



National College for
Teaching & Leadership

Andrew Mark Fowler: Professional Conduct Panel outcome

**Panel decision and reasons on behalf of the
Secretary of State for Education**

December 2014 (amended April 2015)

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Professional Conduct Panel decision and recommendations, and decision on behalf of the Secretary of State

Teacher: Mr Andrew Mark Fowler

Teacher ref no: 0260483

Teacher date of birth: 16 December 1977

NCTL Case ref no: 0010967

Date of Determination: 1 December 2014

A. Introduction

A Professional Conduct Panel (“the Panel”) of the National College for Teaching and Leadership (“the National College”) convened on 22 September 2014 and 1 December 2014 at 53-55 Butts Road, Earlsdon Park, Coventry, CV1 3BH to consider the case of Mr Andrew Mark Fowler.

The Panel members were Mr William Nelson (Lay Panellist in the Chair), Ms Gail Goodman (Teacher Panellist) and Ms Jean Carter (Lay Panellist).

The Legal Adviser to the Panel was Mrs Luisa Gibbons of Eversheds LLP Solicitors.

The Presenting Officer for the National College was Mr Christopher Geering, Counsel, of 2 Hare Court, instructed by Nabarro LLP.

Mr Fowler was present and represented by Ms Jan Alam, Counsel of Ropewalk Chambers.

The hearing took place in public and was recorded.

Following an appeal by Mr Fowler against the original prohibition order dated 4 December 2014 (“the Original Decision”), a consent order was agreed between the parties (and subsequently approved by the High Court) which sought the quashing of the Original Decision insofar as it related to the Secretary of State’s decision to impose a ten year review period.

In light of the points raised by Mr Fowler in his appeal, the Secretary of State took the view that the decision to set a ten year period after which Mr Fowler would be entitled to apply for a review of the prohibition order was not a proportionate sanction given the factual allegations proved before the professional conduct panel. Accordingly the Original Decision has been amended on the basis that Mr Fowler should be entitled to apply for the prohibition order to be set aside once a period of two years has elapsed from the date on which it came into force.

The latter part of this introduction was added on 27 April 2015. At the same time, certain amendments were made to the parts of the Original Decision which concerned when Mr Fowler should be able to apply for a review of the prohibition order. The remainder of the Original Decision is unchanged. The prohibition order continues to have effect from the date it was made, i.e. 4 December 2014. It follows that Mr Fowler will be able to apply for a review of the prohibition order from 4 December 2016.

The Original Decision is annexed to this decision at Annex A.

B. Allegations

The Panel considered the allegations set out in the Notice of Proceedings dated 13 June 2014.

It was alleged that Mr Fowler was guilty of having been convicted of a relevant criminal offence, in that:

On 15 October 2013, at the North Cheshire Magistrates Court you were convicted of the offence of:

1. Possessing a Controlled drug Class A (cocaine) on 11 August 2013, contrary to the Misuse of Drugs Act 1971 s5(2), you received a fine of £100.00, costs of £85.00 and a victim surcharge of £20.00.

It was also alleged that Mr Fowler was guilty of unacceptable professional conduct and/or conduct that may bring the profession into disrepute, in that:

2. On 30 September 2001, you were cautioned by Northumbria Police for the offence of possessing a Controlled drug Class A (MDMA) on 30 September 2001, contrary to the Misuse of Drugs Act 1971 s5(2).

Mr Fowler has admitted the facts alleged in Allegation 1, and has admitted that the facts amount to conviction of a relevant offence. Mr Fowler has denied the facts alleged in Allegation 2 and that he is guilty of unacceptable professional conduct and/or conduct that may bring the profession into disrepute.

C. Preliminary applications

The Panel considered the application of Mr Fowler's representative to discontinue the second allegation, on the basis that Mr Fowler was not a teacher at the time, on 30 September 2001, when he was cautioned for possessing a Controlled drug. It was not disputed by Mr Fowler that he had been issued with the caution. However, it was argued that this could not amount to unacceptable professional conduct and/or conduct that may bring the profession into disrepute. Mr Fowler's representative also stated that Mr Fowler always disclosed the caution when joining the profession, and this was not disputed by the Presenting Officer.

The Panel considered the nature of the caution and the lapse of time since the caution meant that it would not be able to come to a judgement that the caution amounted to unacceptable professional conduct and/or conduct that may bring the profession into disrepute. The Panel therefore reached a decision that it would not consider Allegation 2.

The Panel did not consider it necessary, for the purposes of this case, to decide whether or not its jurisdiction extended to current teachers who were not employed as a teacher at the time any conduct or conviction took place but subsequently became so employed.

