

## General Teaching Council for Scotland Fitness to Teach Panel Outcome

### Procedural Hearing Tuesday 28 April 2015

<b>Respondent</b>	Gillian Scott (not present)
<b>Registration number</b>	066852
<b>Registration category</b>	Secondary - English
<b>Panel</b>	Forbes Mitchell (Convener), Bernadette Sanderson, Cathy Monteith
<b>Legal Assessor</b>	Chris Smith
<b>Servicing Officer</b>	Vivien Whyte
<b>Presenting Officer</b>	Gillian Sim, in-house solicitor, GTCS
<b>Respondent's representative</b>	Mr James Scott

Any reference in this decision to:

- “GTCS” means the General Teaching Council for Scotland;
- the “Panel” means the Fitness to Teach Panel considering the case;
- the “Rules” (and any related expression) means the GTCS Fitness to Teach and Appeals Rules 2012 or refers to a provision (or provisions) within them; and
- the “Register” means the GTCS register of teachers

#### **Background**

The Procedural Hearing was arranged to consider:

*An application made by the Respondent for the case against her to be abandoned.*

In accordance with case management directions, both parties had submitted written submissions along with documentary evidence and legal authorities in advance of the hearing.

#### **Preliminary Issue**

The Respondent did not attend the hearing but was represented by her father, James Scott. The Panel noted that the Respondent's signature as it appeared on the letter dated 18 September 2014, appointing Mr Scott as representative, differed significantly from her signature as it appeared on a number of documents within the Respondent's hearing papers, including at pages 24, 29 and 144. Mr Scott assured the Panel that the signature on the letter was the Respondent's signature; he was there when she signed it. He explained that she had two forms of signature, one of which was her “bank account” signature, of which this was an example. Mr Scott confirmed that the Respondent had appointed him as her representative and that she was aware that a Procedural Hearing was taking place today. The Presenting Officer advised that she had no comment to make on the matter. Despite its reservations about the marked differences in the way in which certain of the letters of the signature had been formed, the Panel accepted Mr Scott's assurance on this matter.

#### **Summary of Respondent's submissions**

Within his written submissions, at page 6 of the Respondent's hearing papers, Mr Scott had outlined the reasons why the case against the Respondent should be abandoned. Those reasons were as follows:-

1. The discovery that Perth & Kinross Council knew information that was relevant to the case and withheld it from GTCS in order to advance its own case;
2. Perth & Kinross Council failed to supply all relevant documents to GTCS, such as the Jardine Report, whistle blowing documents and medical records relevant to the case;
3. Perth & Kinross Council held a disciplinary hearing behind closed doors;
4. At this date (25 February 2015) the case has advanced little;
5. It should be able to complete such a case and reach a decision within three to six months;
6. Delays have been caused by GTCS, Perth & Kinross Council and not the Defence, in fact the Defence has opposed such delays;
7. To take longer than six months to process a complaint, hold a hearing and reach a decision is against the Respondent's human rights, in particular Article 6 of the Human Rights Act 1998: the right to a fair hearing within a reasonable time;
8. GTCS failed to inform the Respondent at the beginning (January 2013) that she was under investigation and failed to do so for eleven months.

Mr Scott explained that his background was that he trained as a Church of Scotland minister and had worked in America and Canada. When he returned to Scotland, he undertook a teaching qualification and had been a Principal Teacher for 20 years in North East Scotland. Mr Scott advised that the Respondent is now teaching abroad in a college. He referred to the significant history regarding the time that she was a member of the teaching staff within the English department at Breadalbane Academy ("the school"), from August 2007. The gist of that history was the collapse of the English department and the failure of support from the Head Teacher.

Mr Scott referred the Panel to the Public Interest Disclosure Act 1998 ("PIDA 1998"), sometimes referred to as the Whistle Blowing Act, and to the fact that four members of the English department signed a letter, referring to that Act, to the Chief Executive of Perth & Kinross Council regarding the competence of the Principal Teacher of English. Mr Scott stated that the Chief Executive initially accepted the teachers' position that they had protected status under PIDA 1998 but retracted that position around 5 months later.

