



Teaching
Regulation
Agency

Mr John Tomsett: Professional conduct panel outcome

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

October 2018

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

Teacher:	Mr John Tomsett
TRA reference:	16247
Date of determination:	26 October 2018
Current employer:	Huntington School
Former employer:	Eastbourne Sixth Form College

A. Introduction

A professional conduct panel (“the panel”) of the Teaching Regulation Agency (“the Agency”) convened from 22 to 26 October 2018 at 53 to 55 Butts Road, Earlsdon Park, Coventry CV1 3BH to consider the case of Mr John Tomsett.

The panel members were Mr Paul Hawkins (teacher panellist – in the chair), Ms Karen McArthur (lay panellist) and Mrs Kathy Thomson (former teacher 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 Ben Bentley of Browne Jacobson LLP Solicitors.

Mr John Tomsett was present and was represented by Mr Andrew Faux, Counsel.

The hearing took place in public and was recorded.

B. Allegations

The panel considered the allegations set out in the Notice of Proceedings dated 9 April 2018.

It was alleged that Mr John Tomsett was guilty of unacceptable professional conduct and/or conduct that may bring the profession into disrepute in that in or around 1990 to 1992 he:

1. whilst employed as a teacher at Eastbourne Sixth Form College failed to maintain professional boundaries by engaging in an inappropriate relationship with Pupil A;
2. engaged in a sexual relationship with Pupil A, during the summer in which she received her A level results.

C. Preliminary applications

There were seven applications in total; four preliminary applications and three during the course of the hearing.

The first application was made by the presenting officer. He requested that the panel direct that Pupil A be treated as a vulnerable witness and be permitted to be screened from Mr Tomsett when giving evidence.

The second application, made by the presenting officer, requested permission to admit two documents into evidence, late. The first document was a letter that Pupil A wrote on 26 July 1995, addressed to herself, to open when she turned 40. The second document was a letter that Pupil B wrote on 18 October 1992, addressed to herself, to open when she turned 40.

The teacher's representative consented to both applications.

The teacher's representative made the third and fourth application which requested the admission of two late documents. The first of these was made at the outset of the hearing and requested that a bundle of correspondence (spanning the period July 2011 to July 2012), and their attachments, be included in the bundle. The second was during opening statements and requested that a page of song lyrics also be included in the hearing bundle.

The presenting officer consented to both applications.

The panel received legal advice from the legal adviser in relation to vulnerable witness status and the special measures available to such witnesses. The panel considered the advice and directed that Pupil A be treated as a vulnerable witness since the panel is satisfied that the quality of her evidence is likely to be adversely affected given that the allegation against the teacher is of a sexual nature and she was the alleged victim.

The panel has considered paragraph 4.71 of the Procedures and the legal advice it received, and has noted that there is no medical evidence that the welfare of Pupil A will be prejudiced by her giving evidence and the panel is content for her to give evidence.

When Pupil A gives evidence, which the panel understands is anticipated, the panel is content for a screen to be used in the way that has been requested.

The panel also heard legal advice relating to the three applications requesting the admission of further late documents.

None of these documents was 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 teacher and the presenting officer.

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 given the letters describe the events relating to the allegations, the lyrics are to be referenced by the parties when discussing the events that took place at the time of the allegations and the correspondence is evidence of the direct interaction between teacher and the alleged victim.

With regard to the overall question of fairness, neither party has any objection to the documents the opposing party wishes to adduce.

By reason of the above, the panel has decided to admit each of the documents and these should be paginated with the page numbers set out in the document section above.

The panel later heard three further applications. Two of which relate to the admission of further late documents. The first was brought by the presenting officer requesting the late admission of some Guidance called "Working Together, Consultation Paper Number 22, Department of Health, June 1991". The teacher's representative did not oppose this application. The second was brought by the teacher's representative and requested approval for the late admission of a witness statement provided by the Chair of Governors of Mr Tomsett's school. The presenting officer did not oppose this application.

The panel considered the legal advice it received previously relating to the late admission of documents, including the hearsay warning it received.

