting out her account of events in which she comprehensively denied sellotaping any students' mouth or directing that to be done. In another document submitted by the teacher entitled "Victim Impact Statement", dated 24th October 2017, she made further statements or suggestions about the circumstances in which the allegations were investigated. Relevant extracts from these documents were put to each witness and each of them rejected the teacher's version of events and the students confirmed they had written their statements independently".

38. Under the heading "Allegations of Professional Misconduct", the Panel found:

> "Under this heading it was alleged in the Notice of Inquiry that one or more of the allegations…taken individually and/or cumulatively and/or in combination, amount to professional misconduct. The Panel found that each of the allegations 1-5…taken individually amounts to professional misconduct. The Panel also found taken cumulatively or in combination that the allegations amount to professional misconduct.
>
> Reasons:

Counsel for the Director submitted that the relevant definition of Professional Misconduct was that contained in the Code of Professional Misconduct for Teachers (updated 2nd Edition, 2016), in these terms:

> "Disgraceful or dishonourable conduct either in the course of the registered teacher's profession or otherwise than in the course of the registered teacher's profession if the conduct is of such a serious nature as would bring the profession of teaching into disrepute."

The Panel considered the teacher's conduct to be wholly unacceptable and as such had no difficulty in describing it as both disgraceful and dishonourable. The seriousness of the misconduct is illustrated by the fact that at the screening stage of the process, the Investigating Committee had to consider whether the allegations were of a criminal nature and involved harm or potential harm to a child in order to satisfy the requirement of Section 42(1B) of the Acts. The Investigating Committee found these criteria had been met and the Panel agreed with this characterisation of the teacher's conduct. This illustrates the Panel's view of the gravity of the teacher's conduct towards her students on this occasion."

39. Under the heading "Any other matters", the Panel stated:

> "The Panel suggests that the Teaching Council give consideration to notifying the appropriate child protection statutory bodies of its findings as soon as it is appropriate to do so."

40. In its decision on Sanction dated 16th March, 2018, the Panel took account of the purpose of sanction and the factors to be considered when imposing sanction, as set out in ss. 6 and 7 of the Teaching Council's Sanction Guidance Document. It went on to state:

> "In considering the issue of Sanction, the Panel received advice from the Legal Assessor. Before making its decision, the Panel informed the parties in writing of the legal advice received and gave them the opportunity to comment on it before the Panel made its decision. In the event, neither party chose to comment on the advice which was then followed by the Panel.

41. The Panel went on to state, under the heading "Background Information":

> "Before considering a sanction, the Panel considered all communications from or on behalf of the Director and [the respondent]. The Panel was informed that a call to a member of the staff of the Teaching Council had been received from a withheld number and the caller did not give her name. This information was disregarded based on legal advice.
>
> Mitigating factors were considered by the Panel before the application of sanction. The factors considered were:
>
> 1. Medical issues were referred to by the teacher in her submissions. However, no documentary evidence was provided by any registered medical practitioner to support any claim that such issues may have affected the teacher's ability to practise. Further, such issues were not presented as an explanation for events, as the events proven as to fact were denied consistently throughout the teacher's submissions.
>
> The Panel therefore felt that such medical issues contributed little towards mitigation.
>
> 2. The teacher was a Newly Qualified Teacher (NQT), working as a substitute and had not been fully probated and lacked experience.
>
> In the [Panel's] opinion, having regard to the nature of her professional conduct, this was not a significant mitigating factor.
>
> 3. There had been considerable time lapse since the events took place. The Panel notes that the conduct continues to be denied. There is little by way of evidence to allay concerns that the conduct proven as to fact has been accepted by the teacher and no remorse or intention to address concerns has been shown. In the circumstances the time lapse in time was not considered to be a significant mitigating factor."

42. The aggravating factors considered by the Panel were as follows:

> "1. The misconduct was of a serious nature, causing harm or potential harm to children.
>
> 2. The events proven as to fact [represent] an abuse of a position of trust.
>
> 3. The events proven as to fact continue to be denied.
>
> 4. No evidence has been presented to the Panel to suggest that issues that may have prompted this behaviour in the first case have been addressed."

43. The Panel then went on to consider the potential sanctions, as set out in the Act, in order of increasing severity. It found that the options of applying "No Sanction" or applying "Advice, Admonishment or a Censure in writing", would, respectively, be inadequate or not adequate or inappropriate for the following reasons:

> "1. This response would not adequately address the professional misconduct found on the part of [the respondent] which was of a serious nature.
>
> 2. This would be an inappropriate response in circumstances where the events proven as to fact, having caused harm or having the potential to cause harm, could reoccur.
>
> 3. To impose no sanction would not afford the public any protection against similar occurrences in the future.
>
> 4. Such a response would be inadequate in the context of sending an appropriate message to the public or to the

profession itself, designed to preserve the reputation of the profession."

