



National College for
Teaching & Leadership

Mr Roger James Ferguson: Professional conduct panel outcome

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

6 July 2017

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

Teacher: Mr Roger James Ferguson

Teacher ref number: 7948862

Teacher date of birth: 14 February 1957

NCTL case reference: 15431

Date of determination: 6 July 2017

Former employer: Dartford Science and Technology College, Kent

A. Introduction

A professional conduct panel (“the panel”) of the National College for Teaching and Leadership (“the National College”) convened on 3 July 2017 to 7 July 2017 at 53 to 55 Butts Road, Earlsdon Park, Coventry CV1 3BH to consider the case of Mr Roger James Ferguson.

The panel members were Mr Martin Pilkington (lay panellist), Ms Kathy Thomson (teacher panellist), and Mr Ryan Wilson (teacher panellist).

The legal adviser to the panel was Miss Laura Ellis of Eversheds Sutherland (International) LLP.

The presenting officer for the National College was Mr Ben Chapman of Browne Jacobson LLP

Mr Ferguson was not present and was not represented.

The hearing took place in public and was recorded.

B. Allegations

The panel considered the allegations set out in the Notice of Proceedings dated 20 March 2017.

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

1. In or around 2015-2016 he made inappropriate statements and/or contact with pupils, in that he:
 - a. Stated 'wank the crank' to Pupil O or words to that effect;
 - b. Touched the chest and/or nose of one or more pupils;
 - c. Led one or more pupils to another location by the hand;
 - d. Placed his arms around one or more pupils;
 - e. Stated that he loved one or more pupils;
 - f. Stated to Pupil G, an autistic pupil with motor difficulties, that she had enough muscle to complete a task;
 - g. With regard to Pupil H:
 - i. Stated that he wanted to give her a cuddle;
 - ii. Hugged her;
 - iii. Stated that she was special and/or wonderful, or words to that effect;
 - iv. Used innuendo in a session concerning perfume bottles;
 - h. Discussed with pupils:
 - i. His preferences in women;
 - ii. The size and/or weight of one or more pupils;
 - iii. Size and/or weight he considered fat;
2. In so doing as at allegation 1 above, he disregarded guidance and/or training received as a result of allegations which were dealt with locally by the school during the period 2004 - 2015, for which he also received:
 - a. a written warning in 2009 for which he was issued with a final written warning;

- b. a second level written warning in 2012;
- c. an informal warning 2015.

From Mr Ferguson's written representations, he appears to admit the facts of allegations 1.a., 1.c., 1.e., 1.f., 1.g.(iii)., and 1.h.

Mr Ferguson does not admit allegations 1.b., 1.d., 1.g.(i), 1.g.(ii), 1.g.(iv) and 2.

Mr Ferguson also does not admit that the conduct giving rise to the allegations constitutes unacceptable professional conduct and/or conduct that may bring the profession into disrepute.

C. Preliminary applications

Proceeding in absence

The panel has considered whether this hearing should continue in the absence of Mr Ferguson.

The panel is satisfied that NCTL has complied with the service requirements of paragraph 19 a to c of the Teachers' Disciplinary (England) Regulations 2012, (the "Regulations").

The panel is also satisfied that the Notice of Proceedings complies with paragraphs 4.11 and 4.12 of the Teacher Misconduct: Disciplinary procedures for the teaching profession, (the "Procedures").

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

The panel understands that its discretion to commence a hearing in the absence of Mr Ferguson has to be exercised with the utmost care and caution, and that its discretion is a severely constrained one.

In making its decision, the panel has noted that Mr Ferguson 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*. The unredacted and most recent version of the Notice of Proceedings was sent to Mr Ferguson's last known address on 20 March 2017, followed by a chaser letter on 18 April 2017. Both of these documents informed him of the date and location of the hearing. Mr Ferguson has written to the NCTL stating that he does not intend to attend the hearing. The panel therefore considers that Mr Ferguson has waived his right to be present at the hearing, in the knowledge of when and where the hearing is taking place.