These 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 teacher and the

presenting officer. 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 given the first document is guidance which existed at the time period of the allegations; this could assist with the panel's consideration of the standards at the time. The second relates to Mr Tomsett's current school's Chair of Governors' awareness of the circumstances; it attaches the notification sent to Mr Tomsett by the Head of Human Resources of the City of York Council of the result of its investigation.

The panel noted, in relation to the teacher's representative's application to admit the witness statement, that there is a distinction to be drawn between the situation where a presenting officer seeks to rely upon hearsay evidence, and the current situation where it is the defence seeking to introduce it, without the witness being in attendance. The former invokes considerations relating to the teacher's right to a fair hearing, whereas the latter does not, although there remains a question of the fairness between the parties. The panel had regard to whether it would be a sufficient safeguard for a hearsay warning to be given before the panel's determination on the facts. The panel was satisfied that any imbalance caused to the presenting officer in being unable to cross-examine the witness could be addressed by the panel's decision in due course as to what weight it should attach to the evidence, if such evidence is admitted.

With regard to the overall question of fairness the panel noted that the presenting officer had no objection to the statement being included in the bundle and also that the evidence contained in the witness statement does not assist with proving or disproving the allegation, but rather the surrounding chronology.

By reason of the above, the panel has decided to admit the witness statement. The panel also decided to admit the guidance at the request of the presenting officer. These documents were paginated with the page numbers set out in the document section above.

The third of the three supplementary applications was brought by the teacher's representative during the witness evidence section of the proceedings. The teacher's representative requested that the case be temporarily adjourned [Redacted]. The panel considered whether the hearing should be adjourned for the rest of the day on Tuesday 23 October 2018, to restart the following morning. The representations were partly heard in private since they concerned matters relating to [Redacted]. The panel also heard representations from the presenting officer.

The panel determined to exercise its discretion under Paragraph 4.54 of the Procedures to adjourn the hearing until 8:30am on Wednesday 24 October 2018 when it shall reconvene.

[Redacted].

The panel balanced the public interest against the interest of Mr Tomsett and decided to adjourn the hearing. [Redacted].

In terms of the risk to Mr Tomsett, the panel was mindful of the seriousness of the case, and also considered that if the hearing were to proceed Mr Tomsett's ability to present his evidence and to give instructions may be compromised.

The panel considers Mr Tomsett's evidence to be pivotal to the case. It is also in the interests of justice, as well as in the interest of Mr Tomsett, for him to be able to participate effectively in the hearing and present his evidence fully. In light of the submissions from the teacher's representative as to Mr Tomsett [Redacted], and the panel's observations, the panel does not believe that Mr Tomsett will be in a position to currently do this.

The panel notes that there are no other witnesses in attendance and therefore does not believe any prejudice will be caused to any witnesses by ordering an adjournment.

The panel has had regard to the public interest and the interest of witnesses that a hearing should take place within a reasonable time. Although the panel accepts that Mr Tomsett is willing and keen to continue with the hearing, there are considerable concerns about his ability to participate effectively, and coupled with the seriousness of this case, and the potential consequences for him, it has decided to adjourn the case to allow him to have an opportunity [Redacted] to reconvene the hearing and to give his witness evidence.

[Redacted], the panel directed that the hearing be adjourned for the rest of the day (23 October 2018) and be reconvened at 8:30am on Wednesday 24 October 2018.

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 2

Section 2: Notice of Proceedings and Response – pages 3 to 18

Section 3: Teaching Regulation Agency witness statements – pages 19 to 84

Section 4: Teaching Regulation Agency documents – pages 85 to 169

Section 5: Teacher documents – pages 170 to 203

In addition, the panel agreed to accept the following:

Presenting Officer Application for Special Measures – pages 204 to 210

Letter of Pupil A - pages 211 to 212

Letter of Pupil B – page 213

Additional Correspondence 2011/2012 – pages 214 to 231

Song lyrics – page 232

DoH Guidance, Consultation Paper No. 22, June 1991 – page 233 to 235

Witness Statement, Head of Governors of current school – pages 236 to 242

The panel members confirmed that they had read all of the documents in advance of the hearing. The panel also took time at the beginning of the hearing to read the new documentation.

Witnesses

The panel heard evidence from Pupil A, the alleged victim referred to within the allegations, and also Pupil B.