44. The Panel also considered retaining the respondent on the Register subject to the application of all or any of the conditions set out in s. 44(1)(c) of the Act. In the context of addressing issues of public protection and the rehabilitation of the respondent it examined possible conditions relating to Training, Monitoring, Mentoring and Observation. The Panel decided however that applying conditions would not be the appropriate sanction for the following reasons:

> "1. [The respondent's] ability to gain appropriate insight had not been demonstrated. Specifically, she had not shown that she understands children's needs, their right to be protected or the teacher's responsibilities in these contexts. The Panel was particularly concerned about this feature of her misconduct and did not consider it was something that could realistically or effectively be addressed by the imposition of conditions.
>
> 2. Her failure to engage in the Inquiry process in a meaningful way made it more difficult for the Panel to have any confidence that conditions will address the concerns that the findings raise.
>
> 3. The paramount importance of public protection in choosing a sanction, and the public protection issues identified by the Panel, meant that conditions would be an inadequate sanction."

45. The next sanction considered was that the respondent be suspended from the Register for a specified period not exceeding two years. This sanction was found not to be the appropriate sanction for the following reasons:

> "1. The Panel believed that the findings against [the respondent] are fundamentally incompatible with continuing to be a registered teacher.
>
> 2. She has shown no evidence of insight and therefore poses a significant risk of repeating the behaviour which was the subject of the inquiry.
>
> 3. The Panel felt that imposing conditions would not adequately address the need to protect the public and, in this case in particular, to protect students".

46. The Panel next considered that the respondent be removed from the Register and not be eligible to be restored for a specific period. It decided that removal from the Register was the appropriate sanction. It gave its reasons in the following terms:

> "1. Having first considered all other sanctions available to the Panel, they were not deemed to be appropriate, adequate or proportionate in this case, for the reasons outlined.
>
> 2. The Panel believed that the findings against [the respondent] are fundamentally incompatible with continuing to be a registered teacher.
>
> 3. [The respondent] did not demonstrate any understanding of children's needs, their right to be protected or the teacher's responsibilities in these contexts. The Panel was particularly concerned about this feature of her misconduct.
>
> 4. Her ability to gain appropriate insight had not been demonstrated.
>
> 5. The Panel felt removing [the respondent] from the register is the only means of protecting the public and, in this case in particular, to protect students.
>
> 6. This is also the only appropriate and effective sanction to preserve the reputation of the teaching profession in the eyes of the public and the profession itself.
>
> 7. In reaching its conclusion, the Panel was very conscious that it was deciding on the most severe sanction open to it. For the reasons identified, it did not believe a more lenient sanction was open to it in all the circumstances. Nevertheless, it is conscious that removing a teacher from the register so early in her professional career before completion of a probation or induction programme, however necessary in the public interest, will be difficult for the teacher concerned.
>
> 8. In deciding on the minimum period before eligibility to apply for restoration to the register, the Panel were not in a position to specify a time in the future when restoration would be appropriate. In general terms, it considered that if [the respondent] believes (having regard to the Panel's findings and all relevant considerations) that she can demonstrate that restoration is appropriate, she should not be unreasonably delayed in making the necessary application. The Panel therefore decided on one year as the minimum period before which such [an] application can be made."

47. Thus, the decision regarding sanction was as follows:

> "For the reasons identified, the Panel's decision on sanction, under section 44(1)(a) of the Act, is to remove the name of [the respondent] from the register and that she will not be eligible to apply, under section 31 of the Act, to be restored to the register for a period of one year, beginning on the date of removal."

Relevant jurisprudence

48. In the course of the application, the Court was referred to the decision of Kelly P. in *Medical Council v. Lohan-Mannion* [2017] IEHC 401 by way of helpful guidance as to how the Court should exercise its function pursuant to s. 44(5) of the Act. In like manner to s. 44(5) of the Act, s. 76 of the Medical Practitioner Act 2007 provides that an application for confirmation of the decision of the Medical Council is to be brought to the High Court where the registered medical practitioner does not appeal a decision of the Medical Council. Section 76(3) of the Medical Practitioners Act provides:

> "The Court shall, on the hearing of an application under subsection (1), confirm the decision under section 71 the subject of the application unless the Court sees good reason not to do so."