Following on from the letter, an independent investigation was carried out to investigate the issues raised by the four teachers. Mr Scott provided the Panel with a copy of the final draft of the report (the Jardine Report), which outlined the findings of that investigation. It was Mr Scott's position that all four teachers were not protected as they should have been under PIDA 1998. Unknown to the teachers, a second investigation was being undertaken, initiated by the Chief Executive, to find out if two of the four teachers had attempted to undermine senior management. He stated that the Chief Executive instructed the Human Resources department to find fault with the four English teachers.

Mr Scott submitted that the Principal Teacher had been hiding all of the prelim examination papers in his car. However, the Respondent had managed to obtain the papers that she was to mark. The Head Teacher had been looking for the papers and discovered that the papers were in the Principal Teacher's car. Mr Scott submitted that the Head Teacher wanted to protect the school and wanted to hush everything up. She had not provided any support to the Respondent when the Respondent's house was burgled by pupils and also when the Respondent's husband was attacked by pupils. Accordingly, the Respondent lost confidence in the Head Teacher.

Mr Scott then went on to explain that the prelim papers were eventually sent to a retired teacher, some of which had already been marked by the Respondent. Significant confusion arose thereafter because there were various marks in different colours on the exam papers. The Head Teacher asked staff to tippex out some of the marks, which led to some marks being incorrectly removed and some marks remaining that should have been removed. The Head Teacher sent out a letter to parents to explain why there was a delay in the prelim marks being returned to pupils. The four teachers took issue with that letter because they were of the view that it blamed them for the delay, despite the fact that the Respondent had, in fact, marked the papers that she had been initially allocated. After the letter was sent out, parents got in contact with the press. The perception of the four teachers was that this was an attack on them. Mr Scott submitted that the

Principal Teacher was removed from his post and a new Head Teacher was brought into the school, who asked the Respondent to run the English department on a day-day basis, although there was a Faculty Head appointed to oversee discipline. Two of the teachers faced disciplinary proceedings, and thereafter resigned, and another simply resigned, which only left the Respondent. Everything calmed down when the new Head Teacher was appointed but then the original Head Teacher returned. Suddenly, everything the Respondent was doing was wrong. Perth & Kinross council held a Stage 3 disciplinary hearing on 2 October 2013 against the Respondent in her absence, which, Mr Scott stated, was in breach of her human rights because it was held behind closed doors and its findings were not made public. The Respondent had become very ill and suffered from work related stress. The hearing referred the Respondent to the Occupational Health Unit; a case of incompetence was not proved against her. No effective Health Care Plan was provided for the Respondent. The Respondent subsequently resigned in November 2013. Perth & Kinross Council complained to GTCS in January 2014, stating that the Respondent's performance as a teacher was incompetent, which, Mr Scott submitted, was a breach of the Data Protection Act 1998.

Mr Scott's position was that Perth & Kinross Council failed to disclose relevant documents when referring its complaint to GTCS. For example, it failed to disclose the Jardine Report and the Respondent's medical records, which state that the Respondent suffered from work related stress. Mr Scott stated that the Jardine Report heavily criticised the original Head Teacher and, in the conclusions of the report, stated that there was enough evidence to instigate a detailed investigation into the leadership, management and decision making of the Head Teacher. However, in response to a Freedom of Information request, Perth & Kinross Council confirmed to Mr Scott that such an investigation had not been carried out.

Mr Scott explained that in all his years of teaching, he had never come across a situation where an entire department resigned; there must have been something seriously wrong for that to have occurred. The Respondent was placed under endless supervision and monitoring, which made her extremely ill. She was asked to give evidence against one of the other teachers and was threatened with disciplinary action.

Mr Scott submitted that if the Whistle Blowing Act applied then the Respondent should have been protected and should not have been subjected to the treatment she received. If all of the staff at the school had been treated fairly then they should all have been disciplined but the Head Teacher was not.

