



Teaching
Regulation
Agency

Robbie Brittain: Professional conduct panel outcome

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

December 2018

Contents

A. Introduction	3
B. Allegations	4
C. Preliminary applications	4
Documents	4
Witnesses	5
E. Decision and reasons	5
Findings of fact	6
Findings as to unacceptable professional conduct and/or conduct that may bring the profession into disrepute	19
Panel's recommendation to the Secretary of State	20
Decision and reasons on behalf of the Secretary of State	23

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

Teacher: Robbie Brittain
Teacher ref number: 1063990
Teacher date of birth: 6 September 1985
TRA reference: 15166
Date of determination: 20 December 2018
Former employer: Langley School, Norfolk

A. Introduction

A professional conduct panel (“the panel”) of the Teaching Regulation Agency (“the TRA”) convened between 23 and 26 October, and 19 to 20 December 2018 at Cheylesmore House, Quinton House, Coventry, CV1 2WT.

The panel members were Mr Melvyn Kershaw (teacher panellist), Mr Anthony Greenwood (lay panellist – in the chair), and Mrs Gail Goodman (teacher panellist).

The legal advisor was Mr Tom Walker (employed barrister, Blake Morgan LLP).

The presenting officer for the TRA was Ms Louisa Atkin.

Mr Brittain was present and was represented by Mr Nicolas Kennan, Counsel of Cornwall Street Chambers.

The hearing took place in public and was recorded.

B. Allegations

The panel considered the allegations set out in the Notice of Proceedings dated 11 April 2018.

It was alleged that Mr Brittain was guilty of unacceptable professional conduct and/or conduct that may bring the profession into disrepute in that whilst working as a Teacher at Langley School, Norfolk between 2012 and 2014 he:

1. Engaged in inappropriate sexual behaviour with Pupil A, including:
 - a) Touching Pupil A on her inner thigh on or around 29 October 2012;
 - b) Engaging in sexual penetration and/or sexual touching with Pupil A in the Mancroft Room;
 - c) Engaging in sexual penetration and/or sexual touching with Pupil A in the TV room;
 - d) Engaging in sexual penetration and/or sexual touching with Pupil A in the Lawrence Room.

2. The conduct, as may be found proven, at 1 above was sexually motivated.

Mr Brittain denied all the allegations.

C. Preliminary applications

Documents

In advance of the hearing, the panel received a bundle of documents which included:

Section 1: Chronology and anonymised pupil list – pages 2 to 4

Section 2: Notice of Proceedings and Response – pages 6 to 13

Section 3: Teaching Regulation Agency witness statements – pages 15 to 25

Section 4: Teaching Regulation Agency documents – pages 27 to 415

Section 5: Teacher documents – pages 417 to 461

In addition, the panel noted that there was a transcript of Mr Brittain's evidence which was missing from the Bundle. Enquiries were made and this missing information was requested. The panel received assurances from the TRA that this material would be made available forthwith, but due to unexpected delays it was not received until late on

24 October 2018. This was undesirable. The panel took the view that it was preferable for all available relevant material to be before it prior to commencing a hearing.

However, before the material had been received on 24 October 2018, both parties made an application to proceed given the fact that the material would be received in the course of the hearing and witnesses (both for the TRA and Mr Brittain) were ready to attend and give evidence.

The panel decided that in the circumstances it was in the interests of justice, and the interest of the pupil witness, to proceed in the expectation that the missing transcript would be received in the course of the hearing. This was subject to the caveat that witnesses may have needed to be recalled if the missing transcript revealed information which needed to be put to witnesses. In the event, this was not necessary.

The panel members confirmed that they had read all of the documents in advance of the hearing. When the missing transcript was received, the panel confirmed that they had read this before the case recommenced on 25 October 2018 (added to the Bundle at pages 462 to 472).

Witnesses

The panel heard oral evidence from:

Pupil A;

Witness A (character witness for Mr Brittain);

Witness B [Redacted]

Robbie Brittain.