49. In *Medical Council v. Lohan-Mannion*, Kelly P. referred to an earlier ex tempore judgment delivered by him in *Medical Council v. M.A.G.A.* [2016] IEHC 779. At para. 45 of his decision in *Medical Council v. Lohan-Mannion* he stated:

"I came to the conclusion that when the Act speaks of 'good reason', that expression has to be given a restricted meaning. In the course of my judgment I said: -

> *'I accept the argument made by Mr. Butler that the jurisdiction which is conferred under s.76 (3) is not an unfettered one and it does not constitute the High Court as an appeal tribunal on the merits in respect of an application of this sort. Rather, the obligation of the court is to deal with the issues of the type identified, such as adherence to correct procedural norms, adherence to the requirements of natural and constitutional justice and the making of a decision by the Medical Council which is a reasonable one or to put it another way is one which cannot be said to be one which no reasonable council would come to. By the use of that expression, I am importing concepts of reasonableness which are well known to legal practitioners on the judicial review side of the court, namely 'Wednesbury unreasonableness' or 'Stardust' type unreasonableness. (Associated Provincial Picture Houses Ltd. v. Wednesbury Corporation [1948] 1 KB 22; State (Keegan & Lysaght) v. Stardust Victims' Compensation Tribunal [1986] I.R. 642.)"*

50. The learned judge went on to state, at para. 49 of *Medical Council v. Lohan-Mannion*:

"Both sides argue that the construction which I placed upon the provisions of s.76 (3) of the Act in Medical Council v. M.A.G.A. is the correct one. The ability of the court to refuse to confirm a decision of the Medical Council is limited to circumstances where it can identify 'good reason' not to do so. Given the contrast between the jurisdiction conferred by s.75 and that conferred by s.76, coupled with the fact that the obligation to protect the public by ensuring that medicine is practised by competent practitioners in whom the public can repose trust is that of the Medical Council, the only basis upon which the court can refuse an order under s.76 is that outlined in M.A.G.A. Thus, the court would have to be satisfied of either a procedural impropriety, a lapse from the norms of constitutional and natural justice or a decision on the part of the Medical Council which is one which no reasonable Council could come to."

He further opined:

"60. In Hermann v. Medical Council [2010] IEHC 414, Charleton J. said this:-

> *'Correction, rehabilitation and punishment mark out the potential approaches by the Medical Council within these three major but sometimes overlapping categories of appropriate response to misconduct or lack of competence. To rigidly divide these responses into categories would be to undermine the scheme of the Act whereby the Fitness to Practice Committee, in making a recommendation to the Medical Council, and the Council itself, are entrusted with the important task of ensuring that the practice of medicine delivers its expected service to the public through being highly competent, safe and reliable. In the mildest cases of admonishment little danger may be involved to the public. When that category shades into the instances where it is necessary to issue a censure in writing, or to attach conditions to registration while restricting the practice of medicine that may be engaged in by the practitioner, the category of misconduct or lack of competence has become much more serious. It is clear from the scheme of the Act of 2007 that the approach by the Medical Council should involve protecting the public and reassuring them as to the standards that medical practitioners will at all times uphold; requiring that medical practice is by those who are properly trained and appropriately qualified to safely engage in the areas of medicine where they hold themselves out to be experts. In that and the other more serious category, the protection of the public is paramount to the approach of the Medical Council. The reputation of the medical profession must, in those instances be upheld. This exceeds in importance, where the misconduct is serious, the regrettable misfortune that must necessarily be visited upon a doctor.'*

61. Thus it can be seen that the protection of the public is a paramount consideration for the Medical Council and the court on an application of this sort.

62. In carrying out the function which is prescribed under s.76 (3) of the Act, I have to have regard to the limited jurisdiction which is vested in this court. As I have already pointed out I can only refuse the order sought in this case if I am of opinion that the Medical Council came to such an unreasonable decision that no reasonable medical council could have so done.

63. I am unable to come to that conclusion and thus cannot refuse to confirm the Medical Council's decision. The threshold which has to be achieved in order to demonstrate such unreasonableness is similar to that required to quash the decision of any administrative body on judicial review. It is a high threshold and has not been achieved here.

64. Given the limited jurisdiction conferred upon the court, my views as to the adequacy of the sanction, having regard to the serious failures of the respondent and the findings made against her, are not relevant.

65. Although the sanction might be considered to be lenient or one which does not address the public interest and provide protection to the public as comprehensively as it might, it nonetheless cannot be regarded as so lacking in that regard as to warrant a refusal of this application. The Medical Council is of the view that the sanction proposed by the FTPC and affirmed by it is proportionate and adequately protects the public as it is framed and without the necessity of any suspension being visited upon the respondent. For the reasons urged upon me by both the Medical Council and the respondent, I conclude that the Council's decision addresses all relevant issues in such a way as would not justify a refusal of this application.

66. In these circumstances it is not necessary for me to consider the powers which the court would have if the order were to be refused. Would the court be confined to a mere refusal thus resulting in the respondent not having to face any sanction at all? Would it have power to refer the matter back to the Medical Council for reconsideration by it? Or could it be that in order to ensure that an absurd result was not brought about the court could proceed to impose a sanction which it thought appropriate?

67. These interesting questions do not arise for answer here in the light of my findings. It would be neither prudent or appropriate for me to suggest the answers to these questions."