With respect to the process of the GTCS investigation, Mr Scott stated that GTCS did not contact the Respondent until 12 December 2014, despite having received the complaint from Perth & Kinross Council in January 2014. He said that GTCS claimed that it had previously sent a recorded delivery letter to the Respondent but had no proof that it was received by her. He submitted that the case had gone on for too long; cases should be disposed of within 3 to 6 months. Mr Scott submitted that the Respondent was not afforded the opportunity to challenge decisions made at an early stage of GTCS proceedings. He explained that the Respondent had been out of the country since February 2014 but that both Mr Scott and his wife had keys to her flat and visited it regularly. Mr Scott had asked on a number of occasions for proof from GTCS that the letters were received by the Respondent or on her behalf but that GTCS had been unable to produce such proof. He submitted that it was up to GTCS to have an effective system to ensure that letters sent by it are delivered; that courts and tribunals can do this quite easily with no problem. Mr Scott explained that if a recorded delivery letter had been delivered at the flat then he would have signed for it. He had contacted Royal Mail and the response was that if a registered letter is not delivered then they keep it for 18 days and then send it back. GTCS had not checked the Track and Trace system to ascertain whether the letter sent in April 2014 had been delivered. It was not the Respondent's responsibility to know that GTCS had sent out letters.

Mr Scott was aware that Perth & Kinross Council had sent a large bundle of documents to GTCS in January 2014 and questioned why it had taken until April for GTCS to send a letter to the Respondent informing her about the investigation being carried out against her by GTCS. The

Respondent's mobile number was on her contact details with GTCS and so a call could have been made to her to ascertain whether she had received the letter. It was for the Presenting Officer to prove beyond reasonable doubt what she was claiming. The Presenting Officer had suggested that the Respondent was obstructing the process by not updating her details but she was not doing so at all.

The Respondent took up her current employment position in September 2014 and wrote to GTCS to advise of her change of address from Glasgow to Elgin. She could not provide her address abroad because it was a temporary position. This change of address was not noticed immediately by GTCS. The first letter received on behalf of the Respondent was in December 2014, almost 12 months after the complaint was first received by GTCS. When Mr Scott enquired about the process, he was advised that GTCS is only required to send letters by recorded delivery. In addition, he was advised that 37% of Respondent's refuse to participate in proceedings. Mr Scott's view was that they might not actually know about the proceedings.

Mr Scott submitted that GTCS said that it would carry out a review of its procedures but when he raised a Freedom of Information request to ask what review had been undertaken, he was told that no review had taken place; they were lying. In the e-mail response from GTCS, at page 189 of the Respondent's hearing papers, they stated that an informal review had taken place about improving processes. Mr Scott submitted that GTCS and its solicitors do not always tell the truth. Accordingly, when GTCS says that letters have been sent out, they are lying. He submitted that GTCS works on assumed guilt, in that if a Respondent does not respond then he or she is assumed to be guilty.

Mr Scott submitted that the teachers that Perth & Kinross Council wanted to remove were given the worst classes in order to build up a case against them. When the Respondent was subject to disciplinary proceedings, she stated that she wanted a legal representative but was advised that that was not allowed even though the Human Rights Act 1998 states that a person is entitled to be represented by a person of his/her own choice. In addition, a person is entitled to have a hearing held in a reasonable period of time, know what the charges are against him/her and to take part in the proceedings at the earliest stage, which did not happen either at the school or with GTCS.

The Respondent did not attend her disciplinary hearing on the advice of Mr Scott because she was not going to get a fair hearing. The Respondent was told that a large dossier against her had been provided to the Head Teacher but that that was not going to be referred to at the hearing and the Head Teacher was not going to be called as a witness. Mr Scott was told by the Legal Services department at Perth & Kinross Council that the Respondent was going to be offered a position at a different school. The Respondent decided not to take up this offer. She decided to move on and so resigned from her post. She obtained a professional qualification in teaching English as a foreign language. Mr Scott referred the Panel to the certificate of that qualification at page 161 of the Respondent's hearing papers, which showed that she had passed with Grade B. He read aloud the passage from the certificate which explained what that meant along with the list of the Respondent's areas of achievement and overall comment.

Mr Scott explained that the Respondent did not deserve to be disciplined; she wanted matters to settle down. He submitted that if a teacher is struggling then you should give them a lighter timetable and you do not give them the worst classes. Mr Scott submitted that the Principal Teacher was protected. There were two medical reports provided in respect of the Respondent whilst she was working at the school, the last of which indicated that she required support and that the Equality Act might apply to her because of her health condition. The Head Teacher was aware of the reports. There was no proof from the meetings held with the Respondent that she had asked for a representative of her own choice, that the Head Teacher decided what would be included within the notes of the meeting and there was no proof that the Head Teacher regularly shouted at the Respondent.