The panel has had regard to the requirement that it is only in rare and exceptional circumstances that a decision should be taken in favour of a hearing taking place without the teacher. However, in this case there is no indication that an adjournment might result in Mr Ferguson attending the hearing.

The panel has had regard to the extent of the disadvantage to Mr Ferguson in not being able to give his account of events, having regard to the nature of the evidence against him. The panel has the benefit of representations made by Mr Ferguson and is able to ascertain the lines of defence. The panel has noted that all witnesses relied upon are to be called to give evidence and the panel can test that evidence in questioning those witnesses, considering such points as are favourable to Mr Ferguson, as are reasonably available on the evidence. The panel has not identified any significant gaps in the documentary evidence provided to it and should such gaps arise during the course of the hearing, the panel may take such gaps into consideration in considering whether the hearing should be adjourned for such documents to become available and in considering whether the presenting officer has discharged the burden of proof. 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 Mr Ferguson's account.

The panel also notes that there are six vulnerable/child witnesses who are prepared to give evidence by video-link at the hearing, and that it would be inconvenient and distressing for them, for the hearing to be delayed until a later date.

The panel has had regard to the seriousness of this case, and the potential consequences for Mr Ferguson and has accepted that fairness to Mr Ferguson is of prime importance. However, it considers that in light of Mr Ferguson's waiver of his right to appear; by taking such measures referred to above to address that unfairness insofar as is possible; and taking account of the inconvenience an adjournment would cause to the witnesses; that 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.

Application to admit additional documents

The presenting officer made an application to admit some photographs of the location at which the conduct that gave rise to the allegations arose, and a second witness statement of Pupil H. These documents were already in the hearing bundle prior to the hearing, but were submitted after the disclosure deadline of 5 June 2017 (4 weeks prior to the hearing) pursuant to paragraph 4.20 of the Procedures. The documents were disclosed to Mr Ferguson on 20 June 2017.

The panel decided to admit the documents under paragraph 4.25 of the Procedures, as it considered that they were relevant to the case and that its admission was fair to both

parties (particularly as they have already been disclosed to Mr Ferguson in the hearing bundle and he has not objected to their inclusion).

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 5

Section 2: Notice of Proceedings and response – pages 7-19

Section 3: NCTL witness statements – pages 21 to 98

Section 4: NCTL documents – pages 100 to 372

Section 5: Teacher documents – pages 374 to 399

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

Witnesses

The panel heard oral evidence from:

- Witness A – Vice-Principal of the School who undertook an internal investigation into the allegations on behalf of the School.
- Pupil H
- Pupil O
- Pupil I
- Pupil U
- Pupil G
- Pupil T

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 in advance of the hearing.

Mr Ferguson was employed as a design and technology teacher and director of learning at Dartford Science and Technology College (the "School") from 1 September 2002. On 18 March 2016 the School received a letter from the father of Pupil H, alleging that Mr Ferguson had made inappropriate physical contact and verbal communication with Pupil H. On the same date, Pupil G reported to the School a separate allegation of inappropriate physical contact and verbal communication from Mr Ferguson. Mr Ferguson was consequently suspended from the School, whilst Witness A (the Vice Principal) carried out an investigation into the allegations. During the investigation further allegations of a similar nature were raised by other pupils. Mr Ferguson subsequently resigned from the School and his employment ended on 1 July 2016.

Findings of fact

Our findings of fact are as follows:

The panel must decide whether the facts of the case have been proved on the balance of probabilities. The panel has found the following particulars of the allegations against you proven, for these reasons:

It is alleged that you, Mr Roger James Ferguson, are guilty of unacceptable professional conduct and/or conduct that may bring the profession into disrepute, in that:

1. In or around 2015-2016 you made inappropriate statements and/or contact with pupils, in that you:

a. Stated 'wank the crank' to Pupil O or words to that effect;

Pupil O stated that on one occasion in 2015-2016, she was using a pillar drill during an after-school lesson in Mr Ferguson's classroom. Mr Ferguson stood near her and told her a joke about a time when he was younger on a boat, which involved saying "wank the crank". She said that Mr Ferguson then laughed but that she felt awkward.