E. Decision and reasons

The panel announced its decision and reasons as follows:

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

The panel confirms that it has read all the documents provided in the bundle in advance of the hearing, as well as the supplemental documents provided at the outset of, and during the course of, the hearing.

Mr Tomsett had been employed as a teacher at Eastbourne Sixth Form College during the period 1990 to 1992. During this period he is accused of having an inappropriate relationship with a pupil. He is also accused of engaging in a sexual relationship during the summer in which the pupil received A level results. The allegations were first raised with Mr Tomsett in 2016.

Findings of fact

Our findings of fact are as follows:

The panel has found the following in relation to the particulars of the allegations:

In doing so, the panel were aware of the CMH decision of 4 September 2018, which it read. The panel applied the direction when reaching its decision.

1. whilst employed as a teacher at Eastbourne Sixth Form College failed to maintain professional boundaries by engaging in an inappropriate relationship with Pupil A;

Allegation 1 is not found proven.

The panel noted that this allegation could only be found proven if the Presenting Officer has established, on a balance of probabilities, that an inappropriate relationship had taken place. Each witness interpreted the matters giving rise to the inappropriate behaviour in a very different way. The panel will need to decide, for each of the alleged actions, whether it considers it more likely than not that the event occurred and whether if it did, that amounts to an inappropriate relationship. In order to do this it will need to assess whether it considers the evidence of Pupil A or Mr Tomsett to be more credible or reliable, and whether there is any corroborating evidence either way, for each of these instances. The panel has also taken into account the legal advice it received relating to the significance of the 26 year delay in the case being brought and the impact that this would have on memories and recollection of events.

The panel heard oral evidence from Pupil A that during the period before Mr Tomsett left his teaching post at the College in May 1992 (to take up a new role at another school), she considers that, in retrospect, Mr Tomsett acted in a way that was inappropriate towards her. She referenced a number of instances which included allegedly:

- making a sexual innuendo about the way in which she positioned herself in class;
- an occasion where Mr Tomsett had helped her on a one to one basis by typing up one of her essays;
- a discussion of a psychology questionnaire which contained some questions about sex;
- providing her with his home address on or around his last day at the College;
- writing comments in her end of College memory book which she believed were flirtatious;
- on his last day at the College asking her to come to his classroom after her last lesson of the day;
- allegedly kissing her before she left his room that day;
- allegedly watching her intensely from the back of the hall during her participation in the choir at the College Christmas concert;
- telling her that he wished he was 20;

- allegedly saying to her “there are so many things I’ve wanted to say to you but either couldn’t or shouldn’t”.

This oral evidence, which discussed events that allegedly took place over 26 years ago, was provided in significant detail, including how the witness felt at the time these events allegedly occurred. The witness had the support and benefit of reading and reviewing her detailed diary entries which detailed many of these alleged occurrences and her feelings at the time.

The panel took account of the fact that the only corroborating evidence of Pupil A’s version of these events was her own diary. [Redacted].

The panel heard a contrasting position from Mr Tomsett in his oral and written evidence. The panel also took account of the limited answers provided by Mr Tomsett to events which they would have expected would have been memorable events.

Despite the overall allegation being not proven, the panel’s assessment of the evidence it has seen and heard on these events is as follows:

- Pupil A said that, [Redacted]. She gave oral evidence that Mr Tomsett commented to her that it was very distracting and that his comment was said in such a way that she considered it to have been a sexual innuendo. Mr Tomsett, however, gave oral evidence that he was making an observation that he found it very distracting [Redacted], and that his comment was not meant as a sexual innuendo. Pupil A explained in her oral evidence that Mr Tomsett was not a, “smutty” man in the way that he communicated with her and others. The panel considered Mr Tomsett’s explanation to be plausible, and found that, on a balance of probabilities, it was more likely than not that the comment was not a sexual innuendo.
- Mr Tomsett’s explanation for having assisted Pupil A with typing her essay in the computer room was that he was aware that Pupil A had difficulty [Redacted], as he was a fast typist, he was happy to help her. Mr Tomsett said that other staff and pupils used the computer room. The panel considered that this is a plausible, sensible explanation as to why Mr Tomsett assisted Pupil A with her essay.
- The panel believed that Mr Tomsett was watching the Christmas concert. It believed that it would have been particularly difficult for Pupil A to discern whether Mr Tomsett was looking only at her in an intensive way during the concert, rather than just watching the concert.
- Mr Tomsett admitted that he provided his home address to Pupil A [Redacted]. Mr Tomsett stated that he felt guilty to have been leaving his A level classes to begin a job at another school before they had finished the year. As a result he said that he gave many of his pupils his home address so that they could write to him for further help in the run up to their exams. Mr Tomsett said that he remembered that at least

