



Teaching
Regulation
Agency

Mr David Fishwick: Professional conduct panel outcome

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

August 2018

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

Teacher: Mr David Fishwick

Teacher ref number: 1556761

Teacher date of birth: 30 January 1993

TRA reference: 16728

Date of determination: 21 August 2018

Former employer: St Christopher’s CE High School, Lancashire

A. Introduction

A professional conduct panel (“the panel”) of the Teaching Regulation Agency (“the Agency”) convened on 20 and 21 August 2018 at The Study Inn, 175 Corporation Street, Coventry, CV1 1GU to consider the case of Mr David Fishwick.

The panel members were Mr John Matharu (lay panellist – in the chair), Ms Fiona Tankard (teacher panellist) and Mr Sathi Ariya (lay panellist).

The legal adviser to the panel was Miss Antonia Sandford of Eversheds Sutherland (International) LLP solicitors.

The presenting officer for the Agency was Mr Benjamin Chapman of Counsel, instructed by Browne Jacobson LLP solicitors.

Mr Fishwick 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 4 July 2018.

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

Whilst employed as a science teacher at St Christopher's CE High School from September 2015 to June 2017, Mr Fishwick:

1. Sent Pupil A inappropriate messages from March 2017 to April 2017 on your school email and/or personal email account, including the following messages:
 - i. 'You're just beautiful on the inside and out';
 - ii. 'Will be thinking about you all Easter';
 - iii. 'Wish I could give you a hug without it being weird';
 - iv. 'I'd love to see you drunk';
 - v. 'You were in my dream last night'
 - vi. 'You just got caught doing stuff in school tis all';
 - vii. 'Bet you've done loads. But that doesn't make you a slag';
 - viii. 'Condoms are boring like';
 - ix. 'I know what girls are like. They think anything that's a B or C is small';
 - x. 'Well I adore you';
 - xi. 'Yet I still love you';
2. Continued to message Pupil A, despite her requests for Mr Fishwick to stop, as demonstrated by the following messages sent to him:
 - i. 'Don't message me anymore. I'm only gonna say this once. I don't think u should email me anymore. It's getting too far';
 - ii. 'Ignoring that question, thanking u for the advice and leaving it now. Thanks';
 - iii. 'I think these convos are gonna have to stop gonna look well weird o school email';
 - iv. 'I don't want to have this conversation';

- v. 'I am not doing anything on Snapchat for Christ sake';
 - vi. 'Sir not a question you should ask a pupil';
 - vii. 'What the hell sir';
 - viii. 'Righttttt. To far sir';
 - ix. 'Right can we change the sub just please'
3. Your conduct as may be found proven at allegation 1 above was sexually motivated.

Mr Fishwick has admitted to allegations 1 and 2 and has admitted that these facts amount to unacceptable professional conduct and/or conduct that may bring the profession into disrepute. It must be noted that Mr Fishwick does not make the same admission in relation to allegation 3.

C. Preliminary applications

Application to Proceed in Absence

The panel considered an application from the presenting officer to proceed in the absence of Mr Fishwick. The presenting officer confirmed that the Notice of Proceedings had been served in accordance with the "Teacher Misconduct – Disciplinary Procedures for the Teaching Profession", (the "Procedures") as Mr Fishwick had waived his right to the eight weeks' notice period. In addition, the presenting officer drew the panel's attention to the fact that Mr Fishwick stated in an email dated 3 August 2018, 'I do not intend to appear at the hearing, and therefore waive my right to attend.'

Advice Given to the Panel

The provisions that govern what is to happen when a teacher is absent from a hearing are set out at paragraphs 4.27 to 4.30 of the "Teacher Misconduct – Disciplinary Procedures for the Teaching Profession", (the "Procedures").

