



National College for
Teaching & Leadership

Mr David Philip Brown: Professional conduct panel outcome

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

April 2017

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

Teacher: Mr David Philip Brown

Teacher ref number: 0220512

Teacher date of birth: 25 December 1970

NCTL case reference: 15228

Date of determination: 10 April 2017

Former employer: Worth School, Sussex

A. Introduction

A professional conduct panel (“the panel”) of the National College for Teaching and Leadership (“the National College”) convened on 10 April 2017 at Study Inn, 165/175 Corporation Street, Coventry CV1 1GU to consider the case of Mr David Phillip Brown.

The panel members were Mr Michael Lewis (former teacher panellist – in the chair), Ms Margaret Simpson (teacher panellist) and Mr John Matharu (lay panellist).

The legal adviser to the panel was Mr Parminder Benning of Eversheds Sutherland International LLP.

The presenting officer for the National College was Ms Julia Faure-Walker of Counsel, briefed by Nabarro LLP.

Mr David Philip Brown 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 25 January 2017.

It was alleged that Mr David Phillip Brown was guilty of unacceptable professional conduct and/or conduct that may bring the profession into disrepute in that he failed to maintain appropriate professional boundaries and/or professional standards whilst working as a teacher at Worth School (“the School”) in that:

1. Between 1 June 2015 and 31 December 2015 he:

a. Sent Pupil A one or more messages including;

- i. A message encouraging Pupil A to take drugs,
 - ii. A message indicating that he had taken drugs,
 - iii. A picture message of himself in the bath,
 - iv. Messages which were of a sexual nature,
 - b. Entered into an inappropriate relationship with Pupil A including engaging in sexual activity on one or more occasions;
2. His conduct as set out at paragraphs 1(a) iii and/or 1(a)(iv) and/or 1(b) above was sexually motivated.

In the statement of agreed facts dated 16 February 2017, Mr Brown admitted the above allegations and that they amounted to unacceptable professional conduct and conduct which may bring the profession into disrepute.

C. Preliminary applications

Proceeding in Absence

As Mr Brown was not in attendance, the panel considered whether the hearing should continue in his absence.

The panel noted that the National College served the Notice of Proceedings by post on 25 January 2017 at his last known address, and then by email on 26 January 2017. The National College had been diligent in seeking to contact Mr Brown and notify him of these proceedings. Mr Brown responded to the Notice of Proceedings on 16 February 2017 with a signed Response to Notice.

Having considered the factual evidence before it, the panel is satisfied that the National College had complied with the service requirements of paragraph 19.a. to 19.c. of the Teachers' Disciplinary (England) Regulations 2012.

The panel was also satisfied that the Notice of Proceedings complied with paragraphs 4.11 and 4.12 of the Teacher Misconduct: Disciplinary Procedures for the Teaching Profession, (the "Procedures").

The panel determined to exercise its discretion under paragraph 4.29 of the Procedures to proceed with the hearing in the absence of the teacher.

The panel understood that its discretion to commence a hearing in the absence of the teacher had to be exercised with the utmost care and caution, and that its discretion was a severely constrained one. The panel also understood the requirement that it be only in rare and exceptional circumstances that a decision should be taken in favour of the hearing taking place.

In making its decision, the panel noted that the teacher may waive his right to participate in the hearing. The panel has taken account of the various factors drawn to its attention from the case of *R v Jones* [2003] 1 AC1. As noted above, Mr Brown had more than 8 weeks' notice of the hearing date and in fact responded to the Notice of Proceedings on 16 February 2017. It was apparent to the panel that Mr Brown was aware of these proceedings. Furthermore, in the response Mr Brown indicated that he did not intend to attend the hearing nor did he propose to be represented. In addition, there was no indication that an adjournment would result in the teacher attending the hearing. The panel therefore considered that the teacher had waived his right to be present at the hearing in the knowledge of when and where the hearing was taking place.

