



National College for
Teaching & Leadership

Mr Simon Richard Whalley: Professional conduct panel outcome

Panel decision and reasons

February 2016

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Professional conduct panel decision and recommendations, and decision on behalf of the Secretary of State

Teacher: Mr Simon Richard Whalley

Teacher ref number: 9100982

Teacher date of birth: 4 July 1968

NCTL case reference: 12546

Date of determination: 3 February 2016

Former employer: Abingdon School, Oxfordshire

A. Introduction

A professional conduct panel (“the panel”) of the National College for Teaching and Leadership (“the National College”) convened on 1 February 2016 to 3 February 2016 at 53 to 55 Butts Road, Earlsdon Park, Coventry CV1 3BH to consider the case of Simon Richard Whalley.

The panel members were Mr Ian Hughes (lay panellist – in the chair), Mrs Kathy Thomson (teacher panellist) and Mr Brian Hawkins (teacher panellist).

The legal adviser to the panel was Mr Guy Micklewright of Blake Morgan LLP solicitors.

The presenting officer for the National College was Mr Christopher Gillespie of Counsel, instructed by Nabarro LLP solicitors.

Mr Whalley was not present and was not represented.

The hearing took place in public and was recorded.

B. Allegations

The panel considered the allegation(s) set out in the Notice of Proceedings dated 27 August 2015.

It was alleged that Mr Richard Whalley was guilty of unacceptable professional conduct and/or conduct that may bring the profession into disrepute in that whilst employed at Abington School, between 2000 and 2002, you failed to maintain appropriate professional boundaries in that you:

1. In relation to Pupil A:
 - a) Developed a close friendship with him,
 - b) Met him in a bar and/or restaurant, on one of more occasions,
 - c) Met him at your flat, on one or more occasions,
 - d) On an occasion after a night out you allowed Pupil A to sleep in your bed whilst intoxicated and you:
 - i. Climbed into bed with him,
 - ii. Tried to kiss him,
 - iii. Put your hand inside his underwear,
 - e) Asked Pupil A not to attend a school trip and suggested that he stay at your flat for a week,
 - f) Shared a bed with Pupil A, on one or more occasions,
 - g) Hugged Pupil A on one or more occasions,
 - h) Kissed Pupil A on one or more occasions,
 - i) Masturbated Pupil A on one or more occasions,
 - j) Performed oral sex on Pupil A on one or more occasions,
 - k) Took Pupil A on a trip to London,
 - l) Showed Pupil A a diagram depicting anal sex and suggested that you and him should try it,
 - m) Sent messages to Pupil A with content not related to school by:
 - a. SMS message

b. Email

2. In relation to a pupil or pupils (other than Pupil A):

a) Met a pupil or pupils, on one or more occasions:

- i. In pubs and/or bars,
- ii. In restaurants,
- iii. At your flat,

b) Bought alcoholic drinks for a pupil or pupils, on one or more occasions,

c) Discussed sexual matters with a pupil or pupils, on one or more occasions,

d) Allowed a pupil or pupils to consume alcoholic drinks, on one or more occasions,

e) Allowed a pupil or pupils to stay overnight at your flat, on one or more occasions;

3. Your actions described at paragraph 1 above were sexually motivated.

Given that Mr Whalley was neither present nor represented, and in the absence of any clear and unequivocal admissions, the panel treated all of the particulars of the allegation as in dispute.

C. Preliminary applications

The panel considered an application to proceed in the absence of the teacher.

The panel considered the Notice of Proceedings dated 27 August 2015 and the documents submitted by the NCTL in support of service. It considered the requirements of paragraphs 4.11 and 4.12 of the Teacher Misconduct: Disciplinary Procedures for the Teaching Profession ("the Disciplinary Procedures"). It considered that those requirements were satisfied and, accordingly, service had been properly affected.

The panel then considered whether to exercise its discretion to proceed in the absence of Mr Whalley under paragraph 4.29 of the Disciplinary Procedures. The panel concluded, from the document enclosed with the email from the NASUWT, dated 15 December 2015, and the email dated 31 January 2016, that Mr Whalley has voluntarily unequivocally waived his right to appear at the hearing. In the email of 15 December 2015 the NASUWT confirmed that they were no longer representing Mr Whalley, and Mr Whalley has not informed the NCTL at any time since that he has engaged alternative representation. The panel therefore considered that, were it to adjourn the proceedings, there was no realistic prospect that Mr Whalley would attend at a future date. The panel

considered that there was a public interest in the serious allegations against Mr Whalley being heard expeditiously, and was conscious that Pupil A was already in attendance and ready to give evidence. Accordingly, the panel decided to proceed in the absence of Mr Whalley.

