



Teaching
Regulation
Agency

Mr Kevin Michael Lee: 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 Kevin Michael Lee

Teacher ref number: 0856005

Teacher date of birth: 1 February 1987

TRA reference: 16360

Date of determination: 28 August 2018

Former employer: Cams Hill School, Fareham

A. Introduction

A professional conduct panel (“the panel”) of the Teaching Regulation Agency (“the Agency”) convened on 28 August 2018 at 53 to 55 Butts Road, Earlsdon Park, Coventry CV1 3BH to consider the case of Mr Kevin Michael Lee.

The panel members were Professor Roger Woods (former teacher panellist– in the chair), Councillor Gail Goodman (teacher panellist) and Professor Ian Hughes (lay panellist).

The legal adviser to the panel was Miss Hannah James of Eversheds-Sutherland (International) LLP solicitors.

The presenting officer for the Agency was Mr Ian Perkins of Browne Jacobson LLP solicitors.

Mr Kevin Michael Lee was present and was represented by Ms Sue Sleeman of Counsel.

The hearing took place in public and was recorded.

B. Allegations

The panel considered the allegations set out in the Statement of Agreed and Disputed Facts signed on 16 and 21 August 2018.

It was alleged that Mr Kevin Michael Lee was guilty of unacceptable professional conduct and/or conduct that may bring the profession into disrepute in that whilst employed as a geography teacher at Cams Hill School in Fareham:

1. He engaged in inappropriate communication with Pupil A (a pupil at St John's College in Southsea) via Snapchat in January 2017, in that he;
 - a. sent Pupil A a photograph of himself;
 - b. sent Pupil A messages, stating:
 - i. "Get your shirt off and show us what you're made off";
 - ii. "[Pupil A], I'm not a ladies man, I'm a gentlemen man!"
 - c. encouraged Pupil A to send him a picture of himself;
 - d. asked Pupil A on 19 January 2017 to delete communications that he had sent to him.
2. Sent a text message to a colleague, Individual A, stating "Oh my god, [Pupil B] is such a hunk I've been looking at his huge fingers & wishing they were inside me" or words to that effect in or around the summer term of 2011.
3. His actions at allegations 1(a) and/or 1(b) and/or 1(c) and/or 2 were sexually motivated.

C. Preliminary applications

There were two preliminary issues for the panel to consider.

The first issue was to confirm that page 19 of the bundle, which the Agency confirmed should not have been included in the bundles and which should have been redacted before being provided to the panellists, had not been read by the panellists and had been disregarded/removed/redacted. All three panellists confirmed that they had not read page 19. Two panellists confirmed that they had received the Agency's email warning before having read the bundles and so took steps to remove it. The third panellist did not receive a copy of page 19 of the bundle within his papers. Mr Lee's representative confirmed that she would not be taking issue with this given the panellists confirmation that page 19 had not been read. The panel considered that Mr Lee would not have suffered any unfairness given that the page had not been read, and so the hearing continued.

The second was a preliminary application that Mr Lee be permitted to admit his witness statement dated 16 August 2018 to the documents, late. This document was not served in accordance with the requirements of paragraph 4.20 of the Teacher misconduct: disciplinary procedures for the teaching profession (“the Procedures”), and as such the panel was required to decide whether that document 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 Mr Lee’s representative and the fact that no objections were raised by the presenting officer to the admission of the document.

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 was satisfied that the document was relevant to the case, provided useful information to assist the panel with its determination, and the panel had already read the statement as it was contained in its bundle of papers. The panel therefore considered it would be fair to Mr Lee to include the statement. The panel also noted that it would not have been possible for the document to have been provided before the deadline passed, having been produced as a result of the previous hearing which was after the deadline for submission of documents for the next hearing had expired.

By reason of the above, the panel decided to admit the witness statement of Mr Lee dated 16 August 2018, which was already within the bundle, paginated at pages 101 to 107.

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 1 to 4

Section 2: Notice of Proceedings and response – page 6

Section 3: Statement of Agreed and Disputed Facts – pages 7 to 12

Section 4: Teaching Regulation Agency documents – pages 13 to 99

Section 5: Teacher documents – pages 100 to 157

In addition, the panel agreed to accept the following:

The witness statement of Mr Lee at pages 101 to 107.

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

E. Decision and reasons

The panel announced its decision and reasons as follows:

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

The panel confirms that it has read all the documents provided in the bundle in advance of the start of the hearing.