With regard to the efficacy of the Notice of Proceedings, the first question for the panel to consider is whether the Notice of Proceedings has been sent to the teacher. The panel should consider the evidence as to whether the Agency has complied with the service requirements of paragraph 19 a to c of the Teachers' Disciplinary (England) Regulations 2012, (the "Regulations").

Secondly, the panel should consider whether the teacher has been provided the requisite length of notice of at least eight weeks' notice in accordance with paragraph 4.11 of the Procedures. The panel should note that Mr Fishwick has waived his right to the eight week notice period.

Thirdly, the panel should consider whether the Notice of Proceedings contained the necessary details set out in paragraph 4.12 of the Procedures.

If the panel is not satisfied in any of the above respects, the panel must adjourn the hearing.

With regard to the exercise of the panel's discretion whether or not to proceed in absence, only if the panel is satisfied with all of the above requirements does the panel has any discretion to decide whether or not to proceed in the teacher's absence under paragraph 4.29 of the Procedures.

The right to a fair trial under article 6 of the European Convention on Human Rights includes the right to 'participate effectively'. However, the right is not absolute and can be waived by the conduct of the defendant, if that waiver is unequivocal, meaning 'clear and unqualified'.

The main authority on the issue of whether to proceed in a professional's absence is the case of *R v Jones* [2003] 1 AC 1. The House of Lords stressed in that case, that '*the discretion to commence a trial in the absence of a defendant should be exercised with the utmost care and caution. If the absence of the defendant is attributable to involuntary illness or incapacity it would be very rarely, if ever, be right to exercise the discretion in favour of commencing the trial.*

Below are the principles from the relevant authorities that the panel should consider when reaching its determination.

The House of Lords in *Jones* endorsed a checklist of matters relevant to the exercise of the discretion. It is not intended to be comprehensive or exhaustive but provides an invaluable guide. These are as follows, insofar as they are relevant to the decision the panel must reach:

- i. A defendant has, in general, a right to be present at his trial and a right to be legally represented. In the case before the panel, this right is provided for in paragraph 9 of the Regulations.
- ii. The defendant himself can waive those rights, separately or together, wholly or in part. They may be wholly waived if, knowing, or having the means of knowledge as to, when and where his trial is to take place; he deliberately and voluntarily absents himself and/or withdraws instructions from those representing him. They may be waived in part if, being present and represented at the outset, the defendant, during the course of the trial behaves in such a way as to obstruct the proper course of the proceedings and/or withdraws his instructions from those representing him.

- iii. The trial judge has a discretion as to whether a trial should take place or continue in the absence of a defendant and/or his legal representatives. For 'trial judge', please substitute 'panel'.
- iv. That discretion must be exercised with great care and it is only in rare and exceptional circumstances that it should be exercised in favour of a trial taking place or continuing, particularly if the defendant is unrepresented.
- v. In exercising that discretion, fairness to the defence is of prime importance but fairness to the prosecution must also be taken into account. The judge must have regard to all the circumstances of the case including, in particular:
 - i. the nature and circumstances of the defendant's behaviour in absenting himself from the trial or disrupting it, as the case may be and, in particular, whether his behaviour was deliberate, voluntary and such as plainly waived his right to appear;
 - ii. whether an adjournment might result in the defendant attending voluntarily and/or not disrupting the proceedings;
 - iii. the likely length of such an adjournment;
 - iv. whether the defendant, though absent, is, or wishes to be, legally represented at the trial or has, by his conduct, waived his right to representation;
 - v. the extent of the disadvantage to the defendant in not being able to give his account of events, having regard to the nature of the evidence against him;
 - vi. the risk of panel jury reaching an improper conclusion about the absence of the defendant. For 'jury', please substitute 'panel' as in these proceedings the panel is the tribunal of both fact and law;
 - vii. the seriousness of the offence, which affects defendant, victim and public. This particular point was disapproved by the House of Lords;
 - viii. the general public interest and the particular interest of victims and witnesses that a trial should take place within a reasonable time of the events to which it relates; and
 - ix. the effect of delay on the memories of witnesses.

