Judgment Approved by the court for handing down.

Neutral Citation Number: [2019] EWHC 3129 (Admin)

Case No: CO/21/2019

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 20th of November 2019

Before:

ROWENA COLLINS RICE
(Sitting as a Deputy High Court Judge)

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Between:

THE QUEEN **(on the application of LONDON SCHOOL OF SCIENCE AND TECHNOLOGY)**	**Claimant**
- and -	
PEARSON EDUCATION LIMITED	**Defendant**

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- -

Ms Zoe Gannon (instructed by Eversheds Sutherland LLP) for the **Claimant**
Mr Iain Steele (instructed by Fieldfisher LLP) for the **Defendant**

Hearing dates: 29th October 2019

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Approved Judgment

Ms Collins Rice

Introduction

1. The London School of Science and Technology ('LSST') is a private college offering courses leading to a range of higher and further education qualifications. It prides itself on recruiting students from less advantaged backgrounds and widening participation in education. Its Principal is Dr George Panagiotou.

2. Pearson Education Limited ('Pearson') is one of the UK's largest educational qualification awarding bodies. LSST was accredited to run courses leading to some of Pearson's academic and vocational qualifications.

3. In these judicial review proceedings, LSST challenges a process which led to the withdrawal of Pearson accreditation and to the imposition of additional sanctions on Dr Panagiotou, on grounds of malpractice.

Background

4. In 2017, Pearson received anonymous allegations about malpractice at a number of schools and colleges, including LSST. The allegations were both wide-ranging and specific. They related to matters such as improper recruitment processes, falsified attendance records, dishonest assessments and fraud.

5. Pearson investigated LSST. It made both announced and unannounced visits. It interviewed students, both on a sample basis and by following up some of the specific cases mentioned in the anonymous allegations. It examined records. It compiled a dossier of information. In the spring of 2018 it put this dossier to LSST on the basis that it suggested malpractice in its recruitment processes. It was said to show that enrolment tests had been answered faultily or by plagiarism, and that students were admitted without the basic proficiency in English needed to undertake the courses leading to Pearson qualifications. Dr Panagiotou responded on the specific cases highlighted, with context and explanations. Pearson was not satisfied.

6. After correspondence in which Pearson particularised the concerns and evidence and invited further explanation, and Dr Panagiotou responded, Pearson informed him on 6th July 2018 that the matter was being referred to a Malpractice Committee to determine whether, on the balance of probabilities, malpractice had occurred and, if so, what sanctions were appropriate to be imposed on any individuals and/or LSST. The letter explained that written submissions could be made. Copies of the case summary and evidence pack going before the Committee were provided. At LSST's request, an expedited timetable was arranged.

7. Dr Panagiotou made brief written submissions on 23rd July, addressing some of the context of the evidence relied on by Pearson, and plagiarism and English language proficiency in particular, and pointing to recent improvements. He suggested that, if there were any (isolated, historical) errors which were thought not to have been adequately explained by his representations, an action plan should be drawn up to address constructively any further improvements.

8. The 3-person Malpractice Committee convened on 30th July 2018. It found that serious malpractice had occurred, on the basis of clear and substantial evidence of systemic failure in the integrity of recruitment processes. It determined that LSST accreditation should be removed. It also determined that Pearson would not consider any application for accreditation from Dr Panagiotou for ten years, and that he would, for that period, be barred from any involvement in the management and assessment of Pearson qualifications.

9. LSST appealed this determination by letter of 14th August, on three grounds: that the decision was unreasonable on the evidence before the Committee; that further relevant evidence had come to light; and that the sanction was disproportionate to the seriousness of the malpractice. The appeal was heard by a 3-person Appeal Panel on 25th September 2018. Dr Panagiotou attended with LSST's head of admissions and one of its governors. The Panel upheld the finding of serious malpractice, with particular reference to defects in the integrity of its admissions processes. It confirmed the withdrawal of accreditation from LSST. It reduced the period of the sanctions against Dr Panagiotou from ten years to five, in recognition of the 'laudable' intentions of LSST to broaden access and educational opportunities for under-represented sections of the community.