Application of the relevant principles to the within application

51. In the present case, there has been no application by the respondent pursuant to s. 44(3) of the Act to annul the decision on sanction. Of course, it goes without saying that in order to make such an application the respondent would have to have notice of the imposition of the sanction, as required by s.44(2) of the Act. I am satisfied that she received such notice and that the 21 day period from which to apply to the Court for annulment of the decision of the Teaching Council commenced on 29th March, 2018 when the respondent was served with the applicant's letter of 16th March, 2018 together with a copy of the decision on sanction. Service of the said documents on the respondent was effected on behalf of the applicant by RB Legal Services Limited posting the documents through the letterbox of the address maintained by the Teaching Council for the respondent, being the address from which the respondent had communicated with the Teaching Council at all stages of the Inquiry, and indeed prior to the commencement of the Inquiry. I note that in her letter of 3rd October, 2017 to the applicant's legal representatives, the respondent stated her postal address on the said letter and specifically communicated her preference for all correspondence in relation to the matter, either from the applicant or its legal representatives, to be by post. The address listed on the respondent's letter is that maintained by the Teaching Council on its Register and, more importantly, it is the address of the property where RB Legal Services Limited delivered a copy of the letter of 16th March, 2018 together with the decision on sanction on 29th March, 2018. The fact of the respondent on 29th March, 2018 logged in to the Teaching Council's website for the purpose of deleting her address does not, in all the circumstances of this case, give the Court any cause for concern that the respondent is unaware of the sanction imposed on her. The Court is satisfied that the respondent was served with the decision on sanction on 29th March, 2018 and is thus satisfied to deem service on the respondent on the said date to be in order.

52. I turn now to the question of whether there is any "good reason" as to why the Court should not confirm the decision of the Teaching Council. As set out by Kelly P. in *Medical Council v. M.A.G.A.* and in *Medical Council v. Lohan-Mannion*, the function of the Court in applications such as the present is a restricted one and, to paraphrase Kelly P., it does not allow the High Court to act as an appeal tribunal on the merits.

53. Moreover, the Court's restricted function in an application under s. 44(5) of the Act is clearly put into focus when compared to the functions of the Court in circumstances where a teacher who is subject to sanction (other than a decision to advise, admonish or censure) applies to the High Court for annulment of the decision. Section 44(3) of the Act provides that where such application is made, "the Court, on hearing the application, may-

> (a) annul the decision,
>
> (b) confirm the decision and as the Court considers appropriate-
>
> > (i) direct the Council to remove the registered teacher from the register,
> >
> > (ii) direct that during a specified period (which period shall commence not earlier than 7 days after the date of the decision of the Court and shall not exceed 2 years) registration shall be suspended, or
> >
> > (iii) direct the Council to retain the registration subject to such conditions (if any) as the Court considers appropriate,
>
> (c) vary the decision[…], or
>
> (d) give such other directions to the Council as the Court considers appropriate…"

54. Thus, as can be seen, the Court has a much more substantive adjudicative function in an application under s. 44(3) of the Act as opposed to the function of the Court under s. 44(5) of the Act.

55. As outlined by Kelly P. in *Medical Council v. M.A.G.A.,* and in *Medical Council v. Lohan-Mannion, "the obligation of the court is to deal with the issues…such as adherence to correct procedural norms, adherence to the requirements of natural and constitutional justice and the making of a decision by the Medical Council which is a reasonable one or to put it another way is one which cannot be said to be one which no reasonable council would come to*."

56. Can it be said as regards the present case that there was any question of procedural impropriety or lack of natural or constitutional justice? From a perusal of the papers before the Court, I am satisfied that no question of procedural impropriety or lack of natural or constitutional justice arises in this case. My conclusion in this regard is informed by the following factors.

57. I note that at the outset, the Investigating Committee wrote to the respondent on 29th September, 2016 advising her of the making of the complaint and enclosing the documentation considered by the Executive Committee when it decided on behalf of the Teaching Council to make a complaint to the Investigating Committee. She was advised at that stage that she did not have to furnish any information in relation to the complaint, pending a decision of the Investigation Committee to investigate the complaint, but that any such submission as might be made by her would be part of its consideration. She was advised of her entitlement to seek legal advice or the assistance of a colleague or union representative before corresponding in relation to the complaint.

58. The Investigating Committee were alert to the fact that the complaint made against the respondent predated the coming into force of Part 5 of the Act, which was 25th July, 2016. As such, the Investigating Committee was obliged to have regard to s. 42(1B) of the Act and to consider whether the allegations made against the respondent fell within the scope of that subsection. It is clear from the papers before the Court that the Investigating Committee embarked upon such a consideration. It also satisfied itself that the complaint related to the fitness to teach of the respondent. By letter dated 13th October, 2016, the respondent was advised of the Investigating Committee's decision in these regards.