In the application of article 6, the wider public interest is always a factor to be kept in mind.

The other significant authority to which the panel must have regard is *Tait v Royal College of Veterinary Surgeons* [2003] UKPC 34. This made clear that the panel does not have an absolute discretion; it is a severely constrained one. The board in that case considered that the relevant factors to be considered by the committee included:

- i. The seriousness of the case (the board chose to diverge from the view on this expressed by the House of Lords in Jones), as the board thought that the fact that the professional was at serious risk of removal from the register was important;
- ii. The risk of the panel reaching the wrong conclusion about the reasons for the professional's absence, and
- iii. The risk of reaching the wrong decision on the merits as a result of not hearing the professional's account.

The panel should pay attention to the recent Court of Appeal ("CA") decision in the recent case of GMC v Adeogba & Visvardis [2016] EWCA Civ 162. In considering the question of fairness, the CA stated that the fair, economical, expeditious and efficient disposal of allegations against practitioners is of very real importance, set against the context of the regulator's objectives. In the case of these type of proceedings, the objective is apparent from the guidance, which refers to the protection of pupils and the maintenance of public confidence in the profession. The CA made it clear that where there is good reason not to proceed, the case should be adjourned; where there is not however, it is only right that it should proceed. A lower court in this case had taken the approach that an adjournment of a first final hearing was unlikely to be highly disruptive or inconvenient to attending witnesses. The CA considered this approach to have been wrong, stating that an adjournment was highly disruptive in that case. The CA also made it clear that whilst it is of real significance if a case proceeds in a practitioner's absence that the panel would not have the practitioner's input, that difficulty cannot override all other considerations.

The panel may feel that, taking into account the factors referred to that the teacher has voluntarily waived his right to participate in the hearing. If the panel reaches that view, the panel has the discretion under paragraph 4.29 of the Procedures to proceed with the hearing in the absence of the teacher. The panel should ensure it gives reasons for the decision it makes.

Decision on Application to Proceed in Absence

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

The panel is satisfied that the Agency has complied with the service requirements of paragraph 19 a to c of the Regulations.

The panel is also satisfied that the Notice of Proceedings complied with paragraphs 4.11 and 4.12 of 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 the teacher.

The panel understands that its discretion to commence a hearing in the absence of the teacher 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 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. Mr Fishwick confirmed that he was aware of the proceedings in an email dated 3 August 2018. He stated later in this email, 'I am content to keep the hearing dates you have listed in your bundle and previous correspondence and am content for the panel to see the contents of the hearing bundle. I do not intend to appear at the hearing and therefore waive my right to attend.' The panel therefore considers that the teacher 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 the hearing's taking place. There is no indication that an adjournment might result in the teacher attending the hearing.

The panel has 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 has the teacher's evidence addressing mitigation and is able to take this into account at the relevant stage. 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 the teacher's account.

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

Admissibility of Late Documents

The presenting officer made an application to admit late documents namely an email chain dated 13 - 15 August 2018 and a Statement of Agreed and Disputed Facts ("the Statement"). The first email from Browne Jacobson LLP sent on 13 August 2018 requested Mr Fishwick's agreement to the Statement of Agreed and Disputed Facts. Mr Fishwick's reply confirmed his agreement to the Statement but noted that he could not

sign it as he was away on holiday. It is notable that Mr Fishwick's confirmation comes from the email address he listed as his contact information in the bundle and is the same email address used to send many of the emails in the bundle to Pupil A.

The test to apply is whether it is fair and relevant to do so (set out in paragraph 18 of the Regulations). These additional documents are an attempt to narrow the issues between the parties. Mr Fishwick knew the information they contain and all are relevant to the proceedings. They were sent in advance of the proceedings on 13 August 2018.

Advice Given to the Panel

The presenting officer has applied to admit the Statement as well as accompanying emails between the teacher and the presenting officer.