D. Summary of evidence

Documents

In advance of the hearing, the Panel received a bundle of documents which included:

Section 1:	Chronology	pages 2 – 3
Section 2:	Notice of Proceedings and Response	pages 4 – 15
Section 3:	National College for Teaching and Leadership Documents	pages 16 – 21
Section 4:	Police Documentation	pages 22 – 33
Section 5:	Teacher Documents	pages 34 - 88

The Panel Members confirmed that they had read all of the documents in advance of the hearing.

At the outset of the case, the Presenting Officer applied to admit an extract from the arresting officer's notebook. There was no objection to its admission by Mr Fowler's representative. The Panel admitted the document on the basis that it was fair to admit it, and that it was relevant to the Panel's consideration of the case. The document was read by the Panel and paginated as pages 89 and 90.

During the oral evidence of the police officer called by the Presenting Officer, an application was made by the Presenting Officer to admit the custody record that the witness had referred to when answering questions posed by Mr Fowler's representative. There was no objection to its admission by Mr Fowler's representative. The Panel admitted the document on the basis that it was fair to admit it, and that it was relevant to the Panel's consideration of the case. The document was read by the Panel and paginated as pages 91 – 107.

Witnesses

The Panel heard oral evidence from a police officer (the Arresting Officer) called by the Presenting Officer and from Mr Fowler.

E. Decision and reasons

The Panel announced its decision and reasons as follows:

We have now carefully considered the case before us and have reached a decision.

We confirm that we have read all the documents provided in the bundle in advance of the hearing.

Summary of Evidence

On 11 August 2013, Mr Fowler was found in possession of a small bag of white powder. On 15 October 2013, he pleaded guilty to a charge of possession of a quantity of cocaine. Mr Fowler has stated that he subsequently resigned from his post at Saints Peter and Paul Catholic College.

Findings of Fact

Our findings of fact are as follows:

We have found the following particulars of the allegations against you proven, for these reasons:

1. On 15 October 2013, at the North Cheshire Magistrates Court you were convicted of the offence of possessing a Controlled drug Class A (cocaine) on 11 August 2013, contrary to the Misuse of Drugs Act 1971 s5(2), you received a fine of £100.00, costs of £85.00 and a victim surcharge of £20.00.

The Panel has seen a Memorandum of an Entry in the Register of the North Cheshire Magistrates' Court in which it is confirmed that following a guilty plea, Mr Fowler was convicted of the alleged offence and that he received the penalty alleged.

The Panel noted that the Guidance requires that it does not re-examine the facts of the case, and the Panel therefore accepted the conviction as conclusive proof that establishes the fact that Mr Fowler had been in possession of cocaine on 11 August 2013.

This allegation is therefore found proven.

Findings as to conviction of a relevant offence

In considering the allegations that the Panel has found proven, the Panel has had regard to the definitions in The Teacher Misconduct – Prohibition of Teachers Advice, which we refer to as the ‘Guidance’.

The Panel noted that in making its judgement, the Guidance requires it to consider the nature and gravity of the offence, its circumstances and any mitigating circumstances. Mr Fowler’s position is that although he was in possession of the cocaine, having picked it up from a toilet floor in a nightclub, whilst intoxicated by alcohol, he had not used the drug. Although the Panel could not go behind the fact of the conviction, the Panel needed to make a determination of fact as to whether it believed Mr Fowler had used the cocaine, in order to understand the nature and gravity of the offence and its circumstances. The Panel found that as a matter of fact, Mr Fowler did not use the cocaine.

In making this decision, the Panel had regard to the evidence of the Arresting Officer. He produced his notebook which recorded “key with white powder on the end... chewing cheeks, white powder on end of nose”. This was at odds with the custody record, when, on admission, there was no record of there having been white powder on the end of Mr Fowler’s nose, nor any record of him having been under the influence of drugs. There was a reference to white powder having been on the end of his nose on arrival in a later entry in the custody record, made nearly two hours after his admission. However, the Panel would have expected any suspicion of drug taking to have been recorded on admission as part of the risk assessment to assess Mr Fowler’s medical requirements. The risk assessment stated that there was not sufficient concern that medical assistance was required. The Arresting Officer did not appear to the Panel to have had any real recollection of the incident, for example, he could not recall what the bag containing the drugs had looked like, nor what the key looked like. Furthermore, the Arresting Officer’s witness statement did not refer to Mr Fowler having white powder on the end of his nose, It did however make reference to another individual having such white powder on the end of his nose. Given the inconsistencies between the pocketbook, the witness statement and the custody record, together with the apparent absence of a clear recollection of the incident, the Panel could not be satisfied that Mr Fowler had used the cocaine.