two other students wrote to him at his home address for educational support. Pupil A contended that Mr Tomsett gave her his address so that she would write to him for reasons other than educational support and that she was not aware of him giving his address to anyone else. She suggested to the panel that she took the provision of the address to be an encouragement to start or continue romantic relations. Mr Tomsett contended that he would not, under any circumstances, have provided his home address, where he lived with his wife, if that was his intention. The panel accepted Mr Tomsett's explanation. Nevertheless, the panel considered that, in their experience at the relevant time, it was neither wise, nor appropriate for a teacher to provide personal contact details to any student.

- The panel saw the comment written by Mr Tomsett in Pupil A's leavers' memory book. The comment was made up of Mr Tomsett's descriptions of four interactions that he had had with Pupil A. One of the comments stated "I remember typing up your History essay with you and being submitted to a wonderfully erotic Psychology questionnaire...". The panel considered that, at that time, the whole entry was (and would be today) entirely inappropriate and unprofessional. Mr Tomsett gave submissions that he had understood that it would be seen by many others, including other teachers and pupils. He also acknowledged that this would be entirely inappropriate today. The panel considered Mr Tomsett's submissions and felt that the comments left in Pupil A's memory book demonstrated his naive and inexperienced approach at that time.
- Pupil A stated that Mr Tomsett came into her history class after receiving her goodbye card to ask if she could go to his room after her lesson. The panel considers that it was not inappropriate for a teacher to call a pupil into their classroom for a one to one meeting. The panel considers that it becomes inappropriate if the motive for the one to one meeting is for reasons other than educational interaction. Mr Tomsett admitted that he called Pupil A to his room to thank her and to say goodbye to her. He admitted that he hadn't called any other pupil to his room after receiving their cards. He also acknowledged that, by this time, he had feelings for Pupil A and described a chemistry that had grown over time. This further concerned the panel as calling her to his room, in these circumstances, and for no other educational reason, was unprofessional, unwise and ill judged.
- The panel heard and saw conflicting evidence relating to the kiss. The panel noted that both Mr Tomsett and Pupil A admitted that there was a kiss. Whilst Mr Tomsett could not recall whether it was a kiss on the lips or cheek, he can recall that Pupil A kissed him and that it was, "just a peck". Pupil A, however, considers it to have been a kiss that he delivered to her, and that it was on the lips for two seconds. The panel considers that a kiss in any circumstances where a teacher has romantic feelings towards a pupil, and where that teacher has engineered a one to one meeting for no educational reason, was inappropriate.

- Pupil A said in her evidence that, during the one to one meeting on Mr Tomsett's last day, he said to her "If only I was 20" and "there are so many things I've wanted to say to you but either couldn't or shouldn't". This is also set out in her diary. Mr Tomsett could recall saying "If only I was 20" and though he couldn't recall saying the rest of the words, he admitted that he might have. The panel considered that it is more likely than not, on a balance of probabilities, that he said all of these words. The panel also considered that this was unprofessional behaviour, at that time.

On the balance of probability, despite Mr Tomsett's admitting to having feelings for her, the panel did not receive sufficient evidence to demonstrate that he had acted upon those feelings to the extent that an inappropriate relationship had been formed. The panel did not consider that the teacher pupil relationship with her was any different from that which he had with other pupils, apart from those actions which occurred on the last day, and the comments written in her memory book (which the panel considered was inappropriate at the time).

Therefore, upon taking into account all of the evidence it has heard, and considering the evidence on a balance of probabilities, the panel believed that whilst some occurrences were inappropriate, they did not amount to an inappropriate relationship, and the allegation is not found proven.