The panel had regard to the extent of the disadvantage to the teacher in not being able to give his account of events, having regard to the nature of the evidence against him. The panel had the benefit of Mr Brown's admissions in the response to the Notice of Proceedings and in the form of the Agreed Statement of Facts. The panel is also able to exercise vigilance in making its decision, taking into account the degree of risk of the panel reaching the wrong decision as a result of not having heard the teacher's account.

The panel noted that the underlying facts of the allegations commenced two years ago and therefore there was a public interest in the matter proceeding.

The panel had regard to the seriousness of this case, the potential consequences for the teacher, and accepted that fairness to the teacher is of prime importance. However, it considered that: in light of the teacher's waiver of his right to appear; by taking such measures referred to above to address that unfairness, insofar as is possible; on balance, these are serious allegations and the public interest in this hearing proceeding within a reasonable time is in favour of this hearing continuing today.

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 4

Section 2: Notice of Proceedings and Response – pages 6 to 20

Section 3: NCTL witness statements – pages 22 to 36

Section 4: NCTL documents – pages 38 to 174

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

Witnesses

The panel did not hear oral evidence from any witnesses.

E. Decision and reasons

The panel announced its decision and reasons as follows:

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

The panel confirmed that it had read all the documents provided in the bundle in advance of the hearing.

Mr Brown had been contracted to work at Worth School (the “School”) as a peripatetic singing teacher from 24 September 2012. Pupil A joined the School, as a student, on 3 September 2013.

In February 2015, Mr Brown and Pupil A began exchanging text messages and/or emails via social media. Later between June to December 2015, it is alleged that Mr Brown encouraged Pupil A to take drugs, indicated that he, himself, had taken drugs and additionally sent a picture message of himself in a bath, some of these text messages were said to be of a sexual nature.

In July 2015, it is alleged Mr Brown began a sexual relationship with Pupil A.

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. Between 1 June 2015 and 31 December 2015 you:

a. Sent Pupil A one or more messages including;

- i. A message encouraging Pupil A to take drugs,**
- ii. A message indicating that he had taken drugs,**

The panel noted that Mr Brown admitted, in the signed Agreed Statement of Facts dated 10 February 2017, that he sent Pupil A the messages in the terms described in the allegation. Mr Brown also admitted to sending these messages in the Notice of Referral Form dated 13 July 2016 and in the Notice of Proceedings Form dated 16 February 2017.

The panel considered the written evidence of Parent Z who stated that she looked through Pupil A's iPhone which contained messages exchanged between Mr Brown and Pupil A. This phone was bought by Mr Brown for Pupil A. Parent Z noted that, "The messages again included open references to drug use and even offering to share them with Pupil A". Parent Z said "Mr Brown referenced the 'come down' and also the great effect that drugs could have during sex". The panel also considered the contemporaneous text message Parent Z sent to Mr Brown on 12 December where she referred to his "coke" usage. Parent Z has been consistent with her account throughout, relaying the same information to the School during their investigation. This is further corroborated from the School's notes of the meeting with Pupil A where she said that, "Mr Brown emphasised the good aspects of drugs if taken in a controlled environment".

The panel had regard to the School's Staff Prudence Guidance and Code of Conduct which stated, "Neither non-proprietary nor non-prescribed drugs may be brought into the school". The policy goes on to state, "Staff should not engage in inappropriate electronic communication with pupils [and] Staff should not give pupils their private number". The panel noted that the agreement between Mr Brown and the School, which Mr Brown signed on 1 October 2012, stated that a teacher is responsible for familiarising themselves with School policies and that, "The Staff Prudence Code which applied to Teaching Staff must be adhered to at all times". The panel considered that despite being self-employed, Mr Brown was subject to all of the School's policies.

In his meeting with Individual B dated 17 December 2015, Mr Brown accepted that the level of text communication between him and Pupil A was inappropriate. Furthermore, he

accepted that as a teacher he was in a position of power and, “should never do anything to abuse that”.