The panel next considered the renewed application from Mr Whalley in his email of 31 January 2016 that the hearing should be held in private. It noted that a similar application had already been made and refused at a Case Management Hearing in September 2015. Mr Whalley submitted that the proceedings should be held in private because both his parents have a heart condition, and he is concerned that any adverse publicity could seriously affect their health. The panel considered that the application came within the scope of the second bullet point of paragraph 4.57 of the Disciplinary Procedures. The key question for the panel was whether holding the entire hearing in private would be contrary to the public interest.

The panel considered that there was a presumption that hearings should be in public. The public and the profession need to see serious allegations, such as those that Mr Whalley faces, dealt with in an open and fair manner, and to do otherwise requires a significant competing interest. The panel was unable to make any assessment of the likely impact of media publicity on Mr Whalley's parents in the absence of medical evidence, of which there is none. In any event, the panel considered that the potential for, and adverse impact of, the sort Mr Whalley asserts might befall his parents was an insufficient reason for the hearing to be held in private. Moreover, the panel noted that paragraph 4.59 of the Disciplinary Procedures required that, even where a hearing is held in private, the decision of the panel and its reasons is still announced in public.

The panel does not accept the comparison drawn by Mr Whalley in his application between the anonymity afforded to Pupil A and the lack of anonymity given to him. There is a compelling public interest in those who complain of sexual conduct being afforded anonymity during proceedings. The protection afforded by that anonymity encourages complainants to come forward and give what is inevitably distressing and difficult evidence.

Accordingly, the panel dismissed Mr Whalley's application.

The panel considered an application by the Presenting Officer to amend the word "him" in paragraph 1. I) of the allegation to "he", and, of its own motion, to amend the word "Abington" in the preamble to the allegation, to "Abingdon". The panel considered whether, in accordance with paragraph 4.56 of the Disciplinary Procedures, it was in the interests of justice to make those amendments. It reminded itself that Mr Whalley was not on notice of the proposed amendments and had not had any opportunity to submit any representations. The panel concluded that it was in the interests of justice to make the two amendments and that they could be made without any injustice to Mr Whalley. The

amendments were typographical only and did not change, in any way, the nature of the case which Mr Whalley faces.

D. Summary of evidence

Documents

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

Section 1: Chronology and anonymised pupil list – pages 2 to 3

Section 2: Notice of Proceedings, Response and Service – pages 5 to 11f

Section 3: NCTL witness statements – pages 13 to 30

Section 4: NCTL documents – pages 32 to 65

Section 5: Teacher documents – pages 67 to 107

In addition, the panel agreed to accept the following:

Decision and reasons of a CMH held in September 2015 – pages 108 to 113

Email from Mr Whalley to the NCTL dated 31 January 2016 – page 114

Email chain between Nabarro LLP and Mr Whalley – pages 115 to 116

The panel members confirmed that they had read all of the documents.

Witnesses

The panel heard oral evidence from:

Pupil A – former pupil

Witness A – former pupil

Witness B – former pupil

E. Decision and reasons

The panel announced its decision and reasons as follows:

The panel has carefully considered the case before it and has reached a decision.

The panel confirms that it has read all the documents provided in the bundle as well as those submitted on the day.

Mr Whalley was employed at Abingdon School as a music teacher between approximately 2000 and 2014. The allegations against him related to the period 2000 to 2002. They came to light when Pupil A contacted the school in the autumn of 2014 in the wake of the increasing media attention around historical sexual offending. The school commenced an investigation. As part of that investigation it interviewed Pupil A, Witness B and Witness A. In addition, it conducted an interview with Mr Whalley, the first half of which was taped and the second half of which was not, but notes were taken.

The allegations brought by the NCTL relate, firstly, to Mr Whalley's relationship with Pupil A. At the relevant time Pupil A was in the fifth and sixth forms of Abingdon School and between the ages of 16 and 18. Pupil A was, at that time, coming to terms with identifying himself as homosexual. Mr Whalley was a music teacher at the school and was also homosexual. It is alleged that he became increasingly and inappropriately close to Pupil A, eventually engaging in repeated sexual activity with him.