Paragraph 4.20 of the Procedures requires each party to submit to the panel and the other party to the proceedings, a copy of the document at least four weeks prior to the hearing.

Paragraph 4.25 of the Procedures states that if either party wishes to rely at the hearing upon any document not served in accordance with these requirements, then that document may only be admitted at the discretion of the panel.

With regard to the exercise of that discretion, paragraph 4.18 of the Procedures states that the panel may admit any evidence, where it is fair to do so, which may reasonably be considered to be relevant to the case.

The panel should exercise caution given that it has determined to proceed with this hearing in the absence of the teacher. The panel should consider whether the teacher has received the document and had sufficient opportunities to make representations about it.

Decision

The presenting officer has applied to admit the Statement as well as accompanying emails. Those documents were not served in accordance with the requirements of paragraph 4.20 of the Procedures, and as such, the panel is required to decide whether those documents should be admitted under paragraph 4.25 of the Procedures at the discretion of the panel. The panel took into account the representations from the presenting officer, the teacher's agreement contained in his email of 14 August 2018 at 19:08 to the admission of the Statement and his agreement to the disclosure of the recent emails in an email sent on 15 August 2018 at 16:52. The panel exercised caution in exercising this discretion given that it has determined to proceed with this hearing in the absence of the teacher.

Under paragraph 4.18 of the Procedures, the panel may admit any evidence, where it is fair to do so, which may reasonably be considered to be relevant to the case.

The panel is satisfied that the documents are relevant to the case as they provide clear guidelines as to which facts are agreed and disputed between the parties.

By reason of the above, the panel has decided to admit the following documents, and these should be paginated as follows: the email chain from p.292 – p.298, the Statement p.299 to p.302.

There are no further preliminary matters. The panel noted a discrepancy between the dates in Individual A's witness statement regarding when the matter was initially reported; however, the presenting officer will return to this in his submissions.

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 and Response – pages 5 – 12d

Section 3: Teaching Regulation Agency witness statements – pages 14 to 19

Section 4: Teaching Regulation Agency documents – pages 21 to 289

Section 5: Teacher documents – pages 290 - 291

In addition, the panel agreed to accept the following:

Email Chain from 13 – 15 August 2018 – pages 292 - 298

Statement of Agreed and Disputed Facts – pages 299 - 302

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

Witnesses

No witnesses were called to give oral evidence.

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 Fishwick had been employed at St Christopher’s CE High School since September 2015 as a science teacher. It is alleged that between March and April of 2017, Mr Fishwick sent Pupil A inappropriate messages that were sexually motivated and continued to do so despite her requests for him to stop.

Findings of fact

Our findings of fact are as follows:

The panel has found the following particulars of the allegations against Mr Fishwick proven, for these reasons:

- Mr Fishwick has admitted to allegations 1 and 2 in their entirety. In addition these allegations are evidenced by the emails found in the bundle at the following pages with their dates:

| Allegation | Date | Time | Page |
|-------------------|---------------|-------------|-------------|
| 1.i | 10 April 2017 | 23:22 | 208 |
| 1.ii | 1 April 2017 | 12:58 | 71 |
| 1.iii | 5 April 2017 | 14:51 | 191 |
| 1.iv | 4 April 2017 | 13:28 | 170 |
| 1.v | 3 April 2017 | 17:40 | 141 |
| 1.vi | 3 April 2017 | 18:20 | 144 |
| 1.vii | 2 April 2017 | 06:31 | 112 |
| 1.viii | 12 April 2017 | 10:54 | 220 |
| 1.ix | 2 April 2017 | 16:25 | 100 & 118 |
| 1.x | 31 March 2017 | 22:22 | 79 |
| 1.xi | 4 April 2017 | 14:50 | 180 |
| 2.i | 15 April 2017 | 21:23 | 261 |
| 2.ii | 8 April 2017 | 15:54 | 213 |
| 2.iii | 2 April 2017 | 15:03 | 108 |
| 2.iv | 4 April 2017 | 02:03 | 153 |

| | | | |
|--------|---------------|-------|-----|
| 2.v | 4 April 2017 | 20:51 | 173 |
| 2.vi | 2 April 2017 | 15:52 | 104 |
| 2.vii | 4 April 2017 | 01:12 | 143 |
| 2.viii | 12 April 2017 | 10:55 | 220 |
| 2.ix | 2 April 2017 | 16:33 | 119 |

The panel therefore finds allegations 1 and 2 proved.