E. Decision and reasons

The panel announced its decision and reasons as follows:

The panel has carefully considered the case before us 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 Brittain was a physics teacher at Langley School, joining in September 2011. This case relates to an allegation that Mr Brittain engaged in inappropriate and sexual behaviour with Pupil A to include touching her thigh in October 2012 and then subsequently on dates unknown up to 2014 engaged in sexual touching with Pupil A whilst delivering additional physics tuition to her. It is said that this conduct was sexually motivated. For this reason, it is alleged that the conduct of Mr Brittain amounts to

unacceptable professional conduct and/or conduct which may bring the profession into disrepute.

The chronology, which is not entirely agreed between Mr Brittain and the TRA as identified below, can be summarised as follows:

September 2011	Mr Brittain commences employment at Langley School.
March 2012	Pupil A begins attending Langley School as a [Redacted] student.
26 October 2012	Mr Brittain and Pupil A participate in a school trip to [Redacted]
29 October 2012	Pupil A's mother fails to pick her up on the return from [Redacted]. Mr Brittain drives Pupil A to meet her mother and is alleged to have touched Pupil A's inner thigh.
January 2013 – May 2014	Pupil A states that Mr Brittain started to give her additional physics tuition in this period.
October 2013	Mr Brittain states that he started giving Pupil A extra Physics lessons.
April 2014	Pupil A allegedly discloses information to Pupil B about her relationship with Mr Brittain.
July 2014	Pupil A discloses to another pupil, and then Individual A that she and Mr Brittain had engaged in sexual activity.
31 July 2014	Pupil A is video-interviewed by the police (Achieving Best Evidence "ABE" interview).
January 2016	Mr Brittain is acquitted at the Crown Court of criminal charges of sexual offences arising from Pupil A's allegations.
12 February 2016	Mr Brittain leaves Langley School having entered into a Settlement Agreement.

Findings of fact

Our findings of fact are as follows.

The panel notes that the matters giving rise to these proceedings were said to have occurred up to 5/6 years ago, which is a considerable period, and made allowances for this in relation to all witnesses giving evidence in the current proceedings. However, the panel also noted that both Pupil A and Mr Brittain had an opportunity to give an account in July and August 2014 (respectively) to the police. At the time when they gave their

first accounts of the matters in issue, the period which had elapsed was only a matter of months and was thus not significant.

The panel notes at the outset that the matters giving rise to these proceedings (Allegations 1 b) to d)) resulted in a criminal trial at the end of which Mr Brittain was acquitted (January 2016).

The panel received some of the evidence which was given in those proceedings, including transcripts of the oral evidence of Pupil A, Witness B, and Mr Brittain. There were also transcripts of the oral evidence given by another pupil (Pupil B) as to what was disclosed to her by Pupil A, and another member of staff at the school (Individual A) who gave ancillary evidence in relation to how the disclosure was made by Pupil A. The panel also had sight of extracts of the records of Mr Brittain's interview by the police under caution.

The panel also received a series of LADO Minutes which referred to comments made by other pupils – however there were no statements from those other pupils and thus the panel attached little weight to this evidence because such comments could not be tested in evidence. However, the panel has not had sight of all the evidence in the criminal case.

Whilst the panel has had sight of the transcripts of the bulk of what would seem to be the salient witness evidence, including the transcripts of evidence given by both Mr Brittain and Pupil A, it has not heard oral evidence from every witness giving evidence in that case.

The panel has not heard from any other pupil, or received statements from them. Nor indeed has it heard from Individual B, [Redacted], or Individual A, the teacher who received the initial disclosure from pupil A, albeit there were statements from both Individual A and Individual B.

The panel recognises that it is not bound by any conclusions reached in the criminal proceedings, and has not attached any weight to the outcome. The focus of the panel has been the evidence given in these proceedings, how that relates to the evidence before it which was given in the criminal proceedings, and more particularly whether there are any inconsistencies between what witnesses said previously in evidence compared to what was said in these proceedings.