2. engaged in a sexual relationship with Pupil A, during the summer in which she received her A level results.

Allegation 2 is found proven.

The panel heard evidence from Mr Tomsett that he admitted to having had a sexual relationship with Pupil A during the summer in which she received her A level results.

The panel heard evidence from Pupil A that she and Mr Tomsett had a sexual relationship during that summer. Pupil A's diary entries also documented the sexual relationship.

The oral admissions were also supported by the witness statements of Mr Tomsett and Pupil A.

Therefore, upon taking into account all of the evidence it had heard, and considering that evidence on a balance of probabilities, the panel believed that it was more likely than not to have occurred and found the allegation to be proved.

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

The panel was aware of the CMH decision of 4 September 2018, which it read. The panel applied the directions when reaching its decision.

Having found allegation 2 proven, the panel went on to consider whether the facts of that allegation amounted to unacceptable professional conduct and/or conduct that may bring the profession into disrepute.

In doing so, the panel had regard to its knowledge and experience as to the teaching standards at that time. The panel noted that there was no codified set of standards such as there is today, and the panel was not convinced that the guidance and circulars that had been presented to it added much clarity. The panel found the guidance and circulars to which it was directed to be more focussed on situations of child abuse and sexual abuse, which it did not consider was directly applicable here.

The panel took account of its own understanding and experience of the teaching standards in 1992, as well the prevailing culture of that era. The panel considered a situation where a teacher might leave a Sixth Form College to begin a new position at another educational establishment before the end of a school year. If, within weeks of leaving that role, that teacher then went on to have a sexual relationship with an 18 year old former pupil, then, that sexual relationship would have amounted to a breach of the teaching standards of the time (in 1992). In the panel's experience of that era, it considers that it was not appropriate for a teacher to embark on a relationship with a former-pupil for whom that teacher had admitted to having feelings, so soon after that pupil had left. That would suggest that it was acceptable for teachers to wait until pupils finish to engage in romantic or sexual relations.

The panel therefore considered that Mr Tomsett's standards fell short of the standards expected of the profession at the time, particularly the failure to maintain proper professional boundaries with Pupil A.

The panel considered that this standard is a fundamental one and, whilst not explicit in 1990 to 1992, it nevertheless existed.

Today, the standards are more clearly codified in the document called *Teacher Misconduct: The Prohibition of Teachers*, which the panel refers to as "the Advice". The standard states that "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". This current codified standard is only relevant to the extent that it describes how a person should fulfil their teaching role today. As the conduct complained of took place outside of the education setting, the panel also therefore had regard to this current standard in its consideration of the way in which Mr Tomsett fulfils his current teaching role.

Mr Tomsett breached a standard at the time. Given that 26 years have passed since the event, the fact that both he and Pupil A had left the College, when the sexual relationship began, the panel does not consider that current pupils are likely to be exposed to or influenced by this behaviour in a harmful way. Nor does it consider that it would affect the

way in which Mr Tomsett now fulfils his teaching role or his ability to meet today's teaching standards.

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

Therefore, the panel did not find that Mr Tomsett's sexual relationship with Pupil A amounted to unacceptable professional conduct.

The panel took 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 took 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 conduct found proven would, at the time, have brought the profession into disrepute if it had become known at the time. The panel does not consider that the passage of time has altered that position.

The panel was very clear in its finding that it is not professionally acceptable for a teacher to enter into a romantic or sexual relationship with their former pupil shortly after that pupil has left school or college.

The conduct displayed would likely have a negative impact on the individual's status as a teacher, potentially damaging the public perception.

Having found the facts of allegation 2 proved, the panel found that Mr Tomsett's actions constituted conduct that may bring the profession into disrepute.

Panel's recommendation to the Secretary of State

Given the panel's findings in respect of 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 maintenance of public confidence in the profession and declaring and upholding proper standards of conduct.

In light of the panel's findings against Mr Tomsett, which involved engaging in a sexual relationship with a former pupil during the summer in which she received her A level results, the panel considered the strong public interest in protecting the reputation of the teaching profession and also how teachers are viewed by pupils.

Notwithstanding those 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 Tomsett.

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 Tomsett. 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.