- Allegation 3: the panel considered all of the evidence from witness statements, written communications, interview minutes and Mr Fishwick’s letter to the Agency. The panel has paid particular attention to the evidence of the emails themselves and notes the following points:
 - the volume of emails
 - the fact that many email conversations began at Mr Fishwick’s instigation (examples at p.164, p.203 and p.215)
 - emotional and suggestive wording used including:
 - ‘I’d never replace you pal’ p.275
 - ‘you know how much I care’ p.262
 - ‘Aww. I’ll deffo miss you’ p.267 (repeated at pp.174 – 175)
 - ‘You’re a cutie sometimes’ p.244
 - insisting Pupil A admit she loves him, pp.247 – 248
 - of boys ‘They have to get past me before they can have you.’ p.234
 - ‘Anything for you’ p.208
 - ‘You were being sweet and lovely and adorable’ p.200
 - ‘I spend so much time worrying about you’ p.197
 - ‘I do care about you. I do think about you during the day’ p.194
 - ‘My fave 😊’ p.187
 - ‘I am insecure. Don’t know why’ p.183

- 'And I know I love you. In a caring way. You get me?' p.181
- 'Yet I still love you' p.180
- 'I only try to make you happy' p.154
- 'I'm always here if you need anything' p.138
- 'I'm trusting you a lot by talking to you like this' p.127
- 'Ofc I love you, in a non-weird way' p.115
- 'I genuinely do care so much about you and adore you' p.113
- 'You're amazing' p.113
- 'I trust you not to tell people' p.107
- 'You'll always be my favourite' p.96
- 'You're so harsh after I've been so nice about you! I could be horrible' p.87
- 'I'm emailing my fave student of all time' p.85
- 'Course I adore you 😊' p.78
- 'You'll never admit to adoring me' p.71

which led to confusion and upset on Pupil A's part. She replied:

- 'But u "don't have favourites" so u have been lying to me' p.276
- 'It's come to the point where I'm crying myself to sleep' p.277

which indicate to the panel that Mr Fishwick was both trying to gain Pupil A's trust and manipulate her response to him, for example, by asking her to say how she feels about him.

- In the panel's view, Mr Fishwick was continually attempting to push acceptable conversational boundaries through the following themes:
 - persistent enquiries into Pupil A's sexual experience (p.125, p.121, p.112, pp.100 – 105, pp.81 - 82)
 - repeated references to Pupil A's breast size including repeated mentions of 'iddybittytittycommittee' once Pupil A mentioned it initially (p.207, p.152, p.119, p.100)

- hints at sexualised thoughts about Pupil A (pp.69 – 71)
- a sexualised dream concerning Pupil A (pp.141 – 145)
- requesting a hug (allegation 1.iii on p.191)
- pursuing Pupil A despite her repeated requests for the messages to cease (allegation 2)
- return to sexualised conversation when Pupil A attempted to change the topic of conversation (pp.252 – 253, pp.238 – 239, pp.110 – 112)
- the fact that the emails were of a personal nature and sent over the Easter holiday period (March and April 2017)
- emails sent using a personal email address.

Therefore, on the balance of probabilities the panel believed that the inappropriate messages Mr Fishwick sent to Pupil A were more likely than not to have been sexually motivated. The panel therefore finds allegation 3 proved.