The panel is mindful that a criminal trial applies a different standard of proof, namely beyond reasonable doubt, whereas this panel has to assess the evidence on the balance of probabilities. The panel has taken a rigorous approach to this and recognises that the burden of proving the case is firmly on the presenting officer to satisfy the panel that it is more likely than not that the allegations took place.

The panel notes that this is a case of real concern and complexity. The allegations are very serious. However, the evidence is, as was recognised by the parties in these proceedings, entirely binary.

Pupil A's account has been clear and, subject to the observations below, broadly consistent with the account given in the ABE interview (filmed and recorded on a DVD which the panel watched twice), and the account given at the Crown Court.

Pupil A's account was to the effect that Mr Brittain developed a connection with her during the school trip to [Redacted] in October 2012, and she regarded him as approachable and also supportive of her. Pupil A described herself as having a troubled family background and to that extent welcomed support and friendship from anyone who would provide it to her.

Following the school trip it is common ground that there was a mix up with collection arrangements and thus Mr Brittain agreed to give Pupil A a lift to meet her mother. In the course of this journey, it is common ground that Pupil A became distressed and talked to Mr Brittain about her relationship with her mother at which point it is alleged that Mr Brittain touched her inner thigh in a comforting gesture which Pupil A only subsequently regarded as inappropriate. Mr Brittain denies touching her thigh at all, but accepts that he attempted to comfort her in the course of the journey.

Pupil A then states that, some months following this incident, at the start of 2013, Mr Brittain started to give her additional physics tuition between 7.30-8pm every Tuesday or Wednesday at locations in the school boarding to include the TV Room, the Mancroft Room and the Lawrence Room – all common areas of the school open to staff and pupils alike.

Pupil A states that the sessions were suggested by Mr Brittain albeit she recognised that she needed them given her academic performance. Mr Brittain in contrast states that Pupil A approached his fiancé [Redacted] who in turn proposed that he, Mr Brittain, conduct the physics tuition with Pupil A. The panel notes that there are different perspectives on how the sessions were initiated and is unable to resolve this issue (in the absence of evidence from other sources including the fiancée beyond her general written account supportive of Mr Brittain's account at page 445) but is of the view that this dispute has no real bearing on the allegations.

Pupil A states that within a few weeks of the tuition starting, Mr Brittain engaged in sexual touching with her to include touching her vaginal area and also putting her hand on his private parts. Pupil A states that Mr Brittain would place a coat over both of them which was also used as a makeshift table but which also served the purpose of concealing this mutual touching. Pupil A stated that in the course of these interactions, semen or pre-ejaculate fluid came into contact with her and her text books.

The panel had forensic reports before it which confirmed that there were some traces of semen on Mr Brittain's coat. However, there was no evidence before the panel as to whether the coat could have tested positive as a result of other, incidental transfer. There was no trace of any of Mr Brittain's DNA on the text books which were tested, albeit there is no conclusive evidence that the text books tested were the exact books used in the tuition sessions, or that they had not been cleaned after any incident.

Pupil A disclosed to Pupil B that sexual activity was taking place between her and Mr Brittain in or around April 2014, and then went on a school trip to [Redacted] in the early summer of 2014 in the course of which she was warned that she would be disciplined upon her return to the UK as a result of her smoking. During conversations with other pupils on this school trip, Pupil A stated that she had been involved in sexual activity with Mr Brittain, and this in turn was disclosed to a staff member, Individual A, who took a brief statement from Pupil A. Upon return to the UK the disclosure was reported to the police who interviewed Pupil A and undertook a criminal investigation which culminated in the criminal trial referred to above.