Legal framework and scope of these proceedings

10. Permission was granted for LSST to challenge these events in the High Court on the following public law grounds:

- that Pearson acted unfairly and unlawfully by failing to comply with its own policies and procedures;
- that decision-makers failed to take into account relevant considerations;
- that Pearson conducted its investigations into LSST, the Malpractice Committee and the Appeals Panel, in a procedurally unfair way.

11. These grounds were developed into seven specific heads of challenge, some of which turn on a distinction being made between the position of LSST and the position of Dr Panagiotou personally. Their respective positions are therefore considered separately below.

12. I was taken to a number of decided public law authorities on a range of issues relating to the role of courts in judicial review, and to procedural fairness, and in so far as they are relevant to the analysis set out below I have of course kept them in mind.

13. The relevant regulatory framework can be set out briefly. As a qualifications awarding body, Pearson operates within the statutory regulation regime of Ofqual, established by the Apprenticeships, Skills, Children and Learning Act 2009 (c.22). Ofqual publishes a handbook ('the Ofqual Handbook') which includes rules about how awarding bodies should manage allegations of malpractice. These require bodies such as Pearson to take all reasonable steps to prevent malpractice and maladministration in the development, delivery and award of qualifications; to establish, maintain and comply with written procedures for the investigation of alleged malpractice; and where malpractice is found, to prevent recurrence and take

action against those responsible which is proportionate to the gravity and scope of the occurrence.

14. Pearson is a member of the Joint Council for Qualifications (JCQ), a professional association of qualifications awarding bodies. JCQ publishes, and updates annually, general regulations for approved centres such as LSST ('the JCQ Regulations') and a set of policies and procedures for dealing with allegations of malpractice, for the guidance of its members ('the JCQ Guidance'). Malpractice is defined to include any act, default or practice which damages the authority, reputation or credibility of any awarding body or centre (that is, a college such as LSST) or any officer, employee or agent of such a body or centre. JCQ also publishes a guide to awarding bodies' appeals processes ('the Appeals Guidance'). Pearson adopts the JCQ documents for the purposes of compliance with the Ofqual Handbook.

15. Pearson publishes a guide for accredited colleges called 'Recruiting with Integrity', aimed at ensuring fairness and consistency, and setting standards for recruiting to courses leading to Pearson qualifications. It points out that failure to comply may result in the withdrawal of accreditation. The standards expressly address English language competence.

16. Pearson also has a published policy on withdrawal of accreditation ('Policy on the removal of centre and programme approval'). It deals with malpractice investigations and quality assurance (including significant failings in centre management). It also makes reference to the possibility of centre approval being withdrawn if Pearson loses confidence in senior management, where evidence brings into doubt the personal or professional integrity of a senior management team member, for example if they are convicted of a criminal offence. It says that decisions of this sort are taken by Pearson's centre management team, in consultation with their legal team and 'responsible officer', and that they are unappealable. Where appropriate, there will be discussions in such cases with the head of centre or other governing body about possible options other than loss of accreditation, including replacement of members of the senior management team.

17. Pearson monitors and reviews courses leading to its qualifications through an academic management review ('AMR') process. Its most recent AMR of LSST was in February 2018. It raised no concerns.

18. As well as accreditation by awarding bodies, LSST is supervised by the Quality Assurance Agency ('QAA'), a non-statutory independent monitoring body which sets and reviews standards in the provision of higher education. The QAA sets standards about the recruitment of students, and conducts reviews of colleges. It reviewed LSST in December 2017 and confirmed that it met expectations in relation to recruitment.

The position of LSST

19. Of the seven heads of challenge made to Pearson, two are specific to the position of Dr Panagiotou and are considered below. The remaining five are of general application. They are:

i) that the case summary and evidence pack which went to the Malpractice Committee and the Appeal Panel contained irrelevant material;

ii) that relevant considerations were not properly taken into account;

iii) that the correct standard of proof was not applied;

iv) that sanctions were not considered by starting from the least serious;

v) that sanctions were disproportionate.