In making its decision, the Panel also had regard to testimonial evidence submitted by Mr Fowler which included a statement from the Chairman of Widnes Pubwatch, who had worked within the community and with the local authorities to tackle drink and drug related crime. This stated that Mr Fowler was openly anti-drugs and firmly believes that amateur football is a vehicle to instil strong social values and influence personal development. The Panel also had regard to testimonial evidence from a fellow teacher who had been with Mr Fowler on the night of 11 August 2013, who stated that until Mr Fowler did not return from the toilets there had been no suggestion that he had used drugs. He stated that Mr Fowler enjoys a healthy lifestyle and tries to look after himself

so that he can continue to play sport. The impression provided by these witnesses was that Mr Fowler was not a person who would be likely to use drugs.

The Panel also noted that Mr Fowler's account had remained consistent throughout, and that he had nothing to gain from stating that he had not used the drugs at the time of his arrest, since he had admitted the offence of possession.

In all the circumstances, the Panel did not consider it more probable than not that Mr Fowler had used the cocaine.

However, the Panel is satisfied that the conduct of Mr Fowler in relation to the facts it has found proved, involved breaches of the Teachers' Standards. We consider that by reference to Part Two, Mr Fowler is in breach of the following standards:

- Teachers uphold public trust in the profession and maintain high standards of ethics and behaviour, within and outside school, by
 - not undermining fundamental British values, including democracy, the rule of law, individual liberty and mutual respect, and tolerance of those with different faiths and beliefs

The Panel noted that the individual's actions were relevant to teaching, working with children and/or working in an education setting, as teachers are expected to be a role model, and acquiring a conviction for possession of a Class A drug does not provide a good influence to pupils.

The Panel did not consider that Mr Fowler's actions had a potential impact on the safety or security of pupils or members of the public.

The Panel has also taken account of how the teaching profession is viewed by others. The Panel considered that Mr Fowler's behaviour in committing the offence could affect the public confidence in the teaching profession given the influence that teachers may have on pupils, parents and others in the community.

The Panel noted that the Teacher's behaviour did not lead to a sentence of imprisonment which is indicative that the offence was at the less serious end of the possible spectrum.

This is a case involving an offence involving possession of class A drugs, which the Guidance states is likely to be considered a relevant offence.

The Panel has taken account of the considerable written evidence that has been adduced attesting to Mr Fowler's exemplary record as a teacher. Although the Panel finds the evidence of Mr Fowler's teaching proficiency to be of note, the Panel has found the seriousness of the offending behaviour that led to the conviction is relevant to the teacher's ongoing suitability to teach. The Panel considers that a finding that this conviction is a relevant offence is necessary to reaffirm clear standards of conduct so as to maintain public confidence in the teaching profession.

Panel's recommendation to the Secretary of State

Given the Panel's findings in respect of a conviction of a relevant offence, it is necessary for the Panel to go on to consider whether it would be appropriate to recommend the imposition of a Prohibition Order by the Secretary of State.

In considering whether to recommend to the Secretary of State that a Prohibition Order should be made, the Panel has to consider whether it is an appropriate and proportionate measure, and whether it is in the public interest to do so. Prohibition Orders should not be given in order to be punitive, or to show that blame has been apportioned, although they are likely to have a punitive effect.

The Panel has considered the particular public interest considerations set out in the Guidance and having done so has found two of them to be relevant in this case, namely the maintenance of public confidence in the profession and declaring and upholding proper standards of conduct.

In light of the Panel's findings against Mr Fowler, which involved possession of cocaine, the Panel considers that public confidence in the profession could be weakened if such conduct was not treated seriously when regulating the conduct of the profession.

Notwithstanding the clear public interest considerations that were present, the Panel considered carefully whether or not it would be proportionate to impose a Prohibition Order taking into account the effect that this would have on Mr Fowler.

The Panel also noted that there was a public interest consideration in Mr Fowler being allowed to continue teaching, and will return to this point further below.

In carrying out the balancing exercise the Panel has considered these public interest considerations as well as the interests of Mr Fowler. The Panel took further account of the Guidance, which suggests that a prohibition order may be appropriate if certain behaviours of a teacher have been proven. In the list of such behaviours, those that are relevant in this case are:

- serious departure from the personal and professional conduct elements of the teachers' standards
- actions or behaviours that undermine fundamental British values... the rule of law
- the commission of a serious criminal offence, including those that resulted in a conviction or caution, paying particular attention to offences that are 'relevant matters' for the purposes of The Police Act 1997 and criminal record disclosures

Even though there were behaviours that would point to a Prohibition Order being appropriate, the Panel went on to consider whether or not there were sufficient mitigating factors to militate against a Prohibition Order being an appropriate and proportionate measure to impose, particularly taking into account the nature and severity of the

behaviour in this case. The Panel has found that Mr Fowler had not used the cocaine, and that he had picked it up when intoxicated, albeit that he has never denied that the bag contained cocaine.