The panel then turns to Mr Brittain. In complete contradiction of the above, Mr Brittain, a teacher who was highly regarded by colleagues, and a man of good character, denies every allegation strenuously, and attended this hearing to give evidence. Similarly, Mr Brittain denied the allegations when first interviewed by the police under caution and gave clear evidence at his trial which was consistent with the evidence he gave in the current proceedings.

Mr Brittain's case was that Pupil A was in effect fabricating the allegations, and that she was a troubled young woman prone to lying and exaggeration, motivated by a desire to be the centre of attention and to distract from her poor behaviour on the [Redacted] trip.

Furthermore, the case for Mr Brittain was to the effect that the allegations of activity in the common areas are entirely unbelievable for a number of reasons. First, on the basis that nobody considering such action would do so in areas where they would face detection or where there may be CCTV. Second, that the activity is said to have taken place regularly over many months and yet there is not a single example of corroborating evidence to support either the activity being witnessed, or any concern being raised about Mr Brittain and Pupil A being sat together, with a coat over them or otherwise. Third, that the rooms in question all had windows through which anyone walking past outside could observe.

Individual B gave evidence on behalf of Mr Brittain and he too gave evidence in these proceedings consistent with that given to the Crown Court. Individual B also stated that Mr Brittain was a man of good character. The panel also received evidence from Individual C, a friend of Mr Brittain's, who stated that Mr Brittain was a man of good character.

Individual C also gave evidence amounting to a collateral critique of Pupil A's credibility based on her claim that [Redacted] the panel did not find his [Individual C's] evidence in

this respect of particular assistance. Indeed, Pupil A gave an account of this incident which was plausible, albeit unusual. The panel is of the view that Pupil A's account of this event does not comport with it being a complete fabrication, and in any event the fact that she may potentially have exaggerated a holiday story has no bearing on these allegations. On this point, other collateral issues were raised about Pupil A allegedly fabricating stories about her inheritance and bra size, but when rigorously cross-examined on these points gave entirely credible accounts of what she had said and why.

The panel would also note that there was nothing about the demeanour or evidence of the witnesses who gave evidence in this case, including both Pupil A and Mr Brittain, which indicated clearly that their accounts were not plausible.

The panel thus finds itself tasked with resolving the respective factual matters in dispute faced with two binary narratives of what took place which have both been generally consistent since the matters were first investigated in July and August 2014.

The panel has sought assistance, as already indicated above, by turning to other sources of potential evidential value. However, there was little assistance from other sources. There is, for example, no direct corroboration of Pupil A's account in terms of anyone witnessing anything which may have made the allegations more or less likely to have occurred. There was indirect corroboration in the form of evidence given at the criminal trial by Pupil B that a disclosure of a sexual relationship with Mr Brittain was made by Pupil A in April 2014 (page 168).

Conversely, there is some corroboration of Mr Brittain's denial in the form of the evidence of Individual B. Individual B states that during the period in question he would circulate around the school buildings and at no point had he witnessed anything untoward between Pupil A and Mr Brittain. Furthermore, Individual B states that it would be 'inconceivable' that any such actions could have occurred given the fact that they are all said to have taken place at a time when pupils and other staff were in circulation and thus would have witnessed them.

On this point, Pupil A accepted at Crown Court, and in oral evidence, that 'anyone could have walked in' to any of the rooms where she met Mr Brittain. In the ABE interview, Pupil A refers to a number of other pupils whom she says had concerns about her relationship with Mr Brittain (transcript at pages 40 to 41) and yet there is no evidence before the panel in relation to those pupils.

Pupil A also named other pupils who she said were in the room at the same time as her and Mr Brittain, one of whom was said to have been ushered out of the room by Mr Brittain. Again, there is no evidence before the panel of any other concerns raised about Pupil A and Mr Brittain being together.