Mr Scott stated that perhaps the school was not the right one for the Respondent; there was a difficult portion of the pupils that she could not perhaps cope with as a young teacher. He asked

that the Panel take account of the Respondent's health, the breakdown of her marriage, the lack of disciplinary proceedings against the Head Teacher and the failure of the GTCS system, along with the provisions of the Human Rights Act 1998, when making its decision. He submitted that a case would be dismissed if an individual was not informed that he/she was being subject to a trial. It is not reasonable to spend a year and a half making up a case against a Respondent. The GTCS had failed to provide a hearing date to the Respondent within a reasonable period of time and so she is unable to receive a fair hearing. The Respondent failed to retain supporting evidence concerning the alleged complaint because she was not told about it for eleven months. Mr Scott had received an e-mail from the Presenting Officer last night with a statement of one of her witnesses, which was not signed or dated. Mr Scott took issue with that witness. He further submitted that the Head Teacher is about to retire and will get away with what she has done. In the written submissions, Mr Scott explained that he was told by the Presenting Officer that he could have similar access to documents held by Perth & Kinross Council as the GTCS had access to and that documents could be requested via the Presenting Officer under the Public Services Reform (GTCS) Order 2011. However, when he requested documents, the Presenting Officer was unwilling or unable to produce the documents and laid down extra conditions that would apply to gain access to the documents. Mr Scott stated that the Order is not compatible with the Human Rights Act 1998.

### **Summary of Presenting Officer's submissions**

The Respondent's application (which although not categorised under specific headings) was summarised under three heads in the Presenting Officer's submission as follows: (i) matters relating to alleged actions and inactions by Perth and Kinross Council; (ii) alleged delay on the part of GTCS; and (iii) alleged failure on the part of GTCS to inform the Respondent of the allegations until December 2014.

The Presenting Officer referred the Panel to her written submissions in the bundle. She said that it was not her intention to take the Panel through those submissions in full but would draw the Panel to particular parts of it in order to respond to Mr Scott's submission. She reminded the Panel that it was Mr Scott's application for the proceedings against the Respondent to be abandoned and the burden was on him to demonstrate cogent and justified reasons for doing so. Only if the Panel was satisfied that the burden had been discharged should it accede to the application.

The Presenting Officer set out the procedural history of the case. She explained that the matter had been referred to GTCS by Perth and Kinross Council on 13 January 2014. The referral was in accordance with the statutory requirement imposed on employers to notify GTCS where a teacher resigns from his/her employment in circumstances where he/she would have, or might have, been dismissed on the grounds of misconduct or professional incompetence. The documentation had been reviewed by the GTCS Fitness to Teach department and thereafter allegations were framed to be considered by an Investigating Panel Convenor, in accordance with rule 2.1 of the Rules. The Convenor's decision, which was that it was a "relevant complaint" and that an investigation should be commenced, was made on 27 March 2014.

The Presenting Officer explained that a number of documents had been sent to the Respondent at her address as it appeared on the GTCS Register. On 3 April 2014, a copy of the Notice of Referral to Investigating Panel was sent to her by recorded delivery together with all the documentation received from Perth and Kinross Council. She was provided with 28 days in which to respond to that Notice of Referral to IP. Thereafter, consideration was given as to whether any further evidence was required before the case could be considered by an Investigating Panel. Given the notice period required to be given to the Respondent and the fact that an Investigating Panel was not held in July 2014, the case was not considered by an Investigating Panel until August 2014. The decision of the Investigating Panel, dated 12 August 2014, referring the case to a Fitness to Teach Panel for a full hearing, was sent to the Respondent by recorded delivery on 14 August 2014, also to her registered address.