Secondly, the allegations relate to failing to maintain appropriate boundaries with pupils other than Pupil A, in particular by meeting them on licensed premises and socialising with them. This included both permitting them to drink alcohol whilst under age and buying alcoholic beverages for them. In addition, it is said that he would invite pupils round to his flat and, on at least one occasion, permit pupils to stay overnight.

Findings of fact

Our findings of fact are as follows:

The panel carefully applied the standard of proof and acknowledged that the burden of proving each particular of the allegation lies with the NCTL. The panel drew no adverse inference from Mr Whalley's absence. The panel noted that a number of admissions are made by Mr Whalley in his letter to the NCTL dated 21 January 2015 and that in the document entitled "Statement for the Panel" addended to the email sent on 15 December 2015, he stands by what he says in that letter. However, given Mr Whalley's absence, and his answer, "no", to the question, "do you admit the allegation", contained in his response to the Notice of Proceedings, the panel proceeded on the basis that all the particulars of the allegation were in dispute and that the contents of those two documents should be seen as evidence in the case, rather than as formal admissions.

The panel considered the evidence of all of the witnesses who gave evidence to be clear, consistent, considered and credible. All of the witnesses were very open in their answers and made it clear where they had no or little recollection of events. The panel considered Pupil A to be a particularly impressive witness, and found his evidence to be cogent and compelling.

The panel did not consider that any or all of the witnesses were motivated by malice, or that they had weaved a set of false allegations against Mr Whalley, or that Pupil A had

brought these matters to the attention of Abingdon School for anything other than entirely proper motives.

The panel carefully considered the testimonial evidence advanced by Mr Whalley. However, the panel felt it did little to establish a lack of a propensity to conduct himself in the manner alleged. The panel was unclear about how the various authors came to be selected and, in particular, how representative they were of boys between the age of 16 and 18 at Abingdon School who were struggling to come to terms with their sexuality whilst under the tutelage of Mr Whalley.

The panel has found the following particulars of the allegation against you proven, for these reasons:

Whilst employed at Abingdon School, between 2000 and 2002, you failed to maintain appropriate professional boundaries in that you:

1. In relation to Pupil A:

a) Developed a close friendship with him,

The panel noted that this matter is expressly accepted by Mr Whalley in his representations dated 21 January 2015. In a formal, recorded, interview at the School on 27 August 2014 Mr Whalley accepted that the nature of his relationship with Pupil A went beyond that of the normal teacher/pupil relationship, describing it as, "Platonic Plus". The panel also accepted the account of Pupil A. Accordingly, the panel found this particular proved.

b) Met him in a bar and/or restaurant, on one of more occasions,

The panel accepted the evidence from all three witnesses related to the occasions when Mr Whalley had met Pupil A in pubs and restaurants. It accepted, in particular, the very specific recollection Pupil A said he had of being taken to the Castle Tavern in Oxford by Mr Whalley when he was 16. Accordingly, the panel found this allegation proved.

c) Met him at your flat, on one or more occasions,

Mr Whalley accepted during the investigatory interview that he had boys in his flat. In his representations he accepts that there was an occasion when Pupil A and Witness B stayed at his flat overnight. The panel accepted the evidence of Pupil A that he had met Mr Whalley at his flat on multiple occasions. Accordingly, the panel found this allegation proved.

d) On an occasion after a night out you allowed Pupil A to sleep in your bed whilst intoxicated and you:

- i. Climbed into bed with him,**
- ii. Tried to kiss him,**
- iii. Put your hand inside his underwear,**

Mr Whalley accepts in his representations that there was an occasion when both Pupil A and Witness B stayed overnight at his flat. He accepts that they had both consumed alcohol at the local pub earlier and that they consumed more alcohol whilst at his flat. However, he disputes that he got into bed with Pupil A, tried to kiss him, and put his hand inside his underwear. Witness B was frank in his evidence that his state of intoxication was such that he could not recall what happened after he went to the bathroom to vomit, and that he has little recollection of the following morning.

The panel preferred the evidence of Pupil A. It found his account of what happened to be cogent and accepted that he was well able to look after Witness B and was not so drunk at the time that his recollection of events should be considered inherently unreliable. Given Witness B's state of intoxication and the difference in physical size between him and Mr Whalley, the panel does not consider it credible that it could have been him rather than Mr Whalley who entered the bed with Pupil A. The panel accepted Pupil A's evidence that Mr Whalley subsequently apologised for attempting to kiss him that night. Clearly Mr Whalley believed he had done something for which he needed to apologise.