Mr Lee had been employed at Cams High School in Fareham as a geography teacher from September 2009 until February 2017. In 2011 Mr Lee sent an explicit and inappropriate text message to a colleague in relation to a pupil and had received a final written warning to remain on his record for two years. In 2017 Mr Lee communicated with a pupil via social media by forwarding a photograph of himself, requesting a photograph from the pupil and exchanging messages containing text. The images and messages were circulated amongst pupils. Following which, Mr Lee approached his headteacher and admitted to these actions. An investigation took place and Mr Lee resigned.

Findings of fact

Our findings of fact are as follows:

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

- 1. You engaged in inappropriate communication with Pupil A (a pupil at St John's College in Southsea) via Snapchat in January 2017, in that you;**
 - a. sent Pupil A a photograph of yourself;**

Mr Lee consistently admitted to having sent the photograph, in the investigation and when giving oral evidence to the panel at the hearing. In addition, the panel saw evidence within the bundle of the photograph which Mr Lee sent to the pupil in question in which Mr Lee had no top on and revealed his chest and the front of his shoulders.

The panel considered whether sending this photograph to the pupil was inappropriate. The panel found that it is inappropriate, in these particular circumstances, for a teacher to send a photograph, especially one containing a half-naked photograph, to a pupil because teachers should act professionally and maintain professional boundaries with students. Teachers should act as role models to pupils and protect pupils from any inappropriate contact outside the scope of providing and receiving education and appropriate pastoral support. The panel found Mr Lee's action in sending the photograph of himself to be inappropriate.

Therefore, on the balance of probabilities, the panel found this allegation proven.

b. sent Pupil A messages stating:

i. “Get your shirt off and show us what you’re made of”;

Mr Lee consistently admitted to having sent this message, in the investigation and when giving oral evidence to the panel at the hearing. In addition, the panel saw evidence within the bundle of the social media photo and caption containing this wording, which Mr Lee sent to the pupil in question.

The panel considered whether sending this message to the pupil was inappropriate. The panel found that it is inappropriate, in these particular circumstances, for a teacher to send a message requesting a pupil to send an image of himself to a teacher. Teachers should maintain safe and appropriate boundaries with pupils to protect both pupils and teachers. Teachers should act professionally and seek to protect pupils from engaging in any inappropriate contact outside the scope of providing education and appropriate pastoral support. The panel found that Mr Lee’s action in sending this message to the pupil was inappropriate as it fell significantly short of the behaviour expected of a teacher.

Therefore, on the balance of probabilities, the panel found this allegation proven.

ii. “[Pupil A], I’m not a ladies man, I’m a gentlemen man …..!”

Mr Lee consistently admitted to having sent this message, in the investigation and when giving oral evidence to the panel at the hearing. In addition, the panel saw evidence within the bundle of the social media message containing this wording, which Mr Lee sent to the pupil in question.

The panel considered whether sending this message to the pupil was inappropriate. The panel found that it is inappropriate for a teacher to send a message of this nature to a pupil on social media. The message appears to the panel to be flirtatious in nature and to indicate the sexual orientation of the teacher. Teachers should maintain safe and appropriate boundaries with pupils to protect both pupils and teachers, as well as to act as role models. Teachers should seek to protect pupils from engaging in any inappropriate contact outside the scope of providing and receiving education and appropriate pastoral support. The panel found that Mr Lee’s action in sending this message to the pupil was inappropriate as it fell significantly short of the behaviour expected of a teacher.

Therefore, on the balance of probabilities, the panel found this allegation proven.

c. encouraged Pupil A to send you a picture of himself;

Mr Lee admitted to having encouraged the pupil to send a picture of himself to Mr Lee on social media, in the investigation and when giving oral evidence to the panel at the hearing. In addition, the panel saw evidence within the bundle of the social media message Mr Lee sent to the pupil in question.

The panel considered whether the sending of this message to the pupil was inappropriate. The panel found that it is inappropriate for a teacher to send a message requesting a pupil to send a self-image, in these particular circumstances, because teachers should maintain safe and appropriate boundaries with pupils, and teachers should act professionally and as role models for pupils. Teachers should seek to protect pupils from engaging in any inappropriate contact outside the scope of receiving education and appropriate pastoral support. The panel found that Mr Lee's action in sending this message to the pupil was inappropriate as it fell significantly short of the behaviour expected of a teacher.