Mr Fowler does have a previous good history as a teacher. The Panel had regard to testimonial evidence produced by a significant number of parents, friends, colleagues, a former pupil, and those he has worked with as part of his voluntary work for a local football team. They consistently refer to him as an excellent teacher; that he achieves outstanding results; that he is a person of integrity; that he has an innovative approach; and that he gives his time willingly both in the school environment, and also in his voluntary work. The Panel heard Mr Fowler's oral testimony and were impressed that he demonstrated concern for the impact of his actions in resigning from his post, to spare the school in which he was employed from the reputational damage that could flow from publicity of his conviction. He demonstrated a concern for the effect his actions had on others, and has chosen not to take another teaching post pending completion of these procedures, in order not to impact on the reputation of a future school. Throughout these proceedings he has demonstrated insight, and admitted both having received the conviction, and that it was a conviction of a "relevant offence".

The Panel noted that since resigning from his school, he has embarked on a Master's degree in Human Resources Development, which he hopes will improve his skills should he return to teaching, and that it will enable him to develop others that he works with. Mr Fowler also gave interesting evidence about using his experience of these proceedings to benefit those embarking on a teaching career, to help them to understand the conduct that is expected of them. Although Mr Fowler does have a previous caution, it predated him joining the teaching profession, and there has been a considerable lapse of time since. Given the overwhelming evidence in support of Mr Fowler's ability as a teacher, the Panel did not feel that the caution detracted from Mr Fowler's good history as a teacher. The Panel was of the view that the balance of the public interest fell in favour of Mr Fowler being permitted to continue teaching, since otherwise the public would be deprived of an excellent teacher.

The Panel is not of the view that Prohibition is a proportionate and appropriate response. Given that the nature and severity of the behaviour is at the less serious end of the possible spectrum and in light of the mitigating factors that were present in this case, the Panel has determined that a recommendation for a prohibition order will not be appropriate in this case. The Panel notes that Mr Fowler has already suffered a significant penalty both personally and professionally as a result of his behaviour and the Panel is of the view that it has clearly expressed its disapproval of his conduct through its finding that his conviction was for a relevant offence. This fulfils the public interest that the profession understand that his conduct is not to be condoned.

Decision and reasons on behalf of the Secretary of State

I have given very careful consideration to this case and to the recommendation of the panel.

This case involves possession of a class A drug, cocaine. The disposal of the court for this offence was a fine of £100.00, costs of £85.00 and a victim surcharge of £20.00.

The panel has found that this conviction is a relevant one. I have given careful consideration to the panel's thinking in this case.

The panel is clear that this was a breach of the standards that a teacher should follow, especially in terms of adhering to the rule of law. The guidance published by the Secretary of State is also clear that an offence that relates to or involves possession of a class A drug is likely to be an offence which is relevant to a person's fitness to be a teacher.

The panel has concluded that the teacher did possess the class A drug cocaine, but did not use the drug.

The panel has taken into account the testimony of two witnesses who were able to speak of Mr Fowler's character. It has taken into account Mr Fowler's good character and his record as a teacher. I have also taken those matters into account. There is no doubt that Mr Fowler has been an effective teacher.

The panel has recommended that Mr Fowler should not be prohibited from teaching. In taking this view the panel has weighed up for itself the need to balance the reputation of the profession and the public interest alongside the interests of Mr Fowler.

I have also weighed these matters and considered carefully the guidance published by the Secretary of State. The guidance clearly sets out that a prohibition order with no provision for a review period should be considered where there is:

“class A drug abuse or supply”

In this case the panel has not found evidence of abuse or supply.

On balance I have decided not to support the recommendation of the panel. Although there is no evidence that Mr Fowler used the cocaine, possession of a Class A drug is a very serious matter. The panel has not taken, in my view, sufficient account of the effect that possession of a class A drug has on the maintenance of public confidence in the profession. I am also not persuaded that the panel has given sufficient weight to the matter of the reputation of the profession in reaching their recommendation. Teachers have a considerable and significant role in modelling the behaviours and values to which

pupils should adhere. Possession of a Class A drug is a very serious issue and the public will always be concerned where a teacher has a conviction for such a serious matter.

I am therefore imposing a prohibition order on Mr Fowler.

I have then given careful consideration to the matter of a review period. The guidance published by the Secretary of State indicates that a panel should consider recommending a prohibition order with no provision for review where the case involves class A drug abuse or supply. The panel has clearly indicated that in this case they did not find that the teacher had used the cocaine. Nonetheless the possession and conviction of itself is very serious, even in the circumstances set out in this case.

I have therefore decided that a two year review period should apply. I believe this review period reflects the need to maintain confidence in the reputation of the teaching profession and to signal the seriousness of the conviction for possession of a Class A drug by a teacher.