This was corroborated by Pupil T, who stated that she was present in the room at the time and overheard those words being said. She said that Mr Ferguson laughed afterwards and that she and Pupil O felt awkward.

Mr Ferguson appears to admit that he said this, in his written representations to the NCTL. The panel considers that it was a very inappropriate statement to say to a 14 to 15 year old female pupil.

The allegation is therefore found proven.

b. Touched the chest and/or nose of one or more pupils;

Pupil T stated that on one occasion during 2015 to 2016, when she was working in Mr Ferguson's classroom, Mr Ferguson pointed to her chest, told her that there was something on her apron, and then flicked his finger to touch the tip of her nose.

Pupil H stated that she witnessed Mr Ferguson do this to Pupil V. Pupil O also described how she saw Mr Ferguson do this to pupils.

Mr Ferguson denies this allegation in his written representations. However, the panel prefers the evidence of Pupils T, H and O, as it considers that they are credible witnesses. Their accounts are consistent and have not changed since the events took place.

The panel also considers that touching the pupils in this way was inappropriate, particularly as they were 14 to 15 year old girls and it was unnecessary.

On the balance of probabilities, the panel therefore finds this allegation proven.

c. Led one or more pupils to another location by the hand;

Pupil H stated that on many occasions during lessons in 2015 to 2016, Mr Ferguson led her by the hand to the corridor outside of the classroom or to his preparation room.

Pupil O stated that on one occasion whilst she was working in a lesson taught by Mr Ferguson, he approached her, asked her if she was ok, she replied yes, and that he then led her by the hand into the preparation room. When they were in the room, Mr Ferguson asked her if she was ok. She told him that she was alright and returned to the classroom to continue her work. Pupil O also said that on another occasion she saw Mr Ferguson lead Pupil H by the hand to the corridor outside of the classroom and behind a door.

Pupil I stated that on one occasion whilst she was working in a lesson, Mr Ferguson led her by the hand into his preparation room and asked her how she was. She said that there was no one else in the preparation room at the time and that she was not upset (or displaying any signs of being upset). She said that she also saw Mr Ferguson do this to Pupil F.

Pupil U said that on more than one occasion she saw Mr Ferguson lead Pupil H by the hand to the corridor outside the classroom.

Pupil T said that on one occasion Mr Ferguson led her by the hand to his preparation room. She said that she tried to move her hand away as she did not feel that it was appropriate for a teacher to do this and that no other teacher did it. She said that it made her feel very uncomfortable.

Mr Ferguson appears to admit that he did this, in his written responses to questions posed to him during the School's internal investigation. In his written representations to

the NCTL, he admits that he led Pupil I to the preparation room and that he took hold of Pupil H's arm or hand.

The panel considers that this constituted inappropriate and unnecessary physical contact with pupils, particularly given their age, gender and the fact that Mr Ferguson was a male teacher.

The allegation is therefore found proven.

d. Placed your arms around one or more pupils;

Pupil H stated that when she used a band saw machine in Mr Ferguson's classroom, he would often stand behind her or to her side, put his arms around her, put one hand on top of hers to guide her hand to use the machine and the other on her waist or arm. She said that he did this, 'intimately' and that it was, 'very touchy'. She said that this was unnecessary as he could have explained to her how to use the machine, like the other design and technology teacher (a female member of staff). She said that she also saw this happen to Pupils T and V.

Pupil H also described one occasion during a lesson when she was upset due to personal reasons and Mr Ferguson led her out of his classroom into a corridor. She stood with her back against the lockers in the corridor. Mr Ferguson put his arms around her neck, over her shoulders. She said that another member of staff from IT then walked past and Mr Ferguson said "It's alright, we're just having a moment".

This is corroborated by Pupil O, who stated that she saw Mr Ferguson hug Pupil H outside of the classroom in the corridor. Pupil O also said that Mr Ferguson put his arms around pupils to demonstrate how to saw wood.