Therefore, on the balance of probabilities, the panel found this allegation proven.

d. asked Pupil A on 19 January 2017 to delete communications that you had sent to him.

Mr Lee admitted to having asked the pupil to delete communications he had sent to him, in the investigation and when giving oral evidence to the panel at the hearing. In addition, the panel saw evidence within the bundle of the message from Mr Lee in which this request was made.

The panel considered whether sending this message to the pupil was inappropriate. The panel found that it is inappropriate for a teacher to ask the pupil to conceal the inappropriate communications between teacher and pupil. The panel noted that teachers should act as role models for pupils. The panel found Mr Lee's action in asking the pupil to delete the messages was inappropriate as it concealed the inappropriate communication they had had.

Therefore, on the balance of probabilities, the panel found this allegation proven.

2. Sent a text message to a colleague, Individual A, stating "Oh my god, [Pupil B] is such a hunk I've been looking at his huge fingers & wishing they were inside me" or words to that effect in or around the summer term of 2011.

Mr Lee admitted to having sent this text message about a pupil to his colleague in 2011, in the investigation and when giving oral evidence to the panel at the hearing. In addition, the panel saw evidence within the bundle from the individual to whom the text message was sent, who at the time was a colleague of Mr Lee. There are also interview notes in the bundle from the interview with this individual, within which she repeated the wording of the text message she had received from Mr Lee. This was consistent with the account given in her summary of events.

The panel exercised caution as it appreciated that this was hearsay evidence. In considering this hearsay evidence, the panel took account of the fact that the person who was the direct source of that evidence was not before it, and therefore the panel did not have the opportunity to question or assess her credibility. Equally, the evidence was not tested by cross-examination, and thus the panel did not have the opportunity to see how

it withstood that form of challenge. The panel noted that hearsay evidence would usually carry less weight than evidence which was tested. The panel noted that there was no rule of law that prevented it from relying upon hearsay solely or to a decisive degree, if satisfied with the strength of that evidence. Similarly, the panel received legal advice that it might consider that greater weight should be attributed to witness evidence that has been tested orally before it, compared to the witness evidence of those that have not been called to give evidence, and therefore which the panel has not had the opportunity to directly challenge.

The panel took into account the fact that Mr Lee admitted that he sent a text message to his colleague in the terms quoted by her in her written recollection of events, which is also the wording set out in the allegation. The panel considered that, on the balance of probabilities, it accepted that this message was sent.

The panel considered whether this message was inappropriate. The panel found that it was exceptionally inappropriate for Mr Lee to have sent a message in such explicit sexual terms, “wishing” for sexual activity with a pupil. Teachers should maintain safe and appropriate boundaries with pupils, and teachers should act professionally and act as role models. The panel found that Mr Lee’s action in sending this message to his colleague was inherently inappropriate as it made a direct sexual reference to a pupil, and a desired sexual activity with a pupil.

Therefore, on the balance of probabilities, the panel found this allegation proven.

3. Your actions at allegations 1(a) and/or 1(b) and/or 1(c) and/or 2 were sexually motivated.

The panel received legal advice that, when considering whether Mr Lee’s actions were sexually motivated, it should consider whether, on the balance of probabilities, a reasonable person would think the words and/or actions found proven could be sexual. If so, to ask itself whether, in all the circumstances of the conduct in the case, it is more likely than not that Mr Lee’s purpose of such words/actions was sexual.

The panel considered whether, even in the absence of direct evidence, sexual motivation should be inferred from all the circumstances of the case. The panel had in mind the evidence of Mr Lee’s character and considered whether such evidence had any bearing on his credibility or propensity to have carried out the alleged facts, or to the circumstances in which he found himself in.

The panel found that Mr Lee’s actions in allegations 1(a), 1(b), 1(c) and 2 were sexually motivated.

In relation to allegation 1(b) the panel considered that both statements made by Mr Lee were sexually motivated because asking a pupil to take off clothing and to forward a photograph after doing so, and referring to sexuality in that context are likely, on a

balance of probabilities, to suggest a sexual context existed and that it was said with a view of flirting and/or seeking some form of sexual gratification.