The Presenting Officer informed the Panel that the Respondent notified GTCS of her change of registered address on 23 September 2014. When a further letter was due to be sent to the Respondent in December 2014, the change of address was noticed and so the letter of 14 August 2014 was re-sent to the Respondent on 5 December 2014. The Presenting Officer said that GTCS had done what was required of it to serve notices under the Rules but that it was a matter of concern that the Respondent did not appear to have received the correspondence sent to her. GTCS had undertaken an informal review of its procedures as a result by way of discussion. However, she did not accept Mr Scott's assertion that neither the Respondent nor he was aware of the referral by Perth and Kinross Council until December 2014. She reminded the Panel that Mr Scott's appointment to act on behalf of the Respondent was contained in a letter dated 18 September 2014 and states in its terms that Mr Scott is appointed to represent her at GTCS proceedings in respect of the complaint by Perth and Kinross Council. It was the Presenting Officer's submission that Mr Scott and the Respondent must have been aware of the complaint by at least that date.

The Presenting Officer then outlined the procedural steps which were involved in investigating a referral and then taking it forward to a Fitness to Teach Hearing and provided an indication of the factors which were involved, including matters such as the complexity of the issues and the number of witnesses involved. She explained that there can be up to three stages to an investigation by GTCS: consideration by the Investigating Panel Convener and determination as to whether the allegations justify an investigation into the registered teacher's fitness to teach; investigation and consideration by the Investigating Panel as to whether there is a case to answer; determination at a Fitness to Teach hearing before a Fitness to Teach Panel. She also referred to the various notice periods which are built into the Rules. Respondents have a 28 day period in which to respond to the Notice of Referral to IP and thereafter they have a further 14 day period in which to respond to any further information ingathered by GTCS as part of its investigation. Once a case is referred to a Fitness to Teach Panel, both parties are given time in which to prepare their cases. A Respondent is required to be provided with 28 days' notice of a full hearing. Accordingly, Mr Scott's assertion that a case should be concluded within 3-6 months was wholly unrealistic even in the simplest of cases, which this was not.

The Presenting Officer submitted that the actions or inactions of Perth and Kinross Council were irrelevant to the Panel's determination on whether the fitness to teach proceedings should be discontinued. She accepted that the Respondent had concerns about how she was treated at Breadalbane Academy and also about how the subsequent investigation and disciplinary process was handled. It was her submission that all these matters might be relevant to a defence of the complaint against her but were matters which could be explored with relevant witnesses at the Fitness to Teach Full Hearing in due course. In relation to the documents sought by Mr Scott, the Presenting Officer explained that it was the Respondent's responsibility to identify and obtain the documentation that she felt was relevant to her defence. Equally, it was open to her to call her own witnesses.

In regard to the allegations of delay on the part of GTCS, the Presenting Officer referred the Panel to the provisions of article 6(1) of the European Convention on Human Rights and also to relevant case law on the question of what constituted an abuse of process for the purpose of justifying the discontinuance of proceedings. The cases included *Haikel v General Medical Council*, Privy Council Appeal No. 69 of 2001; *R (on the application of Subner) v Health Professions Council* [2009] EWHC 2815 (admin); *Dyer v Watson* [2004] 1 AC 379 and *Attorney General's Reference (No. 2 of 2001)* [2003] UKHL 68. She submitted that these cases were authority for the tests which should be applied in determining whether the time taken to bring a case to trial or to a hearing amounted to an abuse of process such that the person concerned could no longer receive a fair hearing or that it would be unfair to hear the case. She analysed the cases and submitted that the period of 13 months which had elapsed appeared to be significantly short of the threshold that the courts have suggested would cause concern.

In regard to the alleged failure to inform the Respondent of the allegations until December 2014, she reminded the Panel that rule 12.3.2 of the GTCS Registration and Standards Rules 2014

places a clear onus on a registered teacher to inform GTCS of a change of contact address as soon as possible and at least within three months of that change. The Respondent had not done so until September 2014. According to Mr Scott, her flat in Glasgow had been let out from September 2014 and she had been working out of the country since February 2014. In any event, even if there had been a failure on the part of GTCS, no prejudice had been caused to the Respondent. She reminded the Panel that, despite his assertion to the contrary, Mr Scott and the Respondent must plainly have been aware of the proceedings by the time the letter appointing him as representative was signed on 18 September 2014.