The panel noted that Pupil A was a pupil attending the School. She is said to have left the School as a pupil in the summer term 2015, although the panel noted that Pupil A was re-taking one of her A-Levels in the autumn term 2015. The panel considered that the relationship between Mr Brown and Pupil A arose as a result of their contact at the School and therefore could be categorised as a pupil/teacher relationship.

The panel considered all of the evidence, and on the balance of probabilities the panel found that Mr Brown was more likely than not to have sent the messages to Pupil A in the terms described in the allegation. Having regard to appropriate teacher/pupil relationship and the relevant policies, the panel concluded that Mr Brown’s actions, in encouraging Pupil A to take drugs and indicating that he had taken drugs, amounted to a failure to maintain appropriate professional standards and appropriate professional boundaries. Consequently, the panel find this particular of the allegation to be proven.

iii. A picture message of himself in the bath,

iv. Messages which were of a sexual nature,

The panel noted that Mr Brown admitted, in the signed Agreed Statement of Facts dated 10 February 2017, that he sent Pupil A the messages in the terms described in the allegation and that the messages were of a sexual nature. Mr Brown also admitted to sending such messages in the Notice of Referral Form dated 13 July 2016 and in the Notice of Proceedings Form dated 16 February 2017.

The panel considered the written evidence of Parent Z who stated that she looked through Pupil A’s laptop which contained messages exchanged between Mr Brown and Pupil A. She noted that she found a large volume of text messages dating back to February 2015. These messages started off as innocuous, but “Pupil A’s tone was one of trust ... it seemed Mr Brown was preying on her vulnerabilities”. She explained that, “the text messages quite quickly escalated into flirtatious chat and by the summer of 2015 Mr Brown had sent naked images of himself in his bath to Pupil A”. In her statement dated 21 September 2015, Parent Z said that, “the texts were extremely explicit and quite often [Mr Brown] would text her to switch to WhatsApp as it was safer”.

The panel had regard to the School’s Child Protection policy which defines sexual abuse as, “forcing or enticing a child to take part in sexual activities ... [and] may include ... encouraging children to behave in sexually inappropriate ways”. The panel also referred to the School’s Staff Prudence Guidance and Code of Conduct which stated, “A member of staff on his/her own should not be with a pupil on their own” and “Staff should not meet with pupil alone off the school premises”. The policy goes on to state, “All teachers are in

a position of trust” and that, “Allowing any sort of dependent relationship to develop with a pupil is a breach of this trust”. In addition, the policy provides, “Great care should be taken to ensure that no romantic or sexual relationship, no matter how one-sided, is allowed to develop between a teacher and a pupil ... it is a breach of trust ... for a teacher to initiate a romantic or sexual relationship with a pupil after that pupil has left school”.

The panel noted that Pupil A was a pupil attending the School. She is said to have left the School as a pupil in the summer term 2015, although the panel noted that Pupil A was re-taking one of her A-Levels in the autumn term 2015. The panel considered that the relationship between Mr Brown and Pupil A arose as a result of their contact at the School and therefore could be categorised as a pupil/teacher relationship.

The panel considered all of the evidence, and on the balance of probabilities the panel found that Mr Brown was more likely than not to have sent the messages to Pupil A in the terms described in the allegation. Having regard to appropriate teacher/pupil relationship and the relevant policies, the panel concluded that Mr Brown’s actions amounted to a failure to maintain appropriate professional standards and appropriate professional boundaries. Consequently, the panel find this particular of the allegation to be proven.

b. Entered into an inappropriate relationship with Pupil A including engaging in sexual activity on one or more occasions;

The panel noted that Mr Brown admitted, in the signed Agreed Statement of Facts dated 10 February 2017, that he entered into an inappropriate relationship with Pupil A which included engaging in sexual activity. Mr Brown also admitted to this allegation in the Notice of Proceedings Form dated 16 February 2017.