In relation to allegations 1(a) and 1(c) the panel noted that it does not consider that sending a photograph or asking for a photograph is, in itself, sexually motivated. The context here, however, is such that the sending and requesting of the photographs was sexual as the panel had regard to the circumstances in which the request and provision was made. The panel noted that the message sent in allegation 1(b)(i), requesting that the pupil forward a photograph of himself without his top on demonstrated the context in which the request was made, and that this was sexual. In addition, Mr Lee chose to send a topless photograph of himself rather than a photograph in which he was fully clothed. Taking these matters together, and considering the context overall, the panel found that, on the balance of probabilities, these two allegations were sexually motivated.

In relation to allegation 2 the panel considered Mr Lee's submissions that whilst he understood that this behaviour was inappropriate, he did not intend it to be sexual in nature. The panel found that the wording in the text message was sexually explicit and that it expressly mentioned that Mr Lee wished that the pupil would participate in a sexual activity with him. The panel asked Mr Lee whether he agreed that his reference was to a sexual activity and Mr Lee agreed that it was. Mr Lee then said that it was not intended to be sexual in nature, rather an element of "banter" between colleagues, and that he had no expectation that any sexual activity with the pupil would take place. The panel found Mr Lee's admissions to have been inconsistent with his oral submissions. The panel asked Mr Lee whether there was any other explanation for the activity referenced in the allegation, such as whether there was any health reason as to why Mr Lee would have such desire for the pupil to undertake this activity, and Mr Lee confirmed that there was not. The panel could see no other reason therefore, other than sexual, for this comment to have been made in the text message.

Therefore, the panel concluded that, on the balance of probabilities, this was sexually motivated.

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

The panel has also considered whether Mr Lee'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.

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.

Accordingly, the panel is satisfied that Mr Lee 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 Lee's actions constitute conduct that may bring the profession into disrepute.

Having found the facts of particulars 1, 2 and 3 proved, we further find that Mr Lee's conduct amounts to both unacceptable professional conduct and conduct that may bring the profession into disrepute. The panel also noted that Mr Lee admitted that, of the allegations he admitted, namely allegations 1 and 2, he considers that these amount to

unacceptable professional conduct and conduct that would bring the teaching 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 maintenance of public confidence in the profession and declaring and upholding proper standards of conduct.

In light of the panel's findings against Mr Lee, which involved finding that all of the allegations were proven, were sexually motivated, and amounted to unacceptable professional conduct and conduct which would bring the profession into disrepute, there is a strong public interest consideration in protecting pupils given the serious findings.

Similarly, the panel considers that public confidence in the profession could be seriously weakened if conduct such as that found against Mr Lee 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 Lee was outside that which could be reasonably 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 Lee.

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 Lee. The panel took further account of the Advice, which suggests that a prohibition order may be appropriate if certain behaviours of a teacher have been proven. In the list of such behaviours, those that are relevant in this case are:

- serious departure from the personal and professional conduct elements of the Teachers' Standards;
- misconduct seriously affecting the education and/or well-being of pupils, and particularly where there is a continuing risk;
- a deep-seated attitude that leads to harmful behaviour;
- abuse of position or trust (particularly involving vulnerable pupils) or violation of the rights of pupils;
- sexual misconduct, e.g. involving actions that were sexually motivated or of a sexual nature and/or that use or exploit the trust, knowledge or influence derived from the individual's professional position.

Even though there were behaviours that would point to a prohibition order being appropriate, the panel went on to consider whether or not there were sufficient mitigating factors to militate against a prohibition order being an appropriate and proportionate measure to impose, particularly taking into account the nature and severity of the behaviour in this case.

Mr Lee's actions were deliberate and he was not acting under duress. The panel took into account the fact that the allegations include Mr Lee's actions from 2011, in which he was given a final written warning. Mr Lee has then conducted himself in the way set out in the allegations relating to the 2017 period. The panel does not therefore consider that these actions were out of character. The panel noted that even now, during his oral evidence, Mr Lee said that he "probably shouldn't have" when referring to the behaviour in allegation 1 and that at the time he was sending the messages he wasn't clear it was a problem but that it became obvious to him that it was a problem when he learnt that the pupil had screenshotted his messages and images. The panel considered this showed a lack of insight into the seriousness of his actions.

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, despite the severity of the consequences of prohibition for the teacher.

The panel is of the view that prohibition is both proportionate and appropriate. The panel decided that the public interest considerations outweighed the interests of Mr Lee. The fact that the allegations were sexually motivated was a significant factor in forming that opinion. Accordingly, the panel made 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 it to decide to recommend that a review period of the order should be considered. The panel was mindful that the Advice recommends 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.