Taking into account irrelevant material

20. The objection here is that materials before the decision makers included the original anonymous allegations from 2017 which had first prompted Pearson's investigations. These allegations ranged over other colleges and included suggestions of fraud and the direct compromising of qualifications which were not relevant to, or investigated in relation to, LSST.

21. The JCQ Guidance states that information provided to a Malpractice Committee is to be 'only that which is directly relevant to the case under consideration'. It is objected that this was not complied with. The Malpractice Committee 'noted' that the case had had its origins in those earlier allegations. One of its members, Ms Dean, provided a witness statement in these proceedings from which it is said to be possible to discern that the Committee to some degree took this material into account in its decision or was otherwise improperly influenced by it.

22. I do not consider this objection to be sustainable. It was relevant for the decision-makers to know how the case had originated. Its origins in wide-ranging anonymous allegations, of uncertain motivation, were relevant to their consideration of the rigour, fairness and open-mindedness with which Pearson investigators had dealt with those allegations and inquired into their merits or otherwise. Their inclusion gave LSST a fair opportunity to question those origins and their motivation, which it took. The Malpractice Committee expressly concluded that no evidence had been offered on the wider original allegations and that it therefore made no judgment on them; they were to that extent mentioned only to be dismissed. The decision-makers' focus was clearly and exclusively on the matters actually investigated by Pearson at LSST. I do not think Ms Dean's evidence can fairly be read, as a whole and in context, as suggesting otherwise or as indicating improper influence.

23. No objection was made at the appeal stage to unfairness on this ground; nor in my view could it properly have been. The appeal notice did object to the substance and motivation of the original allegations, but acknowledged that only a limited number had been investigated and that no corresponding findings of wide-ranging bad faith had been made by the Malpractice Committee. The wider content of the original allegations does not seem to have played a part at the appeal hearing itself, and there is no sign that the Appeal Panel was influenced by them, in any way prejudicial to LSST or at all. The proceedings cannot be impugned on this ground.

Failure to take account of relevant material

24. The relevant material in question is principally the QAA report of December 2017 and the AMR of February 2018 which had given LSST a clean bill of health, together with evidence LSST had provided that the English language proficiency of a number of the candidates criticised by Pearson had been externally verified (and LSST's systems vindicated) by independent bodies applying respected methodologies. It is also said that the decision-makers failed to take account of LSST's explanations for the examples of apparent plagiarism – namely that allowance should be made for the misunderstanding and naiveté of students from disadvantaged backgrounds.

25. These were all certainly matters put to the Malpractice Committee by LSST. Whether and how it took them into account does not appear on the face of its decision. It is however apparent from the minute of the later appeal hearing, and from the note issued by the Appeal Panel giving full reasons for its determination, that these matters were considered on appeal. The external QAA and AMR validation was accepted. But the more focused and forensic malpractice investigation had uncovered new evidence of problems, which had not been picked up before. The secondary certification evidence of English language proficiency was judged not to displace the new primary evidence. The explanations for the plagiarism were not considered to justify or render acceptable the evidence of failure to address a systemic problem.

26. The objection on this ground cannot in my view fairly be sustained. All of this material was clearly considered on appeal, and reasoned conclusions reached about it. The material was not of itself capable of contradicting the evidence of malpractice in any event. At best, it was relevant context. The weight to be given to it was a matter for the decision-makers, in all the circumstances. It might be thought hard to see how it could have been given much greater weight without unduly limiting the open-mindedness with which the decision-makers were required to consider the fresh evidence and the issues expressly put to them, on their merits. In any event, no basis appears for impugning the ultimate decision on this ground.

Standard of proof

27. The JCQ Guidance is clear that the standard of proof to be applied in formal malpractice proceedings is the balance of probabilities – whether it is more likely than not that the alleged malpractice occurred. It is objected that none of the decisions in this case expressly recites that test. It is also objected that some of the language of the decisions is inconsistent with it, including referring to the existence of evidence and concerns rather than making findings; and using provisional terms such as 'may be' or 'potentially'.

28. The test is expressly set out in Pearson's letter of 6th July 2018 in describing the remit of the Malpractice Committee. It is Ms Dean's evidence that the Committee applied that test. The minutes of the Appeal Panel hearing confirm that the Chair set out that test in introducing the proceedings.