It is right to say that the panel had no additional evidence from any other witness before it to suggest that the activity took place, or indeed that any other witnesses had any

concern about the relationship and contact between Mr Brittain and Pupil A, which took place every week over a considerable period. Similarly, the only evidence the panel has of people witnessing them together in a tuition session and having no concerns, was from Individual B himself, who recalls seeing them together on one occasion. Individual B also adds that had he seen them together at any point with a coat over both their laps he would have intervened as this would clearly have been inappropriate.

The panel decided to first try and resolve the factual dispute relating to the time when the additional tuition commenced. It was agreed that the tuition had come to an end in or around April 2014.

Pupil A stated that the extra tuition sessions with Mr Brittain started in January 2013, but in her ABE interview this was said to be February 2013. Mr Brittain states that the extra sessions started in October 2013.

Individual B, [Redacted], was asked about this and stated that he would have envisaged the sessions starting in October 2013 as opposed to earlier in January 2013. Individual B stated that it would be more likely that extra tuition would commence after an indicator that help was required, such as after Pupil A's results at the end of the academic year in summer 2013, which would make the start of the extra tuition more likely in October 2013. Mr Brittain was also adamant that the tuition started in October 2013 and not before.

However, it is correct that Mr Brittain started his boarding house duties at the school in January 2013, and it may be that this has caused some confusion. It is regrettable that the school does not have a clear record of when individual tuition sessions between a member of staff and a pupil commenced, or indeed how they progressed and whether they were effective.

Whilst both accounts are coherent and plausible, the panel is unable to resolve this issue on the evidence before it. The panel finds that the tuition sessions started on a date unknown in 2013 and continued until in or around April 2014.

The panel then went on to consider a number of the other issues in the case, which both counsel for the TRA and Mr Brittain invited the panel to have regard to.

The evidence of Pupil A was consistent with the evidence which she gave at the ABE interview, and also before the Crown Court. This does not necessarily indicate that she must be telling the truth. However, it does confirm that there is no discernible point in her evidence which fundamentally undermines her credibility.

Pupil A has been vague on dates and her account was imprecise in terms of the chronology. However, it is notable that at no point during her ABE interview was there a concerted attempt by the police to elicit a clear and detailed, staged chronological account of precisely what occurred. However, she was asked to give her own account in her own words, and that is what she did. The ABE interview showed that. Whilst Pupil A

did not seem particularly distressed whilst giving her account, the essence of her evidence was that she had enjoyed her relationship with Mr Brittain and liked him as a person. However, it was clear that she appeared embarrassed in the ABE interview, and this embarrassment looked genuine and also at various points became acute embarrassment when she addressed details of the activity between her and Mr Brittain.

It is correct that Pupil A has also not always been precise around timings. For example, in her ABE interview and at the Crown Court she states that the tuition took place between 7.30-8pm. However, in the statement given to the TRA, which she had signed and was accompanied by a statement of truth, she stated that the tuition took place between 6-7 pm. However, in oral evidence she accepted that this was inaccurate and that the tuition had taken place as she had previously stated. When asked how this had come about she explained that she had only 'skim read' the statement before signing it.

Pupil A stated that she recognised this was an issue and she regretted this. Pupil A stated that she gave her statement to the TRA whilst she was in a field speaking on her mobile telephone and was not paying full attention. The panel is of the view that in such a serious case, involving such serious issues, it is regrettable that such a statement was taken at all in such circumstances.

The panel notes that Pupil A signed a statement of truth on this statement (dated 26 April 2017) and could be criticised for confirming inaccurate details in that statement. However, the fact that Pupil A said 6 to 7pm as opposed to 7 or 7.30 to 8pm as she subsequently stated in oral evidence is an error of timing alone which she readily corrected, and which was consistent with her earlier evidence. The panel accepts what Pupil A said by way of explanation and is of the view that this does not fundamentally undermine her overall credibility.