Accordingly, the panel found all three sub-particulars proved.

e) Asked Pupil A not to attend a school trip and suggested that he stay at your flat for a week,

The panel accepted Pupil A's evidence that Mr Whalley had tried to persuade him to stay at his flat for a week rather than go on the Belgium rowing trip. The panel noted the contents of the draft email from Pupil A's Hotmail account, addressed to Mr Whalley's personal email account. Whilst, for reasons the panel accepted, the actual email correspondence between Pupil A and Mr Whalley was no longer available, the draft email states, "I really do think that missing Belgium is totally out of the question.". The panel infers from this passage that an exchange about missing the Belgium rowing trip had taken place prior to the email being drafted.

Accordingly, the panel found this particular proved.

f) Shared a bed with Pupil A, on one or more occasions,

The panel accepted Pupil A's evidence in this regard and accordingly found the particular proved.

g) Hugged Pupil A on one or more occasions,

The panel accepted Pupil A's evidence in this regard. Furthermore, it noted that Mr Whalley accepted during the interview carried out during the school investigation that there were hugs between Pupil A and him.

Accordingly, the panel found the particular proved.

h) Kissed Pupil A on one or more occasions,

i) Masturbated Pupil A on one or more occasions,

j) Performed oral sex on Pupil A on one or more occasions,

Mr Whalley denies in the interview during the school investigation that any of these acts occurred with Pupil A and maintains that denial. However, the panel prefers the evidence of Pupil A. The panel saw no reason why Pupil A would be mistaken in his account about what had happened given that he describes in his evidence a number of different occasions and circumstances in which this sexual contact occurred. The panel did not accept that his evidence was fabricated. He told Witness A at the time that he was in a, "relationship" with Mr Whalley and prevailed upon him to keep that fact a secret. The panel was struck in particular by Pupil A's evidence of his clear recollection of having to partake in oral sex with Mr Whalley and how he felt that it had somehow crossed a boundary for him.

Accordingly, the panel found these particulars proved.

k) Took Pupil A on a trip to London,

In both his interview with the School and in his representations Mr Whalley accepted that he and Pupil A went to London together and went to the London Eye and a bar. This is consistent with Pupil A's account.

Accordingly, the panel found this particular proved.

l) Showed Pupil A a diagram depicting anal sex and suggested that you and he should try it,

The panel accepted Pupil A's account that he was shown such a diagram and that Mr Whalley made that suggestion to him. It noted that his evidence was that he was particularly distressed by the suggestion, left the bar, and immediately made his way home. In the second half of the interview conducted by the School, when the matter was

put to Mr Whalley his response was equivocal at best, and could not be described as a denial.

Accordingly, the panel found this particular proved.

m) Sent messages to Pupil A with content not related to school by:

a. SMS message

The panel accepts Pupil A's account that he would have received text messages from Mr Whalley during his lower sixth year and that Mr Whalley would have been sending increasingly frantic text messages to Pupil A after Pupil A had decided to head home on the bus after being shown the diagram depicting anal sex.

Accordingly, the panel found this particular proved.

b. Email

The panel accepts Pupil A's account that he would have received emails from Mr Whalley. In addition, it infers from the fact that Pupil A clearly had Mr Whalley's personal email address and had been crafting emails to send to it, that they were both in the habit of regularly exchanging emails.

Accordingly, the panel found this particular proved.

2. In relation to a pupil or pupils (other than Pupil A):

a) Met a pupil or pupils, on one or more occasions:

i. In pubs and/or bars,

The panel considered that there was clear and consistent evidence from all the witnesses that there had been many occasions when Mr Whalley had met groups of pupils in pubs or bars. It noted and accepted Witness A's evidence that Mr Whalley was very much part of the group of students who were interested in music and would socialise in the pub with them around once per month, even though the majority of them were under the age of eighteen.

Accordingly, the panel found this particular proved.

iii. At your flat,

The panel accepted the evidence of Pupil A that Mr Whalley would entertain groups of pupils at his flat on occasions other than when he and Witness B stayed the night. In the interview conducted by the School Mr Whalley was asked whether boys would come over for dinner at his flat and he accepted that they would. Moreover, he accepted in his

representations dated 21 January 2015 that he did have pupils over to his flat for dinner on one occasion.