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 is satisfied that the conduct of Mr Fishwick in relation to the facts found proven, involved breaches of the Teachers’ Standards. The panel considers that by reference to Part Two, Mr Fishwick 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 Mr Fishwick fell significantly short of the standards expected of the profession.

The panel has also considered the Advice's definitions of unacceptable professional conduct and conduct that may bring the profession into disrepute, set out in full below.

'Unacceptable professional conduct' is misconduct of a serious nature, falling significantly short of the standard of behaviour expected of a teacher. Misconduct outside of the education setting will only amount to "unacceptable professional conduct" if it affects the way the person fulfils their teaching role or if it may lead to pupils being exposed to or influenced by the behaviour in a harmful way.

'Conduct that may bring the profession into disrepute' can be defined as misconduct outside of the education setting that may be considered to be relevant if it is serious and the conduct displayed would likely have a negative impact on the individual's status as a teacher, potentially damaging the public's perception of them, therefore bringing the profession into disrepute.

The panel notes that the allegations took place outside of the education setting in the form of personal emails sent over the 2017 Easter holiday period. The panel is of the opinion that Mr Fishwick used Pupil A's vulnerability to cultivate an intense emotional dependence on him which he used to attempt to exploit Pupil A into participating in conversations of a sexual nature. The conversations also included 'advice' to Pupil A which could be seen to encourage harmful behaviour both within and outside of school (see allegations 1.iv, 1.vi, 1.vii and 1.viii).

As Mr Fishwick engaged in written communication that was sexually motivated with a pupil, the panel is concerned that Mr Fishwick has failed to follow either general safeguarding principles or the specific guidance provided by the School.

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

The panel has taken into account the way 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. In the panel's view, Mr Fishwick failed in this regard.

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 Fishwick's actions constitute conduct that may bring the profession into disrepute.

Having found the facts of allegations 1, 2 and 3 proved, we further find that Mr Fishwick'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 punitive effect.

The panel has considered the particular public interest factors 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 Fishwick, which involved findings that Mr Fishwick had sent sexually motivated inappropriate messages to Pupil A despite her repeated requests for the messages to cease, there is a strong public interest consideration in respect of the protection of pupils given the serious findings of inappropriate relationships with children.

Similarly, the panel considers that public confidence in the profession could be seriously weakened if conduct such as that found against Mr Fishwick 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 Fishwick 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 the effect that this would have on Mr Fishwick.

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 Fishwick. 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;
- abuse of position or trust (particularly involving vulnerable pupils) or violation of the rights of pupils; and
- 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 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 a prohibition order, particularly taking into account the nature and severity of the behaviour in this case.

There was no evidence to suggest 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 sexually motivated. The teacher did have a previously good history and the panel accepts that this was an isolated incident. In particular, the panel noted that the email exchange took place within the limited period of an Easter school holiday.

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 would be sufficient.

The panel is of the view that applying the standard of the ordinary intelligent citizen recommending no prohibition order would not be a proportionate and appropriate response. Recommending that the 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 Fishwick. The severity of the allegations 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 for them 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 2 years.

The Advice indicates that there are behaviours that, if proven, would militate against the recommendation of a review period. One of these behaviours is 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 did not find that the email evidence amounted to serious sexual misconduct of the gravest nature especially given that there was no suggestion of an actual physical relationship between Mr Fishwick and Pupil A. Whilst the panel agreed that there was a potential for harm to be caused to Pupil A, the panel could not be satisfied that actual harm had been caused.

Consequently, the panel considered the other mitigating factors put forward by Mr Fishwick with regard to a review period.

Mr Fishwick stated, 'I look back on the situation I put myself and others in with whole-hearted contrition and remorse, having cause [sic] deep embarrassment and hurt for myself and others. I am sorry for the situation which has arisen to all who are and have been involved.'