This means that Mr Andrew Mark Fowler is prohibited from teaching indefinitely and cannot teach in any school, sixth form college, relevant youth accommodation or children's home in England. He may apply for the Prohibition Order to be set aside, but not until 4 December 2016, 2 years from the date of this order at the earliest. This is not an automatic right to have the Prohibition Order removed. If he does apply, a panel will meet to consider whether the Prohibition Order should be set aside. Without a successful application, Mr Andrew Mark Fowler remains barred from teaching indefinitely.



NAME OF DECISION MAKER: Alan Meyrick

Date: 4 December 2014

Revised on 27 April 2015

This decision is taken by the decision maker named above on behalf of the Secretary of State.

ANNEX A

**PLEASE NOTE THAT THIS DECISION NOTICE
WAS REVISED ON 27 APRIL 2015 AND THIS
VERSION IS ANNEXED HERE FOR INFORMATION
ONLY**



National College for
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Andrew Mark Fowler: Professional Conduct Panel outcome

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Professional Conduct Panel decision and recommendations, and decision on behalf of the Secretary of State

Teacher: Mr Andrew Mark Fowler

Teacher ref no: 0260483

Teacher date of birth: 16 December 1977

NCTL Case ref no: 0010967

Date of Determination: 1 December 2014

A. Introduction

A Professional Conduct Panel (“the Panel”) of the National College for Teaching and Leadership (“the National College”) convened on 22 September 2014 and 1 December 2014 at 53-55 Butts Road, Earlsdon Park, Coventry, CV1 3BH to consider the case of Mr Andrew Mark Fowler.

The Panel members were Mr William Nelson (Lay Panellist in the Chair), Ms Gail Goodman (Teacher Panellist) and Ms Jean Carter (Lay Panellist).

The Legal Adviser to the Panel was Mrs Luisa Gibbons of Eversheds LLP Solicitors.

The Presenting Officer for the National College was Mr Christopher Geering, Counsel, of 2 Hare Court, instructed by Nabarro LLP.

Mr Fowler was present and represented by Ms Jan Alam, Counsel of Ropewalk Chambers.

The hearing took place in public and was recorded.

B. Allegations

The Panel considered the allegations set out in the Notice of Proceedings dated 13 June 2014.

It was alleged that Mr Fowler was guilty of having been convicted of a relevant criminal offence, in that:

On 15 October 2013, at the North Cheshire Magistrates Court you were convicted of the offence of:

1. Possessing a Controlled drug Class A (cocaine) on 11 August 2013, contrary to the Misuse of Drugs Act 1971 s5(2), you received a fine of £100.00, costs of £85.00 and a victim surcharge of £20.00.

It was also alleged that Mr Fowler was guilty of unacceptable professional conduct and/or conduct that may bring the profession into disrepute, in that:

2. On 30 September 2001, you were cautioned by Northumbria Police for the offence of possessing a Controlled drug Class A (MDMA) on 30 September 2001, contrary to the Misuse of Drugs Act 1971 s5(2).

Mr Fowler has admitted the facts alleged in Allegation 1, and has admitted that the facts amount to conviction of a relevant offence. Mr Fowler has denied the facts alleged in Allegation 2 and that he is guilty of unacceptable professional conduct and/or conduct that may bring the profession into disrepute.

C. Preliminary applications

The Panel considered the application of Mr Fowler's representative to discontinue the second allegation, on the basis that Mr Fowler was not a teacher at the time, on 30 September 2001, when he was cautioned for possessing a Controlled drug. It was not disputed by Mr Fowler that he had been issued with the caution. However, it was argued that this could not amount to unacceptable professional conduct and/or conduct that may bring the profession into disrepute. Mr Fowler's representative also stated that Mr Fowler always disclosed the caution when joining the profession, and this was not disputed by the Presenting Officer.

The Panel considered the nature of the caution and the lapse of time since the caution meant that it would not be able to come to a judgement that the caution amounted to unacceptable professional conduct and/or conduct that may bring the profession into disrepute. The Panel therefore reached a decision that it would not consider Allegation 2.

The Panel did not consider it necessary, for the purposes of this case, to decide whether or not its jurisdiction extended to current teachers who were not employed as a teacher at the time any conduct or conviction took place but subsequently became so employed.

D. Summary of evidence

Documents

In advance of the hearing, the Panel received a bundle of documents which included:

Section 1:	Chronology	pages 2 – 3
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Section 4:	Police Documentation	pages 22 – 33
Section 5:	Teacher Documents	pages 34 - 88

The Panel Members confirmed that they had read all of the documents in advance of the hearing.

At the outset of the case, the Presenting Officer applied to admit an extract from the arresting officer's notebook. There was no objection to its admission by Mr Fowler's representative. The Panel admitted the document on the basis that it was fair to admit it, and that it was relevant to the Panel's consideration of the case. The document was read by the Panel and paginated as pages 89 and 90.