Accordingly, the panel found the particular proved.

b) Bought alcoholic drinks for a pupil or pupils, on one or more occasions,

The panel accepted the evidence of the witnesses that it was a frequent occurrence for Mr Whalley to buy alcoholic drinks for pupils and that a number of them were underage.

Accordingly, the panel found the particular proved.

c) Discussed sexual matters with a pupil or pupils, on one or more occasions,

The panel accepted the evidence of the witnesses that Mr Whalley would frequently talk about sexual matters in the company of pupils. It noted in particular the description given by Witness A that Mr Whalley was not reluctant to join in with discussions where the topics of conversation were in line with the sexual jokes on The Graham Norton Show.

Accordingly, the panel found the particular proved.

d) Allowed a pupil or pupils to consume alcoholic drinks, on one or more occasions,

Mr Whalley accepted in his interview with the School that he had provided pupils with alcohol when they had come to his flat and has accepted in his representations that he gave Witness B alcohol on the night that Witness B and Pupil A stayed at Mr Whalley's flat. The panel has already found that Mr Whalley bought alcoholic beverages for pupils in pubs. The panel accepted the witnesses' evidence that pupils, including those who were underage, were permitted to drink alcohol on numerous occasions in Mr Whalley's presence.

Accordingly, the panel found the allegation proved.

e) Allowed a pupil or pupils to stay overnight at your flat, on one or more occasions;

Witness B in his evidence describes staying at Mr Whalley's flat on two occasions. One was when he was still attending Christ Church Preparatory School. That was prior to the period 2000 to 2002 and before he attended Abingdon School and therefore is not relevant for the purpose of the allegation. The panel has found, and Mr Whalley accepts, that during that period Witness B did stay the night on one occasion.

Accordingly, the panel find the particular proved.

3. Your actions described at paragraph 1 above were sexually motivated.

Kissing, masturbating, and performing oral sex on Pupil A are activities that are inherently sexual in nature and carrying them out could not properly be described as anything other than sexually motivated.

However, the panel considered that the sexual acts themselves were the result of a process of grooming by Mr Whalley. The panel finds that the increasing closeness of the relationship and the crossing of appropriate professional boundaries by Mr Whalley was a deliberate and sexually motivated endeavour to engage in a sexual relationship with Pupil A. When Pupil A attempted to disengage himself from the relationship, the panel accepted Pupil A's evidence that Mr Whalley would become apologetic and then shortly after endeavour to resume the relationship. This behaviour was, in the panel's view, emotionally manipulative behaviour calculated to maintain Pupil A's emotional attachment to Mr Whalley.

Accordingly, the panel find this particular proved.

The panel has found the following particular of the allegation against you not proven, for these reasons:

2. In relation to a pupil or pupils (other than Pupil A):

a) Met a pupil or pupils, on one or more occasions:

ii. In restaurants,

The panel heard no oral evidence nor was provided with any documentary evidence that any pupils other than Pupil A met with Mr Whalley in restaurants.

Accordingly, the panel found this particular not proved.

Findings as to unacceptable professional conduct and/or conduct that may bring the profession into disrepute

Having found a number of the allegations to have been proven, the panel has gone on to consider whether the facts of those proven allegations amount to unacceptable professional conduct and/or conduct that may bring the profession into disrepute.

In doing so, the panel has had regard to the document Teacher Misconduct: The Prohibition of Teachers, which the panel refers to as "the Advice".

The panel is satisfied that the conduct of Mr Whalley in relation to the facts found proven, involved breaches of the Teachers' Standards. The panel considers that by reference to Part Two, Mr Whalley 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
 - treating pupils with dignity, building relationships rooted in mutual respect, and at all times observing proper boundaries appropriate to a teacher's professional position;
 - having regard for the need to safeguard pupils' well-being, in accordance with statutory provisions;
- Teachers must have proper and professional regard for the ethos, policies and practices of the school in which they teach...
- Teachers must have an understanding of, and always act within, the statutory frameworks which set out their professional duties and responsibilities.

The panel is satisfied that the conduct of the teacher fell significantly short of the standards expected of the profession.

The panel has also considered whether Mr Whalley's conduct displayed behaviours associated with any of the offences listed on pages 8 and 9 of the Advice.