29. I find no basis for concluding that the decision documents, on a fair reading, taken as a whole and in context, suggest a failure to apply the correct test. Express conclusions were reached. The documents make sufficiently clear how the evidence before the decision-makers was weighed and considered to sustain those conclusions. References to evidence and concerns should fairly be read as supporting, not substituting for, conclusions that the elements of malpractice were properly

established. These are decisions the rationality of which is not impugned in these proceedings. They are entrusted to panels whose expertise is not in legal drafting. It is not sustainable to build a challenge of this nature on what are in the end a small number of drafting points.

30. In all these circumstances, I reject this challenge.

Sanction

31. The sanction imposed on LSST was removal of Pearson accreditation. I consider the sanctions imposed on Dr Panagiotou separately below.

32. The JCQ Guidance requires that, if a Malpractice Committee finds that malpractice has occurred, it must consider who is responsible, consider any points in mitigation, and determine the appropriate level of sanction or penalty, considering the least severe penalty first. Sanctions are imposed to minimise the risk to the integrity of qualifications, maintain public confidence in those qualifications, ensure as a minimum that there is nothing to be gained from malpractice, and deter others. Sanctions available against centres are set out on an 11-point scale, running from a written warning, through various forms of supervision and specific sanctions, to withdrawal of approval for a centre to offer some or all of the qualifications of an awarding body.

33. Pearson's 'Recruiting with Integrity' guidance is clear that failure to recruit with integrity may result in sanctions at the highest end of this scale. That is reinforced in its 'Policy on the removal of centre and programme approval'.

34. It is objected that the decisions in this case do not make clear that the sanction imposed on LSST was arrived at by considering the least severe penalty first; indeed that they do not make clear why the sanction was imposed at all. Within this objection are perhaps two elements – failure of reasoning and substantive disproportionality (of which the 'start at the bottom' rule may be regarded as a particular formulation).

35. The malpractice found to have occurred at LSST was serious. It consisted of a systemic failure to 'recruit with integrity' students capable of fairly attaining Pearson's qualifications, including by reason of their proficiency in English. LSST had been recruiting students without having in place fair and reliable systems for eliminating plagiarised, misleading and inadequate evidence of students' relevant capabilities, and without proper enrolment and record-keeping procedures. Those were the findings of the Malpractice Committee, upheld on appeal. It was Ms Dean's evidence that in a long career in the field, it was one of the worst cases she or her fellow panel-members had seen.

36. The Appeal Committee's statement concluded that the nature, seriousness and frequency of the flaws in LSST's recruitment processes seriously and significantly undermined the integrity of the qualifications and warranted a significant penalty. Those flaws were particularised. The minutes of the appeal proceedings show that the 'bottom up' approach to sanctions was explicitly addressed. Taking into account the regulatory context set out above, the sanction was on that basis entirely predictable, and comfortably within the range properly available to the decision-makers, working

from the bottom up. It is in my view amply apparent in context why this sanction was imposed, why lesser penalties would not have been in accordance with published policies and procedures (including Pearson's responsibilities for minimising risk to the integrity of its qualifications, maintaining public confidence in them, ensuring that there is nothing to gain from serious malpractice and deterring others), and that the sanction against LSST was in all the circumstances proportionate to the malpractice which had been found.

Conclusion

37. For all these reasons (but subject to the point noted at paragraph 61 below about the indefinite nature of the sanction) I find no basis for impugning the lawfulness of withdrawal of Pearson accreditation from LSST.

The position of Dr Panagiotou

38. Dr Panagiotou, as Principal of LSST, was, and remains, its employee. Within the regulatory regime, he was its 'head of centre'. He was answerable to an executive committee and board of governors at the college.

39. Particular responsibilities are carried by heads of centre. It was Dr Panagiotou's own evidence that he had overall responsibility for managing LSST and ensuring its full compliance with 'the many and diverse requirements of awarding bodies and industry regulators in academia'. That is indeed what the JCQ Regulations clearly provide. Heads of centre are responsible to awarding bodies for compliance with their (and JCQ's) specifications and the integrity of their qualifications. These are expressly non-delegable responsibilities. Heads of centre must make an annual formal confirmation of their compliance with the Regulations.