The panel is of the view that Mr Fishwick has demonstrated some insight. He has expressed awareness of the negative impact of his actions on the School, profession and Pupil A. Mr Fishwick has engaged with the School's investigation and the Agency's process to bring these proceedings before the panel. In addition, the allegations took place over a limited period.

The panel felt the findings indicated a situation in which a prohibition order should be recommended with provisions for a review period of no less than five years after the commencement of the prohibition order. Given that Mr Fishwick has demonstrated growing insight, the panel is of the opinion that such a review period:

- is proportionate and appropriate given the evidence considered in the round; and
- will provide Mr Fishwick with sufficient time to reflect and demonstrate to a future panel his ability to uphold the Teachers' Standards.

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 both sanction and review period.

In considering this case, I have also 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 all 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 Fishwick should be the subject of a prohibition order, with a review period of five years.

In particular, the panel has found that Mr Fishwick 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 also finds that the conduct of Mr Fishwick "fell significantly short of the standards expected of the profession."

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 Fishwick, 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 “Mr Fishwick used Pupil A’s vulnerability to cultivate an intense emotional dependence on him which he used to attempt to exploit Pupil A into participating in conversations of a sexual nature. The conversations also included ‘advice’ to Pupil A which could be seen to encourage harmful behaviour both within and outside of school.” A prohibition order would therefore prevent such a risk 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 Fishwick has demonstrated some insight.” In my judgement, the lack of full insight means that there is some risk of the repetition of this behaviour and this risks the future well-being of pupils. 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, “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. In the panel’s view Mr Fishwick failed in this regard.” I am particularly mindful of the finding of sexual misconduct in this case, albeit not serious sexual misconduct, and the impact that such a finding has on the reputation of the profession.

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 Fishwick himself. The panel comment that, “The teacher did have a previously good history and the panel accepts that this was an isolated incident.”

A prohibition order would prevent Mr Fishwick from teaching and would clearly deprive the public of his contribution to the profession for the period that it is in force.

In this case, I have placed considerable weight on the panel’s comments concerning insight and remorse. The panel has said, “Mr Fishwick has demonstrated growing insight.”

I have also placed considerable weight on the finding of the panel that Mr Fishwick, “sent sexually motivated inappropriate messages to Pupil A despite her repeated requests for the messages to cease,” and “there is a strong public interest consideration in respect of

the protection of pupils given the serious findings of inappropriate relationships with children.”

I have given less weight in my consideration of sanction therefore, to the contribution that Mr Fishwick has made 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 full remorse or complete insight does not in my view satisfy the public interest requirement concerning public confidence in the profession.

In this regard, I have also taken into account the comment of the panel. “Mr Fishwick has admitted to allegations 1 and 2 and has admitted that these facts amount to unacceptable professional conduct and/or conduct that may bring the profession into disrepute. It must be noted that Mr Fishwick does not make the same admission in relation to allegation 3.”

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 5 year review period.

I have considered the panel’s comments “Given that Mr Fishwick has demonstrated growing insight, the panel is of the opinion that such a review period:

- is proportionate and appropriate given the evidence considered in the round; and
- will provide Mr Fishwick with sufficient time to reflect and demonstrate to a future panel his ability to uphold the Teachers’ Standards. “

I have considered whether a 5 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 2 year review period is not sufficient to achieve the aim of maintaining public confidence in the profession. These elements are; the persistent exchanges despite the clear indication that Pupil A wanted the exchanges to stop; the use of Pupil A’s vulnerability to cultivate an intense emotional dependence on him which he used to attempt to exploit Pupil A into participating in conversations of a sexual nature, and the lack of full insight.

I consider therefore that a 5 year review period is required to satisfy the maintenance of public confidence in the profession.

This means that Mr David Fishwick 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 26 August 2023, 5 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 David Fishwick remains prohibited from teaching indefinitely.

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

Mr David Fishwick 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 'Alan Meyrick', with a stylized flourish at the end.

Decision maker: Alan Meyrick

Date: 22 August 2018

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