The panel considered the written evidence of Parent Z who stated, “it was clear that a physical relationship had begun as there were explicit references to Pupil A and Mr Brown having had sex within the text messages”. In the written evidence of Individual B, he recalled that during his meeting with Pupil A she explained that, “in early July 2015 the relationship took on a sexual nature”. He noted from his meeting with Mr Brown that Mr Brown, “admitted that he had a sexual relationship with Pupil A but stated that it was not whilst she was a pupil at the School”. In the email exchange between Individual B and Individual C [HR Advisor] it is acknowledged that Mr Brown disputed the date upon which the sexual relationship began; he indicated it was after the summer term had finished and not at the beginning of July.

The panel also noted that prior to the sexual encounter, Mr Brown provided Pupil A with free singing lessons, a part time job and then later, bought her an iPhone on which they could communicate.

The panel had regard to the School's Child Protection policy and the School's Staff Prudence Guidance and Code of Conduct, the relevant parts being outlined in allegation 1(a).

Both Pupil A and Mr Brown accepted that they engaged in sexual activity during the time period set out in allegation 1, albeit that they differed in their accounts of precisely when such activity took place. The panel considered the School's note of their meeting with Pupil A, where she discussed the sexual encounter noting that she was, "very conscious of the end of term". The panel therefore concluded that it was more probable than not that the activity occurred during the time period set out in allegation 1. In any event, the panel considered that the sexual activity arose from the relationship that developed from February 2015 and was rooted in Mr Brown's contact with Pupil A, whilst she was a pupil.

The panel considered all of the evidence, and on the balance of probabilities the panel found that Mr Brown was more likely than not to have engaged in sexual activity with Pupil A on one or more occasions, this amounting to an inappropriate relationship. The panel also considered that the provision of the free singing lessons and the paid part time job, could be seen as an attempt to foster a relationship, which the panel regard as inappropriate. The relationship was spawned out of the position of trust that Mr Brown had, and the panel considered this to be inappropriate. Having regard to appropriate teacher/pupil relationships and the relevant policies, the panel concluded that Mr Brown's actions amounted to a failure to maintain appropriate professional standards and appropriate professional boundaries. Consequently, the panel find this particular of the allegation to be proven.

2. His conduct as set out at paragraphs 1(a)(iii) and/or 1(a)(iv) and/or 1(b) above was sexually motivated.

As the panel found the allegations proven, the panel went on to consider the two stage test for sexual motivation – firstly, whether on the balance of probabilities a reasonable person would think the actions could be sexual and secondly whether, in all the circumstances of the conduct in the case, it was more likely than not that the teacher's purpose in such actions was sexual.

In the signed Agreed Statement of Facts dated 10 February 2017, Mr Brown accepted that his actions were sexually motivated.

The panel noted that the facts of the allegations found to be proven against Mr Brown, included, but were not limited to, the following inappropriate words and actions:

- sending inappropriate messages to Pupil A, some of which were of a sexual nature
- sending Pupil A a picture of himself in the bath

- engaging in sexual activity with Pupil A

Upon consideration of the evidence, the panel was satisfied that Mr Brown's words and actions would be viewed by a reasonable person as sexual. In reaching its decision, the panel noted that the very nature of his actions (for instance engaging in sexual activity) and the very nature of the words (for instance sending indecent messages) would suffice to satisfy this element of the test.

Turning to the second limb, whether in all the circumstances of the conduct of the case, the purpose of such actions was sexual on Mr Brown's part, the panel was satisfied, in the absence of any reasonable explanation and as a result of the proven facts, that Mr Brown's intention behind these actions was for sexual gratification. Therefore, the panel found this allegation to be proven.

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

Having found all 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 noted that Mr Brown admitted that his conduct amounted to unacceptable professional conduct and conduct that would bring the profession into disrepute.