Pupil I stated that when Mr Ferguson took her to the preparation room (described under allegation 1.c. above), he put one arm around her. She described in detail where they stood, and explained that she was not upset at the time (and showed no sign of being upset). She also said that she saw Mr Ferguson stand behind Pupils H, O and F, and put his arms around them to demonstrate how to use a band saw machine. She said that this made her feel awkward and uncomfortable, and that Pupils H, O and F appeared to react in the same way.

Pupil U stated that she saw Mr Ferguson stand behind pupils, put his arms around them and guide their hands to use a band saw machine. She said that he would stand quite close to them and look over their shoulders. She also said that she saw Mr Ferguson hug Pupil H in the corridor outside the classroom.

Pupil T said that after Mr Ferguson had led her to the preparation room (described under allegation 1.c. above), he put an arm around her shoulder to give her a hug in the room. She also said that Mr Ferguson put his arms around her on a few occasions to demonstrate using practical equipment in his classroom. She described one occasion

when Mr Ferguson told her that she was sawing wood incorrectly. He stood behind her and put both of his arms around her to demonstrate how to use the saw. She said that he did not ask her permission to do this or give her forewarning. She said that his hands were on top of her hands, and that she moved her hands away on other occasions when she had more time to do so.

Pupils F and AA also reported during the School's investigation that they saw Mr Ferguson hug pupils. Pupil F stated that she saw him put his arms around pupils to demonstrate using the equipment, which made her feel uncomfortable.

In Mr Ferguson's written representations to the NCTL, he admitted that he put his arms around Pupil I whilst using the band saw. In his interview with Witness A during the School's internal investigation, he admitted that he regularly put his arms around pupils to demonstrate use of the equipment in his classroom. Mr Ferguson denied in his written representations to the NCTL that he put his arms around Pupil H and Pupil I, but the panel preferred the credible oral evidence of pupils H, O, I and T in this regard.

The panel considers that this close physical contact with young female students was inappropriate for a male teacher and unnecessary.

The allegation is therefore found proven.

e. Stated that you loved one or more pupils;

Pupil H stated that Mr Ferguson would often say "love ya" to her and Pupil O. She said that on one occasion he whispered this near to her ear and then repeated it in a louder voice, which she found embarrassing.

Pupil O corroborated this and said that on one occasion when Mr Ferguson said this to her, he was marking her work.

Pupil I said that she heard Mr Ferguson say words to the effect of "love ya" or "Oh I do love you" in a joking manner to Pupil H.

Pupil T said that she witnessed Mr Ferguson tell Pupil H that he loved her, which she thought was strange. She said that Mr Ferguson said this across the classroom.

In Mr Ferguson's written representations to the NCTL, he appears to admit that he said "luv ya" to Pupil H, and states that it was meant in a flippant way to show his appreciation of Pupil H and her work in the lesson. Nevertheless, the panel considers that this constituted inappropriate communication with 14 to 15 year old female pupils, which made them feel uncomfortable.

The allegation is therefore found proven.

f. Stated to Pupil G, an autistic pupil with motor difficulties, that she had enough muscle to complete a task;

Pupil G stated that she joined the School in the middle of the school year, when she was aged 13 to 14 years. She was autistic, had motor difficulties, and found it difficult to carry out tasks that are intricate or involved applying a lot of pressure. Soon after joining the School, whilst in a woodwork lesson taught by Mr Ferguson, she struggled to use a tool. Mr Ferguson squeezed her left arm and said to her “you have enough muscle there”. Pupil G explained to the panel that she did not want Mr Ferguson to touch her and that she felt offended and annoyed by this conduct. She also thought that he was insinuating that she was overweight. She wanted to tell him that it was wrong at the time, but did not respond to Mr Ferguson as he was in a position of authority and she was worried about his response. She subsequently reported it to her father and form tutor, and was reluctant to attend further lessons with Mr Ferguson as she did not want it to happen again.

Witness A explained that Pupil G was a vulnerable pupil and that all staff, including Mr Ferguson, were aware of Pupil G’s special educational needs. This was on several records at the School (to which Mr Ferguson had access). He was expected to refer to these on a regular basis and he had received training on how to work with pupils with such needs.