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.

The panel was provided with a substantial amount of mitigation evidence in the form of a 150 page bundle of support for Mr Tomsett's good character. The bundle contained testimonials from past and present pupils, parents, past and present colleagues and senior educational professionals. The testimonials demonstrate that Mr Tomsett is seen as a caring, empathetic, dedicated and driven teacher and leader and demonstrate his value to the educational establishment.

The evidence in Mr Tomsett's witness statement as to his contribution to city-wide initiatives, to mental health initiatives, to securing finance for the local authority to build a media centre, to being a member of the Department of Education expert group on developing the initial teaching training programme for behaviour in schools, demonstrates his positive commitment and contribution to the wider educational sector.

The panel also heard evidence that, in 2007/2008, Mr Tomsett, as headteacher, developed a 10 year vision for his school. In 2017 Ofsted found the school was outstanding in every category for the first time in its history. Additionally, the 2018 A Level results were the best ever recorded.

The panel took into account the public interest in retaining good teachers in the profession and also considered the public interest in Mr Tomsett being able to continue to teach.

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 a proportionate and appropriate response. Given that the nature and severity of the behaviour is at the less serious end of the possible spectrum and in light of the mitigating factors that were present in this case, the panel has determined that a recommendation for a prohibition order will not be appropriate in this case. The panel considers that the publication of the adverse findings it has made is sufficient to send an appropriate message to the teacher and the profession, as to the standards of behaviour that are not acceptable and meets the public interest requirement of declaring proper standards of the profession.

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.

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 one of the two allegations proven. In respect of the proven allegation, the panel has found that it amounts to conduct that may bring the profession into disrepute. I have put from my mind entirely the matters found not proven in this case. The panel has made a recommendation to the Secretary of State that Mr Tomsett should not be the subject of a prohibition order, but that the finding of conduct likely to bring the profession into disrepute should be published.

In this case the panel has said that it “considered that Mr Tomsett’s standards fell short of the standards expected of the profession at the time, particularly the failure to maintain proper professional boundaries with Pupil A.

The panel considered that this standard is a fundamental one and, whilst not explicit in 1990 to 1992, it nevertheless existed.”

The panel goes on to refer to “the Advice”. The panel states that “the standard states that “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”.

The panel goes on to explain that “this current codified standard is only relevant to the extent that it describes how a person should fulfil their teaching role today. As the conduct complained of took place outside of the education setting, the panel also

therefore had regard to this current standard in its consideration of the way in which Mr Tomsett fulfils his current teaching role.”

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 Tomsett, 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 that it, “does not consider that current pupils are likely to be exposed to or influenced by this behaviour in a harmful way. Nor does it consider that it would affect the way in which Mr Tomsett now fulfils his teaching role or his ability to meet today’s teaching standards.”

I have gone on to consider the extent to which a prohibition order would maintain public confidence in the profession. The panel observe, “The conduct found proven would, at the time, have brought the profession into disrepute if it had become known at the time. The panel does not consider that the passage of time has altered that position.

The panel was very clear in its finding that it is not professionally acceptable for a teacher to enter into a romantic or sexual relationship with their former pupil shortly after that pupil has left school or college.

The conduct displayed would likely have a negative impact on the individual’s status as a teacher, potentially damaging the public perception.”

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 Tomsett himself. The panel references much positive evidence, including “The testimonials demonstrate that

Mr Tomsett is seen as a caring, empathetic, dedicated and driven teacher and leader and demonstrate his value to the educational establishment. “

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

I have given considerable weight in my consideration of sanction, to the contribution that Mr Tomsett has made to the profession.

The panel state clearly that it, “was very clear in its finding that it is not professionally acceptable for a teacher to enter into a romantic or sexual relationship with their former pupil shortly after that pupil has left school or college.”

The panel is also clear that there is considerable evidence of Mr Tomsett’s, “positive commitment and contribution to the wider educational sector.”

For all of these reasons, and the fact that the panel say that “ the nature and severity of the behaviour is at the less serious end of the possible spectrum”, I have concluded that not imposing a prohibition order is proportionate and in the public interest in this case.



Decision maker: Alan Meyrick

Date: 30 October 2018

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