The panel has found that the offences of sexual activity and serious offences involving alcohol are relevant.

The Advice indicates that where behaviours associated with such an offence exist, a panel is likely to conclude that an individual's conduct would amount to unacceptable professional conduct.

The panel considers that Mr Whalley showed a flagrant disregard for appropriate boundaries between teacher and pupils. It was entirely inappropriate for him to permit himself to be as friendly with pupils as he did, and in particular to be complicit in underage drinking in pubs and bars.

The panel has found that the sexual relationship that developed between him and Pupil A was a direct result of the targeted grooming of a young man attempting to come to terms with his sexuality. Under the initial pretence of offering pastoral support, Mr Whalley utilised his practice of being over-friendly with pupils to enable him to traverse the boundary from a normal teacher/pupil relationship, to one which enabled him to engage in repeated sexual activity with Pupil A.

The panel noted that the majority of the allegations took place outside of the education setting. However, the actions did themselves involve pupils. Pupil A was subjected to an emotionally manipulative sexual relationship with a teacher at his school. Other pupils had their learning adversely effected by the fact that Mr Whalley's over-friendliness with them meant that he was unable to maintain classroom control in school.

Accordingly, the panel is satisfied that Mr Whalley is guilty of unacceptable professional conduct.

The panel has taken into account how the teaching profession is viewed by others and considered the influence that teachers may have on pupils, parents and others in the community. The panel has taken account of the uniquely influential role that teachers can hold in pupils' lives and that pupils must be able to view teachers as role models in the way they behave.

The findings of misconduct are serious and the conduct displayed would likely have a negative impact on the individual's status as a teacher, potentially damaging the public perception of the profession.

The panel therefore finds that Mr Whalley's actions constitute conduct that may bring the profession into disrepute.

Panel's recommendation to the Secretary of State

Given the panel's findings in respect of unacceptable professional conduct and conduct that may bring the profession into disrepute, 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 punitive effect.

The panel has noted the particular public interest considerations set out in the Advice and having done so has found a number of them to be relevant in this case, namely: the protection of pupils, 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 Whalley, which involved significant breaches of appropriate professional boundaries, and grooming and having sexual contact with a pupil, there is a strong public interest consideration in respect of the protection of pupils, given the serious findings of inappropriate relationship with a pupil.

Similarly, the panel considers that public confidence in the profession could be seriously weakened if conduct such as that found against Mr Whalley were not treated with the utmost seriousness when regulating the conduct of the profession.

The panel noted that there was strong public interest consideration in declaring proper standards of conduct in the profession as the conduct found against Mr Whalley was outside that which could reasonably be tolerated.

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 any effect such an order might have on Mr Whalley.

In carrying out the balancing exercise the panel has noted the public interest considerations both in favour of, and against, prohibition as well as the interests of Mr Whalley. The panel took further account of the Advice, 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;
- misconduct seriously affecting the education and/or well-being of pupils, and particularly where there is a continuing risk;
- a deep-seated attitude that leads to harmful behaviour;
- abuse of position or trust (particularly involving vulnerable pupils) or violation of the rights of pupils;
- sexual misconduct, e.g. involving actions that were sexually motivated or of a sexual nature and/or that use or exploit the trust, knowledge or influence derived from the individual's professional position;

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. In light of the panel's findings, the panel considered that the only mitigating factor referred to in the Advice which is present in this case was that Mr Whalley has a previous good history.

There was no evidence that the teacher's actions were not deliberate.

There was no evidence to suggest that the teacher was acting under duress, and in fact the panel found the teacher's actions to be calculated and motivated.

The panel has been provided with 13 testimonials from former pupils and colleagues, which testify that Mr Whalley was an excellent and skilled teacher. It noted, in addition, that Mr Whalley has made some expressions of remorse for some of the conduct alleged.

The panel is of the view that prohibition is both proportionate and appropriate. Mr Whalley's actions in respect of Pupil A were a calculated and flagrant abuse of a position

of trust. He took advantage of his position as a well-liked and popular teacher within the school to get close to a pupil who was in an emotionally vulnerable stage of his life. He did so, the panel has concluded, with aim of pursuing a covert sexual relationship with Pupil A. Mr Whalley demonstrated a pattern of behaviour which involved breaking down the professional boundaries between him and his pupils, in particular by regularly socialising with them in an inappropriate manner. These behaviours are fundamentally incompatible with remaining a teacher.