In his written representations to the NCTL, Mr Ferguson admits that he said these words to Pupil G.

The panel considers that this was highly inappropriate conduct towards a vulnerable pupil, such as Pupil G.

The allegation is therefore found proven.

g. With regard to Pupil H:

i. Stated that you wanted to give her a cuddle;

Pupil H stated that Mr Ferguson frequently said that he wanted to give her a hug. On one occasion when she tried to obtain a pencil from behind his desk he said to her “Every time I see you I want to give you a cuddle”. Mr Ferguson denies that he made this latter statement.

Pupil O stated that she heard Mr Ferguson tell Pupil H that he wanted to give her a cuddle when Pupil H looked upset.

The panel considers that this constitutes inappropriate communication with young female pupils. The panel finds the allegation proven, as the evidence of Pupils H and O was consistent and credible.

ii. Hugged her;

Pupil H described an occasion when Mr Ferguson hugged her, which is detailed under allegation 1.d. above. This was corroborated by Pupils O and U.

Mr Ferguson denies that he hugged Pupil H. However, as explained above, the panel found the evidence of Pupils H, O and U to be credible and consistent, and consequently preferred their evidence. The panel considers that Mr Ferguson hugged Pupil H outside of the classroom and whilst she was away from her peers. The panel found that these circumstances constituted inappropriate contact with her, particularly given her age and gender. The allegation is therefore found proven.

iii. Stated that she was special and/or wonderful, or words to that effect;

Pupil H stated that in one lesson, whilst she was in Mr Ferguson's classroom, he said to her "Do you know how wonderful you are?". He held her arm above her wrist when he said this. She said that at the time she was not doing any special work, so she found it strange.

Pupil U described an occasion when she was sitting at a desk with three other pupils, one of whom was Pupil H. Mr Ferguson approached the desk and whispered to Pupil H "Do you know how special you are?" and touched Pupil H's hand. He then walked away. Pupil U said that Pupil H was not doing anything special or working with Mr Ferguson at the time.

Mr Ferguson does not appear to admit this allegation, but states in his representations to the NCTL that saying this type of phrase to a pupil reinforces their self-esteem.

The panel considers that saying this to Pupil H was inappropriate. Given the credibility of Pupil H and Pupil U's evidence, the allegation is found proven.

h. Discussed with pupils:

i. Your preferences in women;

ii. The size and/or weight of one or more pupils;

iii. Size and/or weight you considered fat;

Pupils H, I, O, U and T describe an occasion during December 2015 to February 2016 when, during a lesson, Mr Ferguson told them about a woman with whom he had been on a date, which included a discussion about dating websites and his preferences in women. This led to a conversation about the size and weight of women, during which he told the pupils that he was not attracted to women over a certain dress size (who he said were fat) and attempted to guess the dress sizes of the pupils in the room (all of whom were female). This upset Pupil F, who was above the size that Mr Ferguson referred to [REDACTED]. Witness A also reported that Pupil F felt very upset by this conversation.

Mr Ferguson appears to admit these allegations in his written representations, albeit that he says he clarified to the students at the time that his comments were his own personal view and not the views of others.

The panel considered that the pupils' evidence was credible and that the content was largely consistent. The panel also considered that these discussions were highly inappropriate for a teacher to have with 14 to 15 year old girls, many of whom may be self-conscious about their appearance and weight.

2. In so doing as at allegation 1 above, you disregarded guidance and/or training received as a result of allegations which were dealt with locally by the school during the period 2004 - 2015, for which you also received:

- a. a written warning in 2009 for which you were issued with a final written warning;**
- b. a second level written warning in 2012;**
- c. an informal warning 2015.**

The panel has seen the records of the warnings from the School listed above. In addition, Mr Ferguson received other warnings in this period. These warnings related to previous allegations of inappropriate physical contact and communication with female pupils, and are therefore similar in nature to the behaviour detailed in allegation 1. Witness A also corroborated that Mr Ferguson had received training and guidance in response to these previous warnings.