40. The responsibilities of heads of centre include preventing and investigating malpractice. In cases where allegations go to their personal malpractice, investigations may instead be conducted by the awarding body. The JCQ Guidance provides that if a head of centre is personally under investigation for malpractice, the investigating body may communicate with a chair of governors or other appropriate governance authority, and not with the head.

41. Where any employee is under personal investigation, procedural safeguards are to be provided. In particular, they must be informed of any allegation made against them; told what the evidence is to support that allegation; warned of the possible consequences should malpractice be found against them; and have certain opportunities to participate in the processes of resolving the case.

42. It is objected that the malpractice processes as applied to Dr Panagiotou were not compliant with published policy and procedures, and substantively unfair. In particular, it is objected that, as to procedure:

- Pearson's investigators corresponded with him personally, rather than with the chair of governors, leading him to assume he was not at personal risk of findings or sanctions for malpractice being applied to him;

- he was at no time before the Malpractice Committee decision warned that he was personally under investigation, or personally at risk of sanctions;

- no evidence was considered, or findings made, as to his personal implication in the malpractice found;

and as to sanction:

- the sanctions imposed on him were not available as against individuals (as opposed to centres) and were in any event disproportionate.

43. A preliminary point was taken by Pearson on the question of Dr Panagiotou's position in these proceedings. It was suggested that as he was not a party, and LSST was insufficiently interested in his personal position, these questions should properly be considered as beyond the scope of this challenge. I cannot agree. The grounds on which permission for this challenge were granted are undoubtedly wide enough to comprehend the objections to the treatment of Dr Panagiotou, and LSST's interest in the position of its employee and Principal is plain, both organisationally, economically and reputationally. Since the issues raised about his position were dealt with fully and substantively before me, no good purpose would be served now by effectively requiring them to be dealt with in separate proceedings.

Procedure

44. The Pearson investigators did correspond directly with Dr Panagiotou rather than any other authority. It does not appear that he was expressly informed that he was under investigation for personal malpractice, that there was evidence against him personally, or that he personally might be sanctioned.

45. It is said in response that all of this was entirely apparent by necessary implication. The case against LSST – of which Dr Panagiotou was fully on notice – in effect *was* the case against him, because as head of centre he was personally responsible (including on his own evidence) for full regulatory compliance by the organisation. It is said that in these circumstances it hardly lies in his mouth to object that he was unaware of the case he had to answer, or of the evidence that he had failed to prevent recruitment malpractice at LSST, or of his exposure to sanction if the malpractice was established. The malpractice alleged was systemic; a head of centre must obviously and necessarily be implicated to a high degree in such circumstances. In any event, it is said, the reference in the 6th July letter to the possibility of sanctions being imposed "on any individuals and/or" LSST put Dr Panagiotou expressly on notice. He was provided with a personal evidence pack. He made representations in response. He participated fully in the process.

46. There is undeniable force in these submissions. The regulatory context is clear about the non-delegable responsibilities of heads of centre. As he was full aware, serious malpractice was investigated and established on Dr Panagiotou's watch. He had duties to prevent it. The case against LSST was, at any rate to that extent, the case against him. He could not, and did not, dissociate himself from it.

47. The JCQ Guidance, however, distinguishes between investigation into a centre and investigation into its head. That is not surprising, for two reasons.

48. First, there can be wide variance in the *degree* of personal culpability of heads in malpractice cases. Malpractice procedures may be expected to allow for that. All investigations into centres inevitably touch on the general obligations of their heads. The more systemic the malpractice, the more a head's personal performance, as a senior manager, is perhaps likely to be engaged – although even there, others' responsibilities and culpabilities may be relevant also (staff, executive board, governors). In any event, beyond the bald fact of non-delegable accountability, the circumstances, nature and degree of any head's personal failings could vary substantially. Anything might be involved, from inadvertence, through failures of systems or support, or deficiencies in training, resources, effort or competence, all the way to deliberate criminal misconduct. Individual cases would have to be conducted accordingly.