During the oral evidence of the police officer called by the Presenting Officer, an application was made by the Presenting Officer to admit the custody record that the witness had referred to when answering questions posed by Mr Fowler's representative. There was no objection to its admission by Mr Fowler's representative. The Panel admitted the document on the basis that it was fair to admit it, and that it was relevant to the Panel's consideration of the case. The document was read by the Panel and paginated as pages 91 – 107.

Witnesses

The Panel heard oral evidence from a police officer (the Arresting Officer) called by the Presenting Officer and from Mr Fowler.

E. Decision and reasons

The Panel announced its decision and reasons as follows:

We have now carefully considered the case before us and have reached a decision.

We confirm that we have read all the documents provided in the bundle in advance of the hearing.

Summary of Evidence

On 11 August 2013, Mr Fowler was found in possession of a small bag of white powder. On 15 October 2013, he pleaded guilty to a charge of possession of a quantity of cocaine. Mr Fowler has stated that he subsequently resigned from his post at Saints Peter and Paul Catholic College.

Findings of Fact

Our findings of fact are as follows:

We have found the following particulars of the allegations against you proven, for these reasons:

1. On 15 October 2013, at the North Cheshire Magistrates Court you were convicted of the offence of possessing a Controlled drug Class A (cocaine) on 11 August 2013, contrary to the Misuse of Drugs Act 1971 s5(2), you received a fine of £100.00, costs of £85.00 and a victim surcharge of £20.00.

The Panel has seen a Memorandum of an Entry in the Register of the North Cheshire Magistrates' Court in which it is confirmed that following a guilty plea, Mr Fowler was convicted of the alleged offence and that he received the penalty alleged.

The Panel noted that the Guidance requires that it does not re-examine the facts of the case, and the Panel therefore accepted the conviction as conclusive proof that establishes the fact that Mr Fowler had been in possession of cocaine on 11 August 2013.

This allegation is therefore found proven.

Findings as to conviction of a relevant offence

In considering the allegations that the Panel has found proven, the Panel has had regard to the definitions in The Teacher Misconduct – Prohibition of Teachers Advice, which we refer to as the 'Guidance'.

The Panel noted that in making its judgement, the Guidance requires it to consider the nature and gravity of the offence, its circumstances and any mitigating circumstances.

Mr Fowler's position is that although he was in possession of the cocaine, having picked it up from a toilet floor in a nightclub, whilst intoxicated by alcohol, he had not used the drug. Although the Panel could not go behind the fact of the conviction, the Panel needed to make a determination of fact as to whether it believed Mr Fowler had used the cocaine, in order to understand the nature and gravity of the offence and its circumstances. The Panel found that as a matter of fact, Mr Fowler did not use the cocaine.

In making this decision, the Panel had regard to the evidence of the Arresting Officer. He produced his notebook which recorded "key with white powder on the end... chewing cheeks, white powder on end of nose". This was at odds with the custody record, when, on admission, there was no record of there having been white powder on the end of Mr Fowler's nose, nor any record of him having been under the influence of drugs. There was a reference to white powder having been on the end of his nose on arrival in a later entry in the custody record, made nearly two hours after his admission. However, the Panel would have expected any suspicion of drug taking to have been recorded on admission as part of the risk assessment to assess Mr Fowler's medical requirements. The risk assessment stated that there was not sufficient concern that medical assistance was required. The Arresting Officer did not appear to the Panel to have had any real recollection of the incident, for example, he could not recall what the bag containing the drugs had looked like, nor what the key looked like. Furthermore, the Arresting Officer's witness statement did not refer to Mr Fowler having white powder on the end of his nose, It did however make reference to another individual having such white powder on the end of his nose. Given the inconsistencies between the pocketbook, the witness statement and the custody record, together with the apparent absence of a clear recollection of the incident, the Panel could not be satisfied that Mr Fowler had used the cocaine.

In making its decision, the Panel also had regard to testimonial evidence submitted by Mr Fowler which included a statement from the Chairman of Widnes Pubwatch, who had worked within the community and with the local authorities to tackle drink and drug related crime. This stated that Mr Fowler was openly anti-drugs and firmly believes that amateur football is a vehicle to instil strong social values and influence personal development. The Panel also had regard to testimonial evidence from a fellow teacher who had been with Mr Fowler on the night of 11 August 2013, who stated that until Mr Fowler did not return from the toilets there had been no suggestion that he had used drugs. He stated that Mr Fowler enjoys a healthy lifestyle and tries to look after himself so that he can continue to play sport. The impression provided by these witnesses was that Mr Fowler was not a person who would be likely to use drugs.

The Panel also noted that Mr Fowler's account had remained consistent throughout, and that he had nothing to gain from stating that he had not used the drugs at the time of his arrest, since he had admitted the offence of possession.