59. Equally, the Investigating Committee satisfied itself that the procedures under s. 24 of the Education Act 1998 had been exhausted, as advised to the respondent.

60. The Investigating Committee also furnished the respondent with a notice advising her that she could make submissions within 21 days of the receipt of the notice but that she was not obliged to do so. The respondent was advised of the possible outcomes of the Investigating Committee's investigation, namely that it could decide to refer all or part of the complaint to the Disciplinary Committee for an inquiry or decide that the complaint should not be referred to the Disciplinary Committee. In the event of a decision to refer, the respondent was advised that the inquiry process could involve oral evidence to be given on oath before a panel of the Disciplinary

Committee. She was also advised of the range of sanctions available to the Disciplinary Committee if one or more the allegations were proven. The respondent was again reminded that she may wish to seek legal advice or the assistance of a colleague or union representative.

61. Further correspondence issued from the Investigating Committee between 21st November, 2016 and 19th April, 2017.

62. By the time the Investigating Committee made its decision to refer the matter to the Disciplinary Committee, it had a written submission from the respondent dated 26th April, 2017. In her submission, the respondent denied that she had applied or caused sellotape to be applied to the mouths of any child and denied physically assaulting the said children in such manner. She stated that during the course of her class on 7th March, 2012, she had observed children with selloptape over their mouths and directed the children to remove it. She also stated that while concerned to speak to the Principal about the matter she was unable to do so due to having been directed to drive to another school to deliver teaching materials to children there, as had previously been arranged. The respondent stated that on her return to the School she was met by the Principal who told her to leave the School immediately. The respondent also stated that she had asked the Principal if she could "detail her about something that had happened at the end of [her] class" but was told that the Principal did not have time for this.

63. As documented in the Minutes of its meeting of 10th May, 2017, the Investigating Committee noted the conflict of evidence between the respondent's account of the events of 7th March, 2012 and those of the students involved and noted that the conflict may be resolved at an inquiry before a panel of the Disciplinary Committee.

64. By letter dated 22nd May, 2017, the Investigating Committee advised the respondent that, pursuant to s. 42(9) of the Act, it had formed the opinion that there was a *prima facie* case to warrant a referral of the complaint to the Disciplinary Committee. She was also advised of the name of legal representatives who would be acting for the Director of the Teaching Council and she was again advised to seek legal advice or the assistance of a colleague or union representative.

65. The Teaching Council's Director's legal representatives wrote to the respondent on 27th June, 2017, setting out, *inter alia*, the broad parameters of an inquiry by the Disciplinary Committee. They also enclosed paginated copies of the documentation before the Investigating Committee when it made the decision to refer the matter to the Disciplinary Committee, the Minute of the Investigating Committee's meeting, Part 5 of the Act, the Teaching Council's (Disciplinary Committee Panel Procedures) Rules 2016 and the Teaching Council booklet-"*What to do if a complaint is made about you*". It was recommended that the respondent obtain legal advice or that of a colleague or union representative.

66. By letter dated 1st September, 2017, further documentation was furnished to the respondent by the Director's legal representatives. She was advised that a notice of inquiry was currently being prepared and that the Disciplinary Committee would convene a preliminary meeting on 18th September, 2017 for the purpose of deciding whether the inquiry should proceed by way of oral hearing or an inquiry by examination of documents and written submissions. The respondent was also advised that her preference for a specific type of inquiry could be expressed at the oral hearing on 18th September 2017 or in writing. It was recommended that the respondent and/or any representative instructed by her attend the preliminary hearing.

67. As detailed by the Director's legal representatives, the respondent telephoned them on 11th September, 2017, seeking clarification as to the difference between an oral hearing and an examination on the papers. The memorandum of 11th September, 2017 shows that this was explained to her in detail. The memorandum also records that the respondent advised that she had a medical condition which she said would make an oral hearing difficult for her. It also records that the respondent advised that she had taken legal advice in relation to the matter but she was unsure whether her solicitors would be attending the preliminary meeting. The memorandum also records the respondent advising that it was more likely than not that she would be representing her own interests.

68. The Disciplinary Committee's Notice of Inquiry dated 8th September, 2017 was served on the respondent under cover of letter of 12th September, 2017. I am satisfied that it complied with the provisions of s. 43 of the Act.

69. On 12th September, 2017, 13th September, 2017 and 14th September 2017, the respondent furnished written submissions requesting that the inquiry would proceed by way of an examination of documents and written submissions. As her reasons, she cited a request for privacy for herself and her family, the fact that the alleged incident occurred five years earlier and the already deleterious effect of the allegations on her teaching prospects. She requested that the hearing be wholly in private. She stated that she had concern for her immediate family "who have significant health compromise and disability" and who were dependent on her. She also maintained that her health and medical fitness was at issue, stating that she suffered from "long term and chronic effects of two auto-immune diseases and disorders" for which she had to take medication for life. As such she "would not be physically able for the rigours of an oral hearing".