49. Second, there is a clear risk of conflict of interest in the position of a head in malpractice procedure. Heads must assist, if not lead or undertake, a malpractice investigation, but can hardly do so objectively where they themselves are the object of the investigation. Some clarity should be expected about this in the procedures followed. Heads (including as employees) are fairly entitled to have an idea of where they stand in relation to an investigation in general, and the extent to which their personal competence, conduct or culpability is in issue in particular.

50. In this case, the correspondence leading up to the Malpractice Committee was consistently in terms that Pearson was conducting an investigation into "your centre". That is, at best, ambiguous as to personal implications. The reference to 'any individuals' is unspecific and not the clearest way to put a recipient on notice that any particular form or degree personal malpractice was potentially in issue. The investigation was not being entrusted to Dr Panagiotou, but the original allegations had been directed to a number of institutions; on the face of it that might explain why Pearson itself had undertaken the task. In any event, there is no sign that any degree of Dr Panagiotou's personal malpractice, beyond the fact of his automatic accountability for his non-delegable duties, was expressly addressed in correspondence, in the evidence and submissions before the Malpractice Committee, or in its decision.

51. There is one possible exception. The confidential case summary provided by Pearson to the Committee briefly summarised an 'evaluation of the centre's response'. This said: "*The Head of Centre is implicated in the allegations, therefore a potential conflict of interest exists. However, investigators initially conducted an unannounced visit and as the Head of Centre is responsible for ensuring the integrity of Pearson qualifications is not undermined, investigators approached the Head of Centre to respond to the concerns. The second visit to the centre was arranged, however the Head of Centre was not informed of the details of the allegation or the second sample of learner prior to the visit*." Dr Panagiotou's 'implication', in other words, was mentioned in passing and only for the purpose of excluding the possibility that it damaged the reliability of evidence otherwise relied on that malpractice had occurred.

52. It was Ms Dean's evidence that the Committee's deliberations did address Dr Panagiotou's position personally. She says they had lost confidence in his fulfilling his proper role as a head of centre. No such conclusion was however recorded in their decision, nor communicated to him. Nor had this been conducted as a formal 'loss of confidence' case. As noted above, Pearson's 'Policy on the removal of centre and

programme approval' deals with a loss of confidence in senior management, per se (for example on the basis of criminal conviction), as a distinct basis for removing *organisational* accreditation and sets out specific procedures for dealing with it. That was not the course taken here. Pearson accreditation was removed from LSST on grounds of systemic failure to recruit with integrity, not loss of confidence in management as such.

53. All the correspondence and submissions at the investigatory stage were directed to the issue of whether systemic failure to recruit with integrity had in fact occurred. Dr Panagiotou's case was that it had not. No issue of personal malpractice was raised, nor was the degree of his responsibility for the malpractice anywhere addressed. The procedures and safeguards which would have been necessary for the process to consider these were not afforded. No evidence about it was in the event put forward.

54. There is, in short, nothing on the face of the materials before me to suggest that the Malpractice Committee distinguished materially between the case against LSST and the case against Dr Panagiotou. It did not make any findings against Dr Panagiotou, beyond the obvious conclusion that serious, systemic malpractice had happened on his watch.

55. Having been personally sanctioned by the Committee, however, Dr Panagiotou did raise the question of potential degree of personal responsibility in his appeal submissions. He pointed out that there had been no evidence or findings that he had acted in bad faith; and that if he had done wrong negligently or innocently then LSST's 'organisational structure designed to support decision-making about admissions, the extensive gathering of evidence and the oversight and management of risk in this area' should be taken into account in considering the degree of his personal culpability.

56. The Appeal Panel's decision itself does not address any of this. The minutes confirm that representations were made on Dr Panagiotou's behalf that if his personal conduct had by inference formed part of the Committee's decision-making, then fair procedures had not been followed in addressing it. They also confirm that some representations were made by Pearson in relation to Dr Panagiotou's personal conduct: it was said that 'his correspondence during the investigation evidenced a failure to accept the legitimacy of the issues identified by investigators'. It is not clear whether or how that point had been put to Dr Panagiotou or taken into account by the Panel. There is no indication that the Appeal Panel reached any conclusions about Dr Panagiotou personally. The Panel's follow-up note simply concluded that as head of centre Dr Panagiotou was ultimately responsible for the malpractice.