The panel is satisfied that the conduct of Mr Brown in relation to the facts found proven, involved breaches of the Teachers' Standards. The panel considers that by reference to Part Two, Mr Brown 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
 - ensuring that personal beliefs are not expressed in ways which exploit pupils' vulnerability or might lead them to break the law
- teachers must have proper and professional regard for the ethos, policies and practices of the school in which they teach, and maintain high standards ...

- 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 Mr Brown, which involved sending inappropriate messages to a pupil which included encouraging her to take drugs and messages of a sexual nature, and engaging in sexual activity with the pupil, fell significantly short of the standards expected of the profession. The panel considered the relationship between Mr Brown and Pupil A was borne out of the position of trust in that Mr Brown was a teacher at Pupil A's school; the panel took the view that this position of trust continued even when Pupil A became a "Gap Year Student" at the School.

The panel has also considered whether Mr Brown's conduct mirrored behaviours associated with any of the offences listed on pages 8 and 9 of the Advice and the panel has found that the offence of sexual activity is 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 noted that the allegations took place outside of the education setting and in such circumstances misconduct will only amount to unacceptable professional conduct if it affects the way the person fulfils their teaching role or may lead to pupils being exposed to or influenced by the behaviour in a harmful way. The panel noted that the facts surrounding the allegations were not said to have impacted the manner in which Mr Brown fulfilled his role as a teacher. However, there is clear evidence from the underlying facts that Mr Brown's conduct did lead to the pupil being exposed to or influenced by his behaviour in a harmful way; for instance, he accepted sending messages encouraging Pupil A to take drugs, which had the potential to affect her judgment. Furthermore, he engaged in sexual activity with the pupil.

Accordingly, the panel is satisfied that Mr Brown 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 have a negative impact on the individual's status as a teacher, damaging the public perception. The panel therefore finds that Mr Brown'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 considered 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 protection of other members of the public, 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 Brown, which involved sending inappropriate messages to a pupil which included encouraging her to take drugs and messages of a sexual nature, and engaging in sexual activity with the pupil, there is a strong public interest consideration in respect of the protection of pupils given the serious findings of inappropriate relationships with Pupil A.

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

The panel considered that a strong public interest consideration in declaring proper standards of conduct in the profession was also present as the conduct found against Mr Brown was outside that which could reasonably be tolerated.

In view of 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 Brown.

In carrying out the balancing exercise the panel considered the public interest considerations both in favour of and against prohibition as well as the interests of Mr Brown. 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

The panel found that Mr Brown's conduct involved serious departures from the personal and professional conduct elements of the Teachers' Standards, as the panel has already detailed above.

- misconduct seriously affecting the education and/or well-being of pupils, and particularly where there is a continuing risk

The panel found that the misconduct did affect the well-being of Pupil A, as ultimately Mr Brown engaged in sexual activity with Pupil A. Given the lack of insight and remorse shown by Mr Brown, the panel considered that there was a continuing risk.

- abuse of position or trust (particularly involving vulnerable pupils) or violation of the rights of pupils

The panel considered that Mr Brown's conduct, in relation to the proven allegations, involved an abuse of his position and trust. His conduct involved a violation of the right of Pupil A to be safeguarded in her position as a pupil.

- 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.

The panel found allegation 2 proven, noting that Mr Brown's actions were sexually motivated. He exploited the trust he gained in his position as a teacher in order to engage in sexual activity with Pupil A.

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.

Given the nature of the behaviour, the panel held that Mr Brown's actions were deliberate and it had seen no evidence to suggest that he was acting under duress. The panel noted that, as far as they are aware, in his role as a teacher, Mr Brown had not been subject to any formal disciplinary proceedings. The panel noted Mr Brown is said to have been an excellent teacher, although no evidence has been put before it to attest to this.

The panel first considered whether it would be proportionate to conclude this case with no recommendation of prohibition, considering whether the publication of the findings made by the Panel is sufficient.