70. I am satisfied from a perusal of the transcript of the preliminary hearing on 18th September, 2018 that the Panel of the Disciplinary Committee gave due consideration to the respondent's request that the inquiry proceed on the papers.

71. I also note that when advised on 29th September, 2017 that the inquiry would proceed by way of oral hearing in public, the respondent was again advised to obtain legal advice or the assistance of a colleague or union representative.

72. On 19th October, 2017, the respondent was advised that certain witnesses had re-submitted an application for the inquiry to be held otherwise than in public and which resulted in the Panel's decision to hold a further preliminary hearing on 26th October, 2017. The respondent was thus afforded the opportunity to make a further such application as to the mode of the Inquiry by 24th October, 2017. The respondent had not replied to this communication by 23rd October, 2017. She was duly telephoned on 23rd October, 2017, as detailed in a memorandum compiled by the Director's legal representative on the same date. On 24th October, 2017, the Director's legal representatives received a letter dated 20th October, 2017 from the respondent which advised, *inter alia*, that she did not wish any hearing to be held and appealed for a decision by the Teaching Council at their earliest convenience. Insofar as an inquiry was to be held, the respondent's position remained that it be conducted by examination of the papers. The respondent also maintained that she had not been afforded her constitutional right to fair procedures.

73. I am satisfied however that there was no procedural impropriety or lack of fair procedures on the part of the Panel or the Director in the manner of their handling of the inquiry to that point in time. While it is certainly the case that the respondent complained about telephone calls and emails to her despite her request of 3rd October, 2017 that she wished to receive all communication via post only, the Director's legal representatives cannot be faulted for their endeavours to keep the respondent apprised of developments by email and telephone as well as by post. Indeed, the response of the Director's legal representatives of 25th October, 2017 reasonably and eloquently addressed the issues raised by the respondent in her email of 24th October, 2017. Moreover, the respondent was clearly advised that she could raise any grievance that she had at the preliminary hearing scheduled for 26th October, 2017.

74. As previously referred to, the outcome of the Panel's second preliminary hearing was that the Inquiry would proceed in public, with the identity of the respondent, the witnesses and the name and location of the School to be anonymised.

75. Again, as already referred to, the respondent was not represented at the hearing of the Inquiry which took place on 8th November, 2017. Nor did she attend the hearing. I note that in its Report of 9th November, 2017 the Panel were satisfied that all reasonable efforts were made to put the respondent on notice of the allegations against her and of the date and time of the Inquiry. The Court has no reason to demur in this regard. I am also satisfied that the respondent's interests were protected at all relevant times during the course of the hearing and subsequently, not least by the standard of proof adopted by the Panel, namely that the allegations be proven beyond all reasonable doubt. The Panel thus had to be satisfied that the evidence adduced established the facts beyond reasonable doubt. The Legal Assessor's submission to the Panel emphasised that the respondent retained the presumption of innocence, a presumption which was not disturbed by whether or not the respondent engaged in the Inquiry, defended herself or called evidence or sent a representative on her behalf.

76. As set out earlier, when advised on 22nd November, 2017 of the outcome of the hearing, the respondent was provided with the exhibits which had been furnished during the hearing, together with a copy of the transcript. She was also advised of the range of sanctions available to the Panel and advised of her right to make submissions on sanction. In this regard, she was provided with the Teaching Council's Sanction Guidance document.

77. The respondent was also apprised by letter of 22nd November, 2017 from the Director's legal representatives of the fact of a telephone call made to the offices of the Teaching Council on 9th November, 2017 by a female caller. As documented in the telephone attendance compiled by the staff member in the Teaching Council who took the call, the caller stated that she had been in a café with her son on 8th November, 2017 and had overheard five teenage girls talking about how they had "lied in their stories" and "coordinated their stories". The telephone attendance records that the caller had said that she heard the word "sellotape" several times. The caller is recorded as stating that she had then read online about an inquiry where allegations had been made about a teacher putting sellotape on five students. The telephone attendance also records that when asked about the location of the café where she had overheard the conversation, the caller terminated the telephone call.

78. The respondent was provided with a copy of the telephone attendance.

The letter of 22nd November, 2017 also advised the respondent that the Teaching Council had concerns about the *bona fides* of the caller and did not believe the information conveyed by the telephone caller to be accurate for the following reasons:

1. The call was received from a withheld number and the caller did not provide her name.

2. The caller ended the call abruptly when questioned.

3. In most cases, the witnesses in the Inquiry had travelled separately to and from the Inquiry.

The letter further advised that communication with the parents of the children after the call was received indicated that it did not appear possible for the minor witnesses to have been in a café together after they had given evidence on 8th November, 2017.