57. Serious malpractice at LSST was established on the evidence. There is no indication on the materials before me that the decision-makers inquired into the reasons for it in general, or Dr Panagiotou's personal role in it in particular, nor that any evidence about this was considered by them. There could never have been any doubt that Dr Panagiotou's formal responsibility as head of centre followed as a direct consequence of the findings made, and he did not suggest otherwise. There can equally be no doubt that no findings as to the degree of his personal culpability were - or, on the procedures followed, fairly could have been - made against him further than that. The buck stopped with him: no less, but no more.

58. In relation to that limited finding, so far as it goes, the procedure may not have been inadequate – or if it was, could have produced no other outcome – simply because this was an automatic and inevitable result of the outcome against LSST. The limited finding is consistent with the decision-makers taking an approach, which was no doubt open to them, of focusing primarily on the evidence of systemic failure to recruit with integrity, and on the accreditation of LSST, rather than on how or why it had all come about. The real issue in this case, therefore, is how that approach and conclusion fits with the personal sanctions imposed on Dr Panagiotou.

Sanctions

59. As the case against Dr Panagiotou was not distinguished in procedure or findings from that against LSST, the sanctions imposed on him have to be considered from the same standpoint: that he was the head of a college at which serious and systemic malpractice had been properly established, but not otherwise accounted for.

(i) Bar on (re-)registration

60. The JCQ Guidance states that malpractice sanctions are to be chosen from a defined range (no doubt for reasons of fairness, consistency and predictability). It reserves to awarding bodies the right to apply sanctions flexibly, outside those ranges, if particular mitigating or aggravating circumstances are found to exist. Separate 'defined ranges' are set for centres, and for staff. A bar on (re-)registration appears in the range prescribed for centres, but not in the range for individuals. No 'particular mitigating or aggravating circumstances' are cited by the decision-makers for imposing this particular sanction personally on Dr Panagiotou, rather than on LSST.

61. The JCQ Guidance also provides that where a centre is sanctioned by withdrawal of recognition, so that it cannot offer courses leading to an awarding body's qualifications, the centre is to be informed of the earliest date at which it can re-apply for registration and any measures it will need to take prior to this application. That did not happen in this case. LSST had simply had accreditation removed without reference to a period. Instead, a (lengthy and unqualified) bar on Dr Panagiotou (re-)applying for registration was imposed.

62. This adds up to an odd amalgamation of the position of the centre with that of its head, and is hard to reconcile with the published policies and procedures. The bar appears capable of relating to Dr Panagiotou in any or all capacities, including otherwise than as an employee of LSST. That in itself might suggest a considerable measure of personal censure (unsupported by determinations as to degree of personal culpability), rather than being a sanction addressed simply to his accountabilities for and within LSST. At any rate it is not clear what relationship this personal bar would have to an application from any organisation employing him – now or in the future. Even if read as a provision relating solely to Dr Panagiotou acting on behalf of LSST (which is itself unsatisfactorily unclear) it is not easy to understand in its own terms, including, for example, as to whether someone other than him could act on behalf of LSST in this matter, and on what basis.

63. The confusion is if anything compounded by the decision of the Appeal Panel to reduce the period of the bar "in recognition of the case presented on the centre's behalf" relating to LSST's policies of outreach to less advantaged students and

potential students. It is far from clear why the personal bar imposed on Dr Panagiotou – as opposed to the deregistration of LSST – should be affected by the policies of the organisation in this way.

64. For all these reasons, the imposition of a (re-)registration bar on Dr Panagiotou is unsatisfactory and unfair. It is unclear on its face, its operation is uncertain, no explanation is given for it, and it was not readily predictable from, nor obviously consistent with, the JCQ Guidance.