The panel is of the view that applying the standard of the ordinary intelligent citizen recommending no prohibition order is not a proportionate and appropriate response. Recommending that publication of adverse findings is sufficient in the case would unacceptably compromise the public interest considerations present in this case, despite the severity of consequences for the teacher of prohibition.

The panel is of the view that prohibition is both proportionate and appropriate. The panel has decided that the public interest considerations outweigh the interests of Mr Brown. The nature of the text messages, resulting in Mr Brown engaging in sexual activity with Pupil A, coupled with the lack of insight were significant factors in forming that opinion. 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 to decide to recommend that a review period of the order should be considered. The panel was mindful that the Advice indicates 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 states that there are behaviours that, if proven, would militate against a review period being recommended. These behaviours include class A drug abuse or supply and 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 has found that Mr Brown abused his position as a teacher, and the trust built up with the pupil to behave in an inappropriate manner, resulting in him engaging in sexual activity with Pupil A, persistently sending sexualised messages to the pupil, and encouraging her to take drugs. The panel do not consider that Mr Brown has shown sufficient insight or remorse for his actions or the impact they have had upon the individuals involved. The panel felt the findings indicated a situation in which a review period would not be appropriate and as such decided that it would be proportionate in all the circumstances for the prohibition order to be recommended without provision for a review period.

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 in respect of sanction and review period.

In considering this case I have given very careful attention to the advice that is published by the Secretary of State concerning the prohibition of teachers.

In this case the panel has found the allegations proven and found that those proven facts amount to unacceptable professional conduct and conduct that may bring the profession into disrepute. The panel has made a recommendation to the Secretary of State that Mr Brown should be the subject of a prohibition order, with no provision for a review period.

In particular the panel has found that Mr Brown 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
 - ensuring that personal beliefs are not expressed in ways which exploit pupils' vulnerability or might lead them to break the law
- teachers must have proper and professional regard for the ethos, policies and practices of the school in which they teach, and maintain high standards ...
- teachers must have an understanding of, and always act within, the statutory frameworks which set out their professional duties and responsibilities

The panel has set out that it is satisfied that the conduct of Mr Brown, which involved sending inappropriate messages to a pupil which included encouraging her to take drugs and messages of a sexual nature, and engaging in sexual activity with the pupil, fell significantly short of the standards expected of the profession. The panel also considered the relationship between Mr Brown and Pupil A was borne out of the position of trust in that Mr Brown was a teacher at Pupil A's school; the panel took the view that this position of trust continued even when Pupil A became a "Gap Year Student" at the School.

The panel has also set out its consideration of Mr Brown's conduct in terms of the behaviours associated with the offences listed on pages 8 and 9 of the Advice. The panel has found that the offence of sexual activity is 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 has noted that the allegations took place outside of the education setting and in such circumstances misconduct will only amount to unacceptable professional conduct if it affects the way the person fulfils their teaching role or may lead to pupils being exposed to or influenced by the behaviour in a harmful way. The panel noted that the facts surrounding the allegations were not said to have impacted the manner in which Mr Brown fulfilled his role as a teacher. However, there is clear evidence from the underlying facts that Mr Brown's conduct did lead to the pupil being exposed to or influenced by his

behaviour in a harmful way; for instance, he accepted sending messages encouraging Pupil A to take drugs, which had the potential to affect her judgment. Furthermore, he engaged in sexual activity with the pupil.

I have to determine whether the imposition of a prohibition order is proportionate and in the public interest. In considering that for this case, I have considered the overall aim of a prohibition order which is to protect pupils and to maintain public confidence in the profession. I have considered the extent to which a prohibition order in this case would achieve that aim, taking into account the impact that it will have on the individual teacher. I have also asked myself whether or not a less intrusive measure, such as the published finding of unacceptable professional conduct and conduct that may bring the profession into disrepute, would itself be sufficient to achieve the overall aim. I have to consider whether the consequences of such a publication are themselves sufficient. I have considered therefore whether or not prohibiting Mr Brown, and the impact that will have on him, is proportionate.