In conclusion, the Presenting Officer submitted that none of the matters raised by Mr Scott demonstrated any cogent reason for discontinuing the proceedings and she reminded the Panel that there was a countervailing public interest that serious allegations against a registered teacher should be heard and determined rather than abandoned. Much of the evidence is held in contemporaneous documentary form and so it could not be said that this is a case in which the memory of the witnesses is at risk of diminishing. The Presenting Officer had addressed the recent GTCS case on which Mr Scott had commented in his submissions and stated that that case did not appear to lend any support for the Respondent's application to have the case abandoned; it was not concerned with an application to dismiss the proceedings and referred to her written submissions further on that point.

### **Summary of further submissions by Respondent**

Mr Scott was provided with an adjournment to provide him with a period of time to consider the Presenting Officer's submissions.

Mr Scott provided the Panel with colour versions of the photographs of the Respondent's former husband after he was attacked, in order to provide the Panel with the evidence of the severity of the attack. Mr Scott stated that the Respondent's home was being attacked all the time and that sexual comments were being made to her in the street by pupils.

The Presenting Officer had referred to a long period of time within the complaint. However, it was not just the local authority which had taken a long time but also GTCS. The Presenting Officer had advised that it took some time to read over the significant paperwork sent to GTCS from the local authority; it took Mr Scott half a day to read this but apparently the Presenting Officer required three months. The case should have started shortly after the complaint was received from the local authority. The Presenting Officer stated that she asked for extensions to the period of time provided to her for preparing her case for a total period of three weeks. However, she had actually asked for the entire preparation to be suspended until after the Procedural Hearing. Mr Scott had objected to that. The Presenting Officer explained that she had gone to the school to take statements and claims that she could not do that because the weather was atrocious. However, none of the schools were closed. The Servicing Officer intervened to explain that the requests for extensions had been made to the Convener of the Full Hearing, along with the representations of both parties and the Convener had made decisions regarding those requests based on the representations made at the time. It was not for the Panel today to re-consider those requests. Mr Scott referred to the fact that statements of some of the Presenting Officer's witnesses had not yet been produced by her and that he had been informed that the complaint against the Respondent could still be changed.

Mr Scott explained that murder trials can be dealt with in 6 months. In relation to the letter dated September 2014, appointing Mr Scott, Mr Scott explained that he advised the Respondent to appoint him as her representative.

Mr Scott then referred to page 149 of the Respondent's hearing papers, regarding an e-mail he sent to GTCS about another hearing decision on its website. The Presenting Officer in that case had submitted that it was in the public interest for the case to be heard expeditiously. He referred to Article 6 of the European Convention on Human Rights and the GTCS Postponements, Adjournments and Proceeding in the Absence practice statement. The Presenting Officer in that

case had submitted that delay was an important factor when considering compliance with Article 6. However, what the Presenting Officer said today is the exact opposite to this. The Presenting Officer in the other case had submitted that appeals had been successful on the basis that the evidence is too far removed from events, which is the same in this case. Mr Scott submitted that case law is not necessarily precedent and that each case must be based on its own merits.

Mr Scott referred to Appendix 16 in the Respondent's hearing papers and submitted that teachers will be too afraid to come forward if they are not protected under the Whistle Blowing Act. There was another case before the GTCS a number of years ago, at which a teacher from the school was removed from the register for having an affair with a pupil. Mr Scott explained that the affair was widely known to the staff at the school. Accordingly, if teachers are too frightened to speak up then bad things continue to happen.

Finally, Mr Scott submitted that it was not unreasonable to expect staff at GTCS to make a phone call if they think that a teacher has not received a letter. He submitted that there is a collaboration with the local authority. There is an Act of Parliament which allows GTCS access to documents that he cannot get access to without spending lots of money. Fairness means that the Respondent should have the same access to documents as the Presenting Officer.

The Legal Assessor provided advice to the Panel. Both parties were given the opportunity to comment on that advice but had no comments to make.

## **Decision**

The Panel carefully considered the submissions made by the Presenting Officer and those made by Mr Scott along with all of the documentation submitted by both parties in advance of the hearing. The Panel also had regard to the advice which it received from the Legal Assessor.