Pupil A also stated in oral evidence that she had recorded details of her relationship with Mr Brittain contemporaneously in a book of poetry and written "why do you want me when you have her?" and in writing this she was referring to Mr Brittain's fiancée. Pupil A stated that she thought her mother may have thrown this book away but she also added that it was possible that she may find it when she returned home. Pupil A stated that she had not disclosed this book previously because she wanted to keep something 'private'. Again, the panel regards this as somewhat concerning - that a witness would like to keep some details of a case she has already disclosed to herself because she wanted such details to remain private.

The panel took the view that Pupil A was vague and a little casual about this issue. This book, if available, would have some evidential value and the panel is surprised that such a book has not been made available. However, the panel also takes note of the age of Pupil A and does not regard her account of wanting to keep elements of her thoughts about the relationship with Mr Brittain private, as a matter which undermines her overall credibility about the essential nature of the complaint she has made. Indeed, the essence of Pupil A's evidence was that she was also confused about the relationship with Mr

Brittain and suffered some degree of introspection and distress in relation to this issue. The panel accepts Pupil A's explanation of why this book was not made available previously.

Pupil A was challenged on the basis that other pupils had reported that she had said slightly different things to them about her relationship with Mr Brittain. Pupil A was directed to the evidence of Pupil FF (in the criminal trial) with whom she is said to have had a conversation about Mr Brittain prior to this matter being reported to the police.

Pupil A in evidence did not accept that she had told Pupil FF that she and Mr Brittain had 'had everything apart from full intercourse' (page 176). Pupil A was very clear in her rebuttal of this, but in any event even had this comment been made it would represent more an inaccuracy or exaggeration than a fundamental incompatibility with the rest of Pupil A's evidence.

Pupil A was also challenged about stating that Mr Brittain's mother had gone to Paris whereas Mr Brittain denied that he had ever said this, and indeed his mother had never been there. The panel finds that Pupil A may have been mistaken about this, but that this does not have any bearing on her overall credibility, as it is precisely the sort of detail that is easily misunderstood or mistaken.

However, the panel assessed whether Pupil A demonstrated a willingness to exaggerate or fabricate allegations in this case, and could detect no such proclivity or even motivation. Indeed, Pupil A had opportunities to exaggerate and embellish the evidence relating to these allegations but she did not do so.

Pupil A did refer in her ABE interview to other pupils being fantasists and also stated her understanding that people may lie because they were 'bored'. In the panel's view this is a response which requires consideration as it indicates that Pupil A is prepared to acknowledge that people may fabricate an account for 'effect'.

Similarly, Pupil A in her ABE interview also referred to her apprehension that, given her disclosure, other pupils may seek to fabricate allegations against Mr Brittain. Once again, the panel finds this to be indicative that Pupil A inhabited a world in which fabrication, fantasy and exaggeration were issues she understood and appreciated.

Again, the panel has considered this very carefully and assessed the veracity of her evidence – its consistency and its detail - to assess whether there is any indication of fantasy or exaggeration. The panel is of the view that Pupil A's evidence is consistent with her having positive thoughts of Mr Brittain and her concern about the impact of her relationship on the relationship Mr Brittain had with his fiancée. The panel could detect no motivation to fabricate allegations or, importantly, persist in such allegations when giving evidence on oath many years later and long after she had left the school.

Pupil A also stated for the first time in evidence [Redacted]. However, there was no medical evidence before the panel, [Redacted]. The panel reminded itself that it was able

to assess the DVD of the ABE interview close in time to when the allegations are said to have occurred, and was able to question the evidence of Pupil A in these proceedings (and witness her cross-examination).

The panel regarded Pupil A as articulate and intelligent in evidence. Pupil A gave an account of the conduct described which was clear and very credible. When asked to provide detail, she was readily able to do so, and furthermore such detail extended to her emotions and feelings at the time.

The panel had particular regard to the fact that, when given an opportunity to provide more detail she did not take the opportunity to criticise Mr Brittain further – instead often giving an account which was favourable of his character. Indeed, the essence of her evidence was that Mr Brittain was a nice person who had made a mistake, and that she could forgive him.