79. On 11th December, 2017, the respondent was requested to convey her view as to whether the sanction process should be by way of further hearing or by way of written submissions. By letter dated 11th December, 2017, the respondent indicated her desire that the process be by way of submission and again denied that she had put sellotape or caused sellotape to be put over the mouths of children. She also requested that what had been communicated by the female telephone caller to the Teaching Council not be discounted by the Panel.

80. On 18th December, 2018, the respondent wrote to the Director of the Teaching Council taking issue with the manner in which the Teaching Council had dealt with the unidentified female telephone caller on 9th November, 2018. She also took issue with the manner in which the hearing of the Inquiry was conducted.

81. The respondent's complaints were addressed in a letter from the Director's legal representatives on 4th January, 2018. They also provided the respondent with the recorded transcript of the telephone call, as she had requested. They reiterated their concerns as to the *bona fides* of the caller and advised that it was not possible to contact the telephone caller given that the call was made from a withheld telephone number and the caller had not provided her name. As regards the complaint about the hearing of the Inquiry, the respondent was reminded that had she chosen to do so, she could have attended at the hearing and cross-examined witnesses.

82. On 5th January, 2018, having decided to proceed by way of written submissions, the Panel invited the respondent to make submissions on sanction. As already indicated, none were received in response to this invitation.

83. On 5th February, 2018, the Panel wrote to the respondent apprising her of the legal advice it had received from its Legal Assessor as to the manner in which the question of sanction should be addressed by the Panel, and of advice it had received from another Senior Counsel on 2nd August, 2017. The respondent was invited to make a submission in relation to the legal advice by 19th February, 2018. No such submission was received.

84. With regard to the Panel's decision on sanction dated 16th March, 2018, the Court is entirely satisfied that all such submissions as made by the respondent touching on the question of sanction were considered by the Panel. At every relevant step along the way she was given an opportunity to make submissions. Furthermore, the telephone call made to the Teaching Council on 9th November, 2017, an issue which the correspondence shows exercised the respondent, was also addressed in the decision. I perceive no unfairness to the respondent in the Panel's disregard of the information conveyed by the telephone caller, which was based on legal advice.

85. All in all, having regard to the procedural history outlined above, the Court is satisfied that no procedural impropriety or unfairness attaches to the process embarked upon by the Panel, either with regard to its findings of professional misconduct or its decision on sanction.

86. I now turn to the question of whether the decision of the Teaching Council is so unreasonable as to warrant the Court refusing its confirmation.

In carrying out the function with which the Court is vested pursuant to s. 44(5) of the Act, as already noted, I have to have regard to the Court's limited jurisdiction under s. 44(5). As already said, the Court must affirm the decision unless it is of the opinion that the

decision is procedurally infirm or unreasonable. I have addressed the question of procedural impropriety or unfairness and have found no cause for concern in these regards. It is submitted on behalf of the Teaching Council that the decision accords with the test as to reasonableness as set out in *Associated Provincial Picture House Ltd. v. Wednesbury Corporation* [1948] 1 KB 223 and *State (Keegan) v. Stardust Victims' Compensation Tribunal* [1986] I.R. 642. I am satisfied that the aforesaid jurisprudence set out the relevant legal test to be applied when administrative decisions such as the present are being considered.

87. Further, in *O'Keeffe v. An Bord Pleanala* [1993] 1 I.R. 64, Finlay C.J. addressed the approach to be adopted, as follows:

> *"The court cannot interfere with the decision of an administrative decision making authority merely on grounds that it (a) is satisfied that on those facts as found it would have raised different inferences and conclusions, or (b) it is satisfied that the case against the decision made by the authorities was much stronger than the case for it. … Under the provisions of the Planning Acts the legislature has unequivocally and firmly placed questions of planning, questions of the balance between development and the environment and the proper convenience and amenities of an area within the jurisdiction of the planning authorities and the Board which are expected to have special skill, competence and experience in planning questions. The court is not vested with that jurisdiction nor is it expected to nor can it, exercise discretion with regard to planning matters. I am satisfied that in order for an applicant for judicial review to satisfy a court that a decision making authority has acted irrationally in the sense which I have outlined above so that the court can intervene and quash its decision, it is necessary that the applicant should establish to the satisfaction of the court that the decision making authority had before it no relevant material which would support its decision."*

88. Having regard to the applicable legal principles by which the Court must assess the reasonableness of the decision, can it be said that the decision of Teaching Council is unreasonable? I am satisfied that that question must be answered in the negative.

89. The first thing to be observed is that under the Act, the Teaching Council is the body specifically charged with, *inter alia*, the conduct of inquiries, and where appropriate, the imposition of sanctions, in relation to the fitness to teach of any registered teacher. I also note that the Panel who conducted the Inquiry into the respondent's conduct had the benefit of detailed written guidance on sanctions, as contained in the Teaching Council's Sanction Guidance document, which the Panel's Legal Assessor, Nicholas Butler SC, advised should be carefully considered by the Panel. He further advised that the Panel give careful consideration to its Report dated 9th November, 2017, the Core Book and any other documents considered in the Inquiry, together with all relevant post Report exchanges with the respondent and others. The Panel was advised to follow the principles on sanctioning set out by Charleton J. in *Hermann v. Medical Council*.