From the facts found proven in allegation 1 (detailed above), the panel decided that Mr Ferguson disregarded this previous guidance and training.

The allegation is therefore found proven.

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

1. In or around 2015-2016 you made inappropriate statements and/or contact with pupils, in that you:

g. With regard to Pupil H:

iv. Used innuendo in a session concerning perfume bottles;

Pupils H and T described an occasion when they were sketching perfume bottles during a lesson, and Pupil Z asked to see Mr Ferguson's drawing by way of example. Mr Ferguson replied with words to the effect of "Oh, you want to see my thingy?" in a cheeky voice. Pupil T said that he looked down at his genital area. Pupil H said that Mr Ferguson then drew a bottle in the shape of a penis; Pupil Z threw the drawing in a bin. This is

corroborated by written evidence from Pupil Z, obtained during the School's internal investigation.

Mr Ferguson denies this allegation.

The panel does not find this allegation proven on the facts because, although the oral evidence of Pupils H and T was credible, the innuendo does not appear to have been directed at Pupil H, specifically. Instead, the evidence indicates that Mr Ferguson's response was directed at a group of pupils and, in particular, Pupil Z who requested to see his drawing (and from whom the panel did not hear oral evidence).

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 Ferguson in relation to the facts found proven, involved breaches of the Teachers' Standards. The panel considers that by reference to Part Two, Mr Ferguson 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;
 - showing tolerance of and respect for the rights of others.
- 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 Mr Ferguson fell significantly short of the standards expected of the profession. The panel is particularly concerned that, before the incidents that gave rise to these proceedings (set out in allegation 1), Mr Ferguson was given, over an extensive period of time, a series of unambiguous warnings from the School about his conduct, which he chose to ignore.

The panel has also considered whether Mr Ferguson's conduct displayed behaviours associated with any of the offences listed on pages 8 and 9 of the Advice. The panel has found that none of these offences are relevant.

Accordingly, the panel is satisfied that Mr Ferguson 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.

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

In summary, having found the facts of allegations 1.a., 1.b., 1.c., 1.d., 1.e., 1.f., 1.g.(i), 1.g.(ii), 1.g.(iii), 1.h. and 2. proven, the panel further finds that Mr Ferguson's conduct amounts to both unacceptable professional conduct and 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 a 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 maintenance of public confidence in the profession, and declaring and upholding proper standards of conduct.

In light of the panel's findings against Mr Ferguson, which involved numerous incidents of inappropriate physical contact and verbal communications with pupils that made them

feel uncomfortable, there is a strong public interest consideration in the protection of pupils. The panel also considers that public confidence in the profession could be seriously weakened if conduct such as that found against Mr Ferguson were not treated with the utmost seriousness when regulating the conduct of the profession.

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 Ferguson.

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

Even though there were behaviours that would point to the appropriateness of a prohibition order, the panel went on to consider whether or not there were sufficient mitigating factors to militate against the appropriateness and proportionality of the imposition of a prohibition order, particularly taking into account the nature and severity of the behaviour in this case. In light of the panel's findings, Mr Ferguson's actions were deliberate and he was not acting under duress. There are no previous sanctions against Mr Ferguson, but he did receive numerous warnings from the School in response to previous allegations of inappropriate physical contact and communication with pupils.

The panel has carefully considered the written representations of Mr Ferguson and he did not submit any references or testimonials of his teaching ability.

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. Despite the severity of consequences for Mr Ferguson of prohibition, for the panel to recommend that the publication of adverse findings is sufficient in the case, would unacceptably compromise the public interest considerations present.

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 Ferguson. Mr Ferguson's repeated failure to take heed of previous warnings and follow the training and guidance provided by the School, was a significant factor 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 states 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 two years.

The Advice indicates that there are behaviours that, if proven, would militate against a review period being recommended, but none of these is applicable in this case.