The Panel accepted the Presenting Officer's submission that the Respondent's application for the case to be abandoned comprised eight separate issues which fall into the three broad categories set out above. The Panel noted that Mr Scott had no objection to this approach. The Panel approached its task by considering each of those matters within the three categories. In essence the categories were as follows:-

1. Points 1 to 3 relate to actions by Perth and Kinross Council and to a failure by that Council to disclose relevant information to GTCS;
2. Points 4 to 7 relate to alleged delay on the part of the GTCS; and
3. Point 8 relates to an alleged failure on the part of GTCS to inform the Respondent of the allegations until December 2014.

The Panel heard from Mr Scott at length and in detail concerning points 1 to 3. The Panel heard a number of criticisms of the functioning of the English Department at Breadalbane Academy as well as of its Head Teacher and management. The Panel also heard extensive criticisms of actions and investigations carried out by Perth and Kinross Council in so far as they affected the Respondent. It was Mr Scott's submission that the Respondent was one of four "whistle blowers" who raised concerns with Perth and Kinross Council about the functioning of the English Department. He asserted that the treatment which she received from both the school and Perth and Kinross Council was unfair and that she did not receive appropriate protection under the PIDA 1998. However, it was his assertion that none of the four teachers was given "protected disclosure" under that Act and that all of them were subsequently treated unfairly throughout all the management and disciplinary processes which followed. The Panel determined that these were not matters which could justify abandoning proceedings and that they should be considered by a Panel at a Full Hearing, at which evidence and witnesses would be led.

The Panel also heard a number of trenchant criticisms by Mr Scott concerning the GTCS and its processes. These included an assertion that GTCS deliberately distorted matters concerning the sending or serving of documents under its Rules. Mr Scott further asserted that "GTCS does not



always tell the truth” and that solicitors acting on its behalf “do not always tell the truth”. The Panel reminds the Respondent and her representative, Mr Scott, that the GTCS is an independent statutory body whose functions include maintaining a register of teachers, establishing appropriate standards of education and training, establishing the standards of conduct and professional competence expected of registered teachers, and investigating the fitness to teach of individuals who are on the register. Accordingly, GTCS is established as an independent body, which is independent of local authorities and employers. It has a statutory power to investigate referrals and complaints about registered teachers. Mr Scott’s assertion that GTCS and Perth and Kinross Council are involved in some sort of collaboration or conspiracy is rejected. The Panel also records its concern at Mr Scott’s assertion that members of GTCS staff have lied about this case and that its solicitors have also lied. There is no evidence whatsoever before the Panel to support such accusations and they are also rejected. Mr Scott made a further assertion that there is an assumption of guilt in GTCS procedures. The Panel considered that this, too, is a groundless and uninformed opinion on Mr Scott’s part. In every case, the onus is on GTCS to establish the facts according to the civil standard of proof and to satisfy a Fitness to Teach Panel, constituted of independent panel members, that a registrant’s fitness to teach is impaired. The Panel dismissed these criticisms entirely.

The Panel first considered points 1 to 3 of Mr Scott’s grounds for discontinuance. The Panel is satisfied that GTCS properly investigated the complaint made by Perth and Kinross Council and, as a result, formulated allegations against the Respondent. In doing so, it disclosed all material information which it holds to the Respondent. It is asserted by Mr Scott that Perth and Kinross Council is in possession of certain information which has not been disclosed to GTCS but which is relevant to the Respondent’s case. The Panel accepted the Presenting Officer’s submission that it is open to the Respondent to obtain such information if it is required as part of her defence and that she has been afforded time within which to seek such information. It is also open to her to call her own witnesses and to examine the GTCS’ witnesses on these issues. The Panel considered that it is open to the Respondent to request the information relevant to her defence from the body which holds that information and there was no evidence before the Panel that she had done so. She could then present it as part of her defence to the GTCS complaint. The Panel concluded that any failure on the part of the Respondent to obtain this information is not a basis for the proceedings to be discontinued.