Whilst the panel notes that the teacher's witness statement of 20 August 2018 suggests that he is remorseful for his actions and that he now appreciates the inappropriateness of his behaviour, the panel has some concerns that he does not yet fully appreciate the need to maintain appropriate boundaries between pupils and teachers, as set out in more detail above in relation to the lack of insight shown.

The Advice indicates that there are behaviours that, if proven, would militate against a review period being recommended. These behaviours include serious sexual misconduct, e.g. where the act was sexually motivated and resulted in or had the potential to result in, harm to a person or persons. The panel has found that Mr Lee has sent messages and photographs to a pupil, and to a colleague, which have been found to have been sexually motivated. Such behaviour links to a recommendation that no review period be recommended. The panel took this into account when it went on to consider the teacher's mitigation and the impact on the teaching profession of the loss of a potentially good teacher.

The panel took into account Mr Lee's mitigation evidence which demonstrated his quality as a teacher and that he was considered to be a valuable colleague. His performance management reviews also identified that he had the potential to become an excellent teacher. The panel saw testimony from teachers, parents and pupils as to what a good teacher Mr Lee was.

The panel felt the findings indicated a situation in which a review period would be appropriate and as such decided that it would be proportionate in all the circumstances for the prohibition order to be recommended with provisions for a review period of 5 years. The panel took the view that although it considered Mr Lee's actions were deep seated in nature, it felt that 5 years would be a sufficient period of time for Mr Lee to demonstrate to a review panel that he was then fit to be a teacher.

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 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 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 Lee should be the subject of a prohibition order, with a review period of five years.

In particular the panel has found that Mr Lee 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 finds that the conduct of Mr Lee fell significantly short of the standards expected of the profession.

The findings of misconduct are particularly serious as they include a finding of sexual misconduct.

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 Lee, 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, "there is a strong public interest consideration in protecting pupils given the serious findings". A prohibition order would therefore prevent such a risk from being present. I have also taken into account the panel's comments on insight and remorse which the panel say, "that even now, during his oral evidence, Mr Lee said that he "probably shouldn't have" when referring to the behaviour in allegation 1

and that at the time he was sending the messages he wasn't clear it was a problem but that it became obvious to him that it was a problem when he learnt that the pupil had screenshotted his messages and images. The panel considered this showed a lack of insight into the seriousness of his actions." The panel has also commented, "The panel took into account the fact that the allegations include Mr Lee's actions from 2011, in which he was given a final written warning. Mr Lee has then conducted himself in the way set out in the allegations relating to the 2017 period. The panel does not therefore consider that these actions were out of character." In my judgement the lack of insight means that there is some risk of the repetition of this behaviour and this risks future pupils' safeguarding. 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 Lee 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 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 Lee himself.

A prohibition order would prevent Mr Lee from continuing that in the teaching profession. A prohibition order would also 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 the lack of insight or remorse.

I have given less weight in my consideration of sanction therefore, to the contribution that Mr Lee 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 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 5 year review period.

I have considered the panel's comments "Whilst the panel notes that the teacher's witness statement of 20 August 2018 suggests that he is remorseful for his actions and that he now appreciates the inappropriateness of his behaviour, the panel has some concerns that he does not yet fully appreciate the need to maintain appropriate boundaries between pupils and teachers, as set out in more detail above in relation to the lack of insight shown."

Furthermore I have considered the panel's view that Mr Lee's mitigation evidence, "demonstrated his quality as a teacher and that he was considered to be a valuable colleague. His performance management reviews also identified that he had the potential to become an excellent teacher. The panel saw testimony from teachers, parents and pupils as to what a good teacher Mr Lee was."

The panel has also said it took the view that, "although it considered Mr Lee's actions were deep seated in nature, it felt that 5 years would be a sufficient period of time for Mr Lee to demonstrate to a review panel that he was then fit to be a teacher."

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 two 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 sexual misconduct found and the lack of either full insight or remorse.

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

This means that Mr Kevin Michael Lee 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 11 September 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 Kevin Michael Lee remains prohibited from teaching indefinitely.

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

Mr Kevin Michael Lee 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 'Dawn Dandy', with a stylized, sweeping flourish at the end.

Decision maker: Dawn Dandy

Date: 30 August 2018

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