In all the circumstances, the Panel did not consider it more probable than not that Mr Fowler had used the cocaine.

However, the Panel is satisfied that the conduct of Mr Fowler in relation to the facts it has found proved, involved breaches of the Teachers' Standards. We consider that by reference to Part Two, Mr Fowler is in breach of the following standards:

- Teachers uphold public trust in the profession and maintain high standards of ethics and behaviour, within and outside school, by
 - not undermining fundamental British values, including democracy, the rule of law, individual liberty and mutual respect, and tolerance of those with different faiths and beliefs

The Panel noted that the individual's actions were relevant to teaching, working with children and/or working in an education setting, as teachers are expected to be a role model, and acquiring a conviction for possession of a Class A drug does not provide a good influence to pupils.

The Panel did not consider that Mr Fowler's actions had a potential impact on the safety or security of pupils or members of the public.

The Panel has also taken account of how the teaching profession is viewed by others. The Panel considered that Mr Fowler's behaviour in committing the offence could affect the public confidence in the teaching profession given the influence that teachers may have on pupils, parents and others in the community.

The Panel noted that the Teacher's behaviour did not lead to a sentence of imprisonment which is indicative that the offence was at the less serious end of the possible spectrum.

This is a case involving an offence involving possession of class A drugs, which the Guidance states is likely to be considered a relevant offence.

The Panel has taken account of the considerable written evidence that has been adduced attesting to Mr Fowler's exemplary record as a teacher. Although the Panel finds the evidence of Mr Fowler's teaching proficiency to be of note, the Panel has found the seriousness of the offending behaviour that led to the conviction is relevant to the teacher's ongoing suitability to teach. The Panel considers that a finding that this conviction is a relevant offence is necessary to reaffirm clear standards of conduct so as to maintain public confidence in the teaching profession.

Panel's recommendation to the Secretary of State

Given the Panel's findings in respect of a conviction of a relevant offence, it is necessary for the Panel to go on to consider whether it would be appropriate to recommend the imposition of a Prohibition Order by the Secretary of State.

In considering whether to recommend to the Secretary of State that a Prohibition Order should be made, the Panel has to consider whether it is an appropriate and proportionate measure, and whether it is in the public interest to do so. Prohibition Orders should not be given in order to be punitive, or to show that blame has been apportioned, although they are likely to have a punitive effect.

The Panel has considered the particular public interest considerations set out in the Guidance and having done so has found two of them to be relevant in this case, namely the maintenance of public confidence in the profession and declaring and upholding proper standards of conduct.

In light of the Panel's findings against Mr Fowler, which involved possession of cocaine, the Panel considers that public confidence in the profession could be weakened if such conduct was not treated seriously when regulating the conduct of the profession.

Notwithstanding the clear public interest considerations that were present, the Panel considered carefully whether or not it would be proportionate to impose a Prohibition Order taking into account the effect that this would have on Mr Fowler.

The Panel also noted that there was a public interest consideration in Mr Fowler being allowed to continue teaching, and will return to this point further below.

In carrying out the balancing exercise the Panel has considered these public interest considerations as well as the interests of Mr Fowler. The Panel took further account of the Guidance, which suggests that a prohibition order may be appropriate if certain behaviours of a teacher have been proven. In the list of such behaviours, those that are relevant in this case are:

- serious departure from the personal and professional conduct elements of the teachers' standards
- actions or behaviours that undermine fundamental British values... the rule of law
- the commission of a serious criminal offence, including those that resulted in a conviction or caution, paying particular attention to offences that are 'relevant matters' for the purposes of The Police Act 1997 and criminal record disclosures

Even though there were behaviours that would point to a Prohibition Order being appropriate, the Panel went on to consider whether or not there were sufficient mitigating factors to militate against a Prohibition Order being an appropriate and proportionate measure to impose, particularly taking into account the nature and severity of the behaviour in this case. The Panel has found that Mr Fowler had not used the cocaine, and that he had picked it up when intoxicated, albeit that he has never denied that the bag contained cocaine.

Mr Fowler does have a previous good history as a teacher. The Panel had regard to testimonial evidence produced by a significant number of parents, friends, colleagues, a

former pupil, and those he has worked with as part of his voluntary work for a local football team. They consistently refer to him as an excellent teacher; that he achieves outstanding results; that he is a person of integrity; that he has an innovative approach; and that he gives his time willingly both in the school environment, and also in his voluntary work. The Panel heard Mr Fowler's oral testimony and were impressed that he demonstrated concern for the impact of his actions in resigning from his post, to spare the school in which he was employed from the reputational damage that could flow from publicity of his conviction. He demonstrated a concern for the effect his actions had on others, and has chosen not to take another teaching post pending completion of these procedures, in order not to impact on the reputation of a future school. Throughout these proceedings he has demonstrated insight, and admitted both having received the conviction, and that it was a conviction of a "relevant offence".