The Panel next considered points 4 to 7. The Panel accepted the Presenting Officer’s submission that, while Article 6(1) of the European Convention on Human Rights is engaged, it is apparent from a review of relevant case law that any delay is limited to delay in regulatory proceedings and not any delay which may have occurred between the alleged wrongful actions and the commencement of proceedings. The Panel had particular regard to what was said by Lord Bingham of Cornhill in the Privy Council case of *Dyer v Watson* [2004] 1 AC 379:

“In any case in which it is said that the reasonable time requirement ... ..has been or will be violated, the first step is to consider the period of time which has elapsed. Unless that period is one which, on its face and without more, gives ground for real concern it is almost unnecessary to go further since the Convention is directed not to departures from the ideal but to infringements of basic human rights. The threshold for proving a breach of the reasonable time requirement is a high one, not easily crossed. But if the period which has elapsed is one which, on its face and without more, gives ground for real concern, two consequences follow. First, it is necessary for the court to look into the detailed facts and circumstances of the particular case. The Strasbourg case law shows very clearly that the outcome is closely dependent on the facts of each case. Secondly, it is necessary for the contracting state to explain and justify any lapse of time which appears to be excessive.”

In the case of *The Crown (on the application of Subner) v Health Professions Council* [2009] EWHC 2815 (admin) it was said by Mr. Justice Parker:

“Given that any case takes some period to prepare witness statements and otherwise make the case ready for trial or hearing, I am not able to find that a period from March 2007 to 6th

October 2008 — that is about 16½ months — comes anywhere within the range that would cause me real concern that a basic human right of the appellant had been infringed. The period is significantly shorter than that in Dyer, and shorter by far than the periods that have caused concern to the European Court of Human Rights, to which Lord Bingham referred.”

The Panel accepted the Presenting Officer’s submission that the question of delay in any case must turn on its own facts. It has also accepted her submission that the period of the current proceedings is 13 months and that such period is not excessive either by the standards of the GTCS or by those of other regulatory bodies as set out in case law. The Panel noted, that despite his submission to the contrary, Mr Scott had produced no legal authority to support his proposition that a period of 13 months amounts to an excessive delay.

The Panel was aware that the courts have recognised the need to have regard to the complexity of the case, including the time taken to carry out a proper investigation into the matter, the volume of documentation which may be involved and the number of witnesses who may be required to give evidence. Only if it is considered that there has been an unreasonable or unjustifiable delay with the result that the delay has caused prejudice to a defendant such that a fair hearing is no longer possible or that the defendant can no longer properly and fairly conduct his or her defence, would it be appropriate to abandon proceedings.

In this case, the Panel was satisfied from its own experience of the regulatory process that a period of 13 months is neither unusual nor excessive. Having reviewed the case law cited by the Presenting Officer, the Panel is satisfied that a period of 13 months is well within the threshold of the reasonable time requirements. The Panel was also satisfied that the investigation into the Respondent’s fitness to teach has been conducted without undue delay and that no evidence has been put before it to demonstrate a period of delay such that it is no longer possible for the Respondent to have a fair hearing.

The Panel also had regard to the submissions made by Mr Scott in relation to the allegation still being capable of alteration and that further documents were still being lodged by the Presenting Officer. The Panel notes that this is all in accordance with the Rules and that the case is currently undergoing case management, during which time documents can be lodged by either party.

In regard to point 8, it is asserted by Mr Scott that GTCS failed to inform the Respondent of the allegations against her. In this regard, the Panel noted that GTCS attempted to serve documents on the Respondent on her address as it appears on the Register on 3 April and 14 August 2014. In September 2014, the Respondent provided her current contact details. The Presenting Officer submitted that the Respondent was therefore in breach of her obligation under Rule 12.3.2 of the Rules which provides:

“The registrant must notify GTC Scotland of any change in name or contact address as soon as possible at least within 3 months of that change...”.

The Panel was satisfied that the failure by the Respondent to comply with her duty to inform GTCS of her contact address contributed significantly to the delay in intimating the complaint to her prior to December 2014. The Panel also accepted her submission that any delay on the part of GTCS had not caused prejudice to the Respondent.

For all these reasons, the Panel was satisfied that it has not been demonstrated that any material prejudice has been caused to the Respondent such that she can no longer have a fair hearing or that she can no longer properly conduct her defence. Accordingly, the Panel decided to reject the Respondent’s application for the case to be abandoned and that it is appropriate and in the public interest for the allegations to proceed to a full fitness to teach hearing.