(ii) Bar on involvement with Pearson qualifications

65. As regards the second personal sanction on Dr Panagiotou, the JCQ Guidance provides, at the top of the defined range of sanctions applicable to an employee found guilty of malpractice, for a bar from all involvement by that person in the delivery or administration of its examinations and assessments for a period of time. In an annex, historical examples of such cases are given. These all concern the involvement of staff in the administration of qualification tests – exam cheating or bad practice – and typically involve bars of up to two or three years. They all involve clear findings of personal misconduct. No examples are given, nor guidance provided, as to the barring of heads of centre or other senior employees, where malpractice has been established on their watch but against whom no other findings have been made.

66. No overt explanation appears anywhere for the specific choice of sanctions imposed on Dr Panagiotou. They were very severe. As it happens, LSST had for reasons unconnected with this case already decided to cease running courses leading to Pearson qualifications, so the practical impact on the college, and on Dr Panagiotou so long as he remains there, may be limited. But a personal bar for ten years (albeit reduced to five - for mitigation rather than proportionality reasons) on involvement in the administration of one of the UK's largest qualification awarders is plainly capable of having a substantial impact on an individual educationalist's reputation and livelihood.

67. In the absence of clear help from the published guidance and policies, or explanation by the decision-makers themselves, I invited submissions as to how the proportionality of these sanctions was properly to be judged in all the circumstances. It was put simply on behalf of Pearson that this was a bad case of systemic malpractice and it was entitled to conclude, and have its processes endorse, that they did not wish to do business with Dr Panagiotou for a very long time. The severest of penalties would have been a personal lifetime ban, so the proportionality of a ten or five year ban could be considered accordingly. The JCQ Guidance, however, places at the top of its list of personal sanctions suspension 'for a set period of time'.

68. This was also said to be a rare or unusual case, to which exceptional measures were appropriate. That, however, makes it harder rather than easier to rely on inference to deduce the reasoning behind and proportionality of these sanctions. Where sanctions are unusual, or particularly severe, it is more, rather than less, important that they are clearly explained and justified, including by reference to published policies and procedures, in order to be fair.

69. The decision-makers did not materially distinguish the case against LSST from the case against Dr Panagiotou in their procedures or their findings. Having established

serious malpractice on Dr Panagiotou's watch and rejected his explanations, they appear simply to have concluded without more that the severest penalties should be visited not just on LSST but also, and separately, on him. They were entitled within the regulatory framework to hold him to account personally. But the imposition of the severest personal sanctions, *in addition* to deregistration of LSST, required at least some attention to be paid to their *additional* purpose, effect and justifiability in all the relevant circumstances of the case.

70. It is not apparent that that happened. In any event, the decision-makers had made no adverse findings at all about Dr Panagiotou's conduct, competence or integrity, or the degree of his responsibility for the malpractice. The Appeal Panel even acknowledged his good intentions. The justifiability of these additional personal sanctions is therefore not obvious. They are not self-evidently relatable to a malpractice determination which did not inquire into the causes of the malpractice and reached no conclusions about either individual malpractice by Dr Panagiotou or the particular circumstances of his failure to discharge a head's responsibilities. They are not therefore self-evidently fair, or even capable of being fair on the limited findings that had been made and on the procedures that had been followed.

71. At best, the proportionality of these sanctions is left to be inferred from the seriousness of the malpractice and the non-delegable responsibilities of a head of centre without more. For the reasons set out above, that is not a sufficient answer to a challenge that they are indiscriminate, including as to degree of demerit and as to purpose and effect. At worst, they imply unsupported personal censure, or at least leave ample room for doubt that they have been influenced by unarticulated and unexamined assumptions about Dr Panagiotou's personal conduct, competence or integrity. In any event, their proportionality, and their consistency with published policy and procedure, does not speak for itself. Their fairness and lawfulness cannot accordingly be upheld.

Conclusion

72. For these reasons, I conclude that the sanctions imposed personally on Dr Panagiotou and upheld by the Appeal Panel on 25th September 2018 should be set aside.

73. An opportunity should also be taken address the issue of informing LSST of the earliest date at which it can re-apply for registration and any measures it will need to take prior to this application, as provided by paragraph 11.3, subheading 11, of the JCQ Guidance valid 1st September 2017 to 31st August 2018.