The Panel noted that since resigning from his school, he has embarked on a Master's degree in Human Resources Development, which he hopes will improve his skills should he return to teaching, and that it will enable him to develop others that he works with. Mr Fowler also gave interesting evidence about using his experience of these proceedings to benefit those embarking on a teaching career, to help them to understand the conduct that is expected of them. Although Mr Fowler does have a previous caution, it predated him joining the teaching profession, and there has been a considerable lapse of time since. Given the overwhelming evidence in support of Mr Fowler's ability as a teacher, the Panel did not feel that the caution detracted from Mr Fowler's good history as a teacher. The Panel was of the view that the balance of the public interest fell in favour of Mr Fowler being permitted to continue teaching, since otherwise the public would be deprived of an excellent teacher.

The Panel is not of the view that Prohibition is a proportionate and appropriate response. Given that the nature and severity of the behaviour is at the less serious end of the possible spectrum and in light of the mitigating factors that were present in this case, the Panel has determined that a recommendation for a prohibition order will not be appropriate in this case. The Panel notes that Mr Fowler has already suffered a significant penalty both personally and professionally as a result of his behaviour and the Panel is of the view that it has clearly expressed its disapproval of his conduct through its finding that his conviction was for a relevant offence. This fulfils the public interest that the profession understand that his conduct is not to be condoned.

Decision and reasons on behalf of the Secretary of State

I have given very careful consideration to this case and to the recommendation of the panel.

This case involves possession of a class A drug, cocaine. The disposal of the court for this offence was a fine of £100.00, costs of £85.00 and a victim surcharge of £20.00.

The panel has found that this conviction is a relevant one. I have given careful consideration to the panel's thinking in this case.

The panel is clear that this was a breach of the standards that a teacher should follow, especially in terms of adhering to the rule of law. The guidance published by the Secretary of State is also clear that an offence that relates to or involves possession of a class A drug is likely to be an offence which is relevant to a person's fitness to be a teacher.

The panel has concluded that the teacher did possess the class A drug cocaine, but did not use the drug.

The panel has taken into account the testimony of two witnesses who were able to speak of Mr Fowler's character. It has taken into account Mr Fowler's good character and his record as a teacher. I have also taken those matters into account. There is no doubt that Mr Fowler has been an effective teacher.

The panel has recommended that Mr Fowler should not be prohibited from teaching. In taking this view the panel has weighed up for itself the need to balance the reputation of the profession and the public interest alongside the interests of Mr Fowler.

I have also weighed these matters and considered carefully the guidance published by the Secretary of State. The guidance clearly sets out that a prohibition order with no provision for a review period should be considered where there is:

“class A drug abuse or supply”

In this case the panel has not found evidence of abuse or supply.

On balance I have decided not to support the recommendation of the panel. Although there is no evidence that Mr Fowler used the cocaine, possession of a Class A drug is a very serious matter. The panel has not taken, in my view, sufficient account of the effect that possession of a class A drug has on the maintenance of public confidence in the profession. I am also not persuaded that the panel has given sufficient weight to the matter of the reputation of the profession in reaching their recommendation. Teachers have a considerable and significant role in modelling the behaviours and values to which

pupils should adhere. Possession of a Class A drug is a very serious issue and the public will always be concerned where a teacher has a conviction for such a serious matter.

I am therefore imposing a prohibition order on Mr Fowler.

I have then given careful consideration to the matter of a review period. The guidance published by the Secretary of State indicates that a panel should consider recommending a prohibition order with no provision for review where the case involves class A drug abuse or supply. The panel has clearly indicated that in this case they did not find that the teacher had used the cocaine. Nonetheless the possession and conviction of itself is very serious, even in the circumstances set out in this case.

I have therefore decided that a ten year review period should apply. This is a significant review period but I believe it reflects the need to maintain confidence in the reputation of the teaching profession and to signal the seriousness of the conviction for possession of a Class A drug by a teacher.

This means that Mr Andrew Mark Fowler is prohibited from teaching indefinitely and cannot teach in any school, sixth form college, relevant youth accommodation or children's home in England. He may apply for the Prohibition Order to be set aside, but not until 10 December 2024, 10 years from the date of this order at the earliest. This is not an automatic right to have the Prohibition Order removed. If he does apply, a panel will meet to consider whether the Prohibition Order should be set aside. Without a successful application, Mr Andrew Mark Fowler remains barred from teaching indefinitely.



NAME OF DECISION MAKER: Alan Meyrick

Date: 4 December 2014

This decision is taken by the decision maker named above on behalf of the Secretary of State.