In this case I have considered the extent to which a prohibition order would protect children. The panel has observed “the misconduct did affect the well-being of Pupil A, as ultimately Mr Brown engaged in sexual activity with Pupil A. Given the lack of insight and remorse shown by Mr Brown, the panel considered that there was a continuing risk.”

A prohibition order would therefore prevent such a risk from being present. I have also taken into account the panel’s comments as follows, “Mr Brown’s conduct, in relation to the proven allegations, involved an abuse of his position and trust. His conduct involved a violation of the right of Pupil A to be safeguarded in her position as a pupil.” In my judgement, the nature of the behaviour which was sexual and the lack of insight means that there is a significant risk of the repetition of this behaviour and this risks future pupils’ welfare and well-being. I have therefore given this element considerable weight in reaching my decision.

I have gone on to consider the extent to which a prohibition order would maintain public confidence in the profession. The panel observe, “public confidence in the profession could be seriously weakened if conduct such as that found against Mr Brown were not treated with the utmost seriousness when regulating the conduct of the profession.” I am particularly mindful of the finding of sexual misconduct in this case. The panel says that Mr Brown “exploited the trust he gained in his position as a teacher in order to engage in sexual activity with Pupil A.” I have therefore given this element considerable weight in my determination of this case.

I consider that the public has a high expectation of professional standards of all teachers and that failure to impose a prohibition order might be regarded by the public as a failure to uphold those high standards. In weighing these considerations I have had to consider the matter from the point of view of an “ordinary, intelligent and well-informed citizen.”

I have considered whether the publication of a finding of unacceptable professional conduct, in the absence of a prohibition order, can itself be regarded by such a person as being a proportionate response to the misconduct that has been found proven in this case. In my judgement for a case involving sexual misconduct of this nature publication alone is not sufficient.

I have also considered the impact of a prohibition order on Mr Brown himself. The panel reports that there is no evidence of previous misconduct. The panel also notes "Mr Brown is said to have been an excellent teacher, although no evidence has been put before it to attest to this."

A prohibition order would prevent Mr Brown from continuing to practice as a teacher.

In this case I have placed considerable weight on the panel's comments concerning the lack of insight or remorse. The panel has said, "Mr Brown abused his position as a teacher, and the trust built up with the pupil to behave in an inappropriate manner, resulting in him engaging in sexual activity with Pupil A, persistently sending sexualised messages to the pupil, and encouraging her to take drugs."

I have also placed considerable weight on the finding of the panel in that respect.

I have also taken note of the published advice from the Secretary of State that sets out that these behaviours are to be treated with the utmost seriousness.

In my view, it is necessary to impose a prohibition order in order to maintain public confidence in the profession and to protect children. I concluded that a prohibition order is proportionate and in the public interest in order to achieve the aims which a prohibition order is intended to achieve.

I have gone on to consider the matter of a review period. In this case the panel has recommended that there should be no review period.

I have considered the panel's comments "do not consider that Mr Brown has shown sufficient insight or remorse for his actions or the impact they have had upon the individuals involved. The panel felt the findings indicated a situation in which a review period would not be appropriate and as such decided that it would be proportionate in all the circumstances for the prohibition order to be recommended without provision for a review period."

I have also taken into account the published advice from the Secretary of State.

I have considered whether having no review period reflects the seriousness of the findings and is a proportionate period to achieve the aim of maintaining public confidence in the profession and protecting children. In this case, the seriousness of the behaviours and the lack of remorse or insight are the factors that in my view mean that a prohibition order with no provision for review is proportionate and in the public interest.

I consider therefore that a the prohibition order should be imposed with no provision for review.

This means that Mr David Brown 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 allegations found proved against him, I have decided that Mr David Brown 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 David Brown 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 be 'J. Millions', with a stylized, cursive script.

Decision maker: Jayne Millions

Date: 13 April 2017

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