90. The Panel were also informed by the Legal Assessor of the need to comply with s.7(3)(d) of the Act which provides:

> "(3) The Council in the performance of its functions shall-
>
> …
>
> (d) have regard to the need to protect children and vulnerable persons."

91. It is clear from the decision on sanction that the protection of the public, in this case, children, was to the fore in the Panel's considerations. This approach accords with the scheme of the Act and the Teaching Council's statutory remit, in particular its function under s.7(3)(d). The Panel's approach also accords with the principles enunciated by Charleton J. in *Hermann v. Medical Council*.

92. The Court is alert to the fact that the sanction imposed on the respondent is the most severe of the sanctions provided for in s. 44 of the Act. However, I am satisfied from the contents of the decision on sanction, and from a perusal of all the papers put before the Court, that the decision to remove the respondent from the Register was not lightly made. The sanction was imposed after a careful consideration of the Report of 9th November, 2017 and of the purpose of sanction and the factors to be taken account of when imposing sanction. As I have already observed, the Panel took all submissions into account, including those furnished by the respondent. It considered both mitigating and aggravating factors, which were each weighed before sanction was imposed. Each of the sanctions set out in s. 44(1) of the Act were individually considered as to suitability. Those provided for in s.44(1)(b)-(d) were ruled out for stated reasons, which the Court does not find to be unreasonable. It bears emphasising that given the Court's limited jurisdiction under s. 44(5), the Court's view as to the imposition on the respondent of the sanction provided for in s.44(I)(a), having regard to the serious findings set out in the Panel's Report of 9th November, 2017, is not relevant. It is not the function of the Court in an application pursuant to s.44(5) to step into the shoes of the Teaching Council.

93. As previously observed, the Court is all too aware that the respondent has been subject to the most severe sanction under the Act-removal from the Register. I note that in 2012 the respondent had only embarked on her career as a teacher. Indeed, she had not completed her probation and induction programme at the time of the events in question. I note, however, that the Panel were alert to this fact and that it factored the aforesaid considerations into its decision by providing that the respondent may apply to be restored to the Register after a period of one year following her removal. To my mind, the adoption of this approach conforms both to the requirement for proportionality and the necessity to protect the public, in this case children of school-going age.

94. In all the circumstances, I conclude that the Panel's decision on sanction addresses the issues in such a way as would not justify a refusal of the application to confirm the decision. The application is hereby granted. The Court will affirm the decision of the Teaching Council under s.44(5) of the Act.

The necessity for anonymity

95. At the outset of the within application, the applicant's legal representative brought to the attention of the Court cases involving the Medical Council where the learned Kelly P. saw fit to make orders that while the applications would be heard in open court, publication of the medical practitioner's name, or material that would or might identify the medical practitioner, would be prohibited. I was also advised that in each of the cases referred to, Kelly P. had medical evidence before him as to the adverse effect publication would have on the medical practitioners concerned, or in one case, their family member.

96. In the course of the hearing of the within application, which was in public, the Court directed that, pending further decision of the Court, the publication of the respondent's name, or material that might identify her, was to be prohibited.

97. As to whether that prohibition should continue. The Court was aware from the papers in this case that the respondent claims to suffer from a number of medical conditions. She also advised the Teaching Council Panel of certain medical matters pertaining to her

family members. However, unlike the Medical Council cases to which the Court was referred, there was no medical evidence put before the Panel who conducted the Inquiry in the present case. In the absence of any medical evidence, there is, to my mind, no basis upon which the Court could decide to restrict publication of the respondent's name on medical grounds.

98. However, having regard to other relevant circumstances of this case, the Court is satisfied to continue the prohibition on the publication of the respondent's name or material that might identify her. The Court does not do this lightly, having regard to the paramount constitutional imperative that justice be administered in public.

99. I am satisfied, however, that if the respondent's name were to be publicised (or if the name of the Principal and the name and location of the School were to be publicised), there is a strong possibility that the five students of the School, who, I am advised, are now in their Leaving Certificate cycle in secondary school, run the risk of being identified. I am satisfied that if that were to happen their constitutional right to privacy would be engaged disproportionately to the requirement that justice be administered in public to the fullest extent. In arriving at my conclusion, I also take account of the lapse of time that has occurred since the incident which triggered the inquiry. More importantly, I am satisfied that the prohibition on the publication of the respondent's name (and other details relating to the name and location of the School) does not impact on the public function of preserving confidence in the teaching profession and in the regulatory regime under which the profession operates.