The panel was not persuaded that Mr Whalley's representations evidenced any insight into the unacceptable nature of his conduct. Indeed, taking his responses in the investigatory interview carried out by the School and his representations together, the panel concluded that Mr Whalley has a deep-seated attitudinal problem and would be a risk to pupils were he to be allowed to return to teaching.

The panel did not find that there were any specific factors which weighed against a prohibition order being appropriate. It noted that Mr Whalley was now teaching only in Higher Education and so his ability to earn a living would not be adversely affected by the imposition of an order. In addition, whilst it accepted that his teaching skills were held in high regard by many, it is that very approachability and ability to form bonds with pupils which he utilised and took advantage of in order to forge his relationship with Pupil A.

Accordingly, the panel makes a recommendation to the Secretary of State that a prohibition order should be imposed with immediate effect.

The panel went on to consider whether or not it would be appropriate for them to decide to recommend that a review period of the order should be considered. The panel was mindful that the Advice advises that a prohibition order applies for life, but there may be circumstances in any given case that may make it appropriate to allow a teacher to apply to have the prohibition order reviewed after a specified period of time that may not be less than 2 years.

The Advice indicates that there are behaviours that, if proven, would militate against a review period being recommended. These behaviours include serious sexual misconduct, e.g. where the act was sexually motivated and resulted in or had the potential to result in, harm to a person or persons, particularly where the individual has used their professional position to influence or exploit a person or persons.

The panel considered that its findings were so serious that, coupled with Mr Whalley's lack of insight, it would be manifestly inappropriate to recommend to the Secretary of State that a review period would be appropriate. To do so would fail to mark adequately the gravity of the conduct of Mr Whalley and fail to acknowledge the evidence that Mr Whalley is likely to pose an on-going risk to pupils were he ever permitted to return to teaching.

Accordingly, the panel recommends to the Secretary of State that a prohibition order be imposed with no provision for review.

Decision and reasons on behalf of the Secretary of State

I have given careful consideration to the findings and recommendations of the panel in this case. I have noted in particular those allegations where the panel has found the facts proven and where they have found the facts do and do not amount to unacceptable professional conduct and conduct that may bring the profession into disrepute.

Mr Whalley failed to maintain appropriate professional boundaries with pupils whilst employed at Abingdon School. The panel is satisfied that the conduct of the Mr Whalley fell significantly short of the standards expected of the profession.

The panel was of a view that there was a strong public interest consideration in respect of the protection of pupils, the maintenance of public confidence in the profession and declaring and upholding standards.

I have noted that the panel considered these public interest considerations both in favour of and against prohibition as well as the interests of Mr Whalley. The panel considered whether there were sufficient mitigating factors against a prohibition order, taking into account the nature and severity of the behaviour in this case. There was no evidence that Mr Whalley's actions were not deliberate or that he was acting under duress. In fact, the panel found Mr Whalley's actions to be calculated and motivated. The panel noted that Mr Whalley has made some expressions of remorse for some of the conduct alleged. I note that the panel were not persuaded however, that Mr Whalley evidenced any insight into the unacceptable nature of his conduct, and concluded that Mr Whalley has a deep seated attitudinal problem and would be a risk to pupils were he be allowed to return to teaching. The panel decided that the public interest considerations outweighed the interests of Mr Whalley.

For the reasons set out, I support the view of the panel that the sexual nature of Mr Whalley's conduct means prohibition is both proportionate and necessary.

I have considered the matter of a review period. I agree with the panel that Mr Whalley's sexual misconduct was so serious, coupled with his lack of insight, that he is likely to pose an on-going risk to pupils if he were permitted to return to teaching.

I agree with the panel, that the prohibition order be recommended without provision for a review period.

This means that Mr Simon Richard Whalley is prohibited from teaching indefinitely and cannot teach in any school, sixth form college, relevant youth accommodation or children's home in England. Furthermore, in view of the seriousness of the

allegation found proved against him, I have decided that Mr Whalley shall not be entitled to apply for restoration of his eligibility to teach.

This order takes effect from the date on which it is served on the teacher.

Mr Whalley has a right of appeal to the Queen's Bench Division of the High Court within 28 days from the date he is given notice of this order.

A handwritten signature in black ink, appearing to read 'J. Millions', with a small dot at the end of the signature.

Decision maker: Jayne Millions

Date:

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