The panel considered that Mr Ferguson has demonstrated a lack of insight into the seriousness of the allegations, the impact of his behaviour upon the pupils in his care and the need to change his behaviour when teaching. This deep seated attitude is demonstrated by his failure to follow previous warnings and guidance provided by the School. Many of his written responses to the allegations (provided to the NCTL) appear to be evasive and an attempt to place some blame upon pupils for his conduct, which demonstrates poor emotional intelligence and a lack of understanding of the discomfort that he caused to the young female pupils for whom he was responsible.

However, as the allegations themselves are at the less serious end of the spectrum of misconduct, the panel felt the findings indicated a situation in which a review period would be appropriate. As such, it decided that it would be proportionate in all the circumstances for the prohibition order to be recommended with provision for a review after three years; this will allow an appropriate period of time for Mr Ferguson to reflect on his behaviour and its impact upon the students in his care.

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 majority of the allegations proven and found that those proven facts amount to unacceptable professional conduct and conduct that may bring the profession into disrepute. Nonetheless I have noted that the panel did not find the facts of one of the allegations proven. I have ensured therefore that I have put from my mind entirely that allegation.

The panel has made a recommendation to the Secretary of State that Mr Ferguson should be the subject of a prohibition order, with a review period of three years.

In particular the panel has found that Mr Ferguson 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;
 - showing tolerance of and respect for the rights of others.
- 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 has also found the following behaviours to be relevant in this case:

- 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.

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 Ferguson, 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 behaviour “which involved numerous incidents of inappropriate physical contact and verbal communications with pupils that made them feel uncomfortable.” A prohibition order would therefore prevent the risk of this behaviour from being present in the future. I have also taken into account the panel’s comments on insight and remorse which the panel sets out as follows, “Mr Ferguson has demonstrated a lack of insight into the seriousness of the allegations, the impact of his behaviour upon the pupils in his care and the need to change his behaviour when teaching.” The panel has also commented that Mr Ferguson’s written comments “attempt to place some blame upon pupils for his conduct, which demonstrates poor emotional intelligence and a lack of understanding of the discomfort that he caused to the young female pupils for whom he was responsible.” In my judgement the lack of insight means that there is some risk of the repetition of this behaviour and this risks future pupils’ 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 Ferguson were not treated with the utmost seriousness.”

I have had to 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.

I have also considered the impact of a prohibition order on Mr Ferguson himself.

In this case I have placed considerable weight on the panel’s comments concerning the lack of insight or remorse and the previous warnings received by Mr Ferguson, of whom the panel say that his “deep seated attitude is demonstrated by his failure to follow previous warnings and guidance provided by the School.” I note that Mr Ferguson did not submit to the panel any testimonials concerning his teaching career.

I have given less weight in my consideration of sanction therefore, to the contribution that Mr Ferguson has made and is making to the profession. In my view it is necessary to impose a prohibition order in order to maintain public confidence in the profession. A

published decision that is not backed up by remorse or insight does not in my view satisfy the public interest requirement concerning public confidence in the profession.

For these reasons I have 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 a 3 year review period.

I have considered the panel's comments including that he, "demonstrates poor emotional intelligence and a lack of understanding of the discomfort that he caused to the young female pupils for whom he was responsible."

Nonetheless the panel consider that a review period is appropriate in this case. The panel has also said that a 3 year review period would "allow an appropriate period of time for Mr Ferguson to reflect on his behaviour and its impact upon the students in his care."

I have considered whether a 3 year review period reflects the seriousness of the findings and is a proportionate period to achieve the aim of maintaining public confidence in the profession. In this case, there are factors that in my view mean that a two year review period is not sufficient to achieve the aim of maintaining public confidence in the profession. These elements are the deep-seated attitudes found, the lack of either insight or remorse, and the repeated failure to take heed of previous warnings.

I consider therefore that a three year review period is required to satisfy the maintenance of public confidence in the profession.

This means that Mr Roger Ferguson 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 17 July 2020, 3 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 Roger Ferguson remains prohibited from teaching indefinitely.

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

Mr Roger Ferguson 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.



Decision maker: Alan Meyrick

Date: 11 July 2017

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