Pupil A also spoke about Mr Brittain's concern about concealing their interactions by stating that he asked her: "please don't tell anyone, please don't tell anyone" and that if she did he would be "screwed". These are details that would be difficult to invent unless someone was putting together an incredibly sophisticated fabrication. Pupil A also stated that Mr Brittain said to her on occasions: 'if you don't like it then I'll stop'. Again this has the ring of truth.

There is nothing to suggest that this pupil was engaged in fabrication. Pupil A initially disclosed the activity to a friend rather than to the staff at the school. Pupil A did not apprehend the consequences of her disclosure to her friend (and then to friends whilst on the [Redacted] trip) and very quickly found herself being interviewed by staff and in turn the police.

Her ABE interview is significant. It took place not long after the disclosure, and only several months after the allegations are said to have occurred. Pupil A's account, whilst vague on some dates and matters, and rambling in others in as far as Pupil A is given to digress and present narratives on irrelevant matters, is clear in relation to the essential issues giving rise to these allegations.

The panel has proceeded to consider the evidence of Mr Brittain, starting with the police interview. Mr Brittain was challenged by the presenting officer to the effect that he did not go into much detail about Pupil A when first questioned, and later expanded and provided much more detail when questioned and that this indicates he was not forthcoming with the fullness of his evidence. The panel again takes the view that Mr Brittain should have provided a more detailed account of events when first questioned, but is not of the view that this fundamentally undermines his credibility in relation to these allegations.

Mr Brittain was also challenged on the basis that he lied to the police about his other relationships. The panel is mindful that just because someone is not forthcoming about issue X this does not mean necessarily that they are lying about issue Y. The panel

appreciates that there may be a reluctance to disclose matters of one's personal life which do not directly relate to the police investigation of his relationship with Pupil A.

However, whatever the explanation, Mr Brittain did not provide an accurate account of everything he was asked about by the police. The panel takes a critical view of this. Whilst accepting that Mr Brittain may not have understood that the issue of other relationships was relevant to the police investigation, he was a teacher in a school being investigated in relation to an inappropriate sexual relationship with a pupil. Mr Brittain was not under any obligation to answer questions but instead chose to give a misleading account to hide his embarrassment at having engaged in other relationships beyond those with his then fiancée. Whilst understandable, Mr Brittain can be criticised for this conduct. The panel is of the view that this does detract from his credibility to the extent set out below.

The panel has had the opportunity to consider and assess Mr Brittain's demeanour and is satisfied that his account has been clear and, on the face of it, plausible throughout.

The panel is satisfied that details and issues concerning Mr Brittain's romantic life and other relationships he has had does not indicate that he has a propensity to engage in unlawful sexual behaviour. There is no clear or reliable evidence that Mr Brittain has a propensity to engage in such behaviour. There is on the contrary positive evidence of his character and teaching ability from his colleagues.

However, there is evidence in the form of photographs of Pupil A with Mr Brittain, which is an indication that he was given to lapses of judgement involving the blurring of boundaries with pupils – lapses incidentally which Mr Brittain fully accepted in his evidence before the panel.

The panel notes that there was no escalation of the sexual activity alleged as between Mr Brittain and Pupil A. For example there is no evidence of any actual attempt to go to private rooms, or contact one another on social media. [Redacted]

There are a number of areas of investigation which could have been considered and which may have provided valuable corroboration of either Mr Brittain or Pupil A's account.

The panel has not been particularly assisted by the nature of the other evidence in this case, which has ultimately resulted in a need to focus on the evidence of Pupil A and Mr Brittain, and the binary dispute between these two accounts.

As mentioned above, an oddity in the case relates to the complete absence of any corroboration of Pupil A's account from any other source. For example even on Pupil A's account a number of pupils were in circulation whilst she was with Mr Brittain and yet there is no evidence that at any point any concern was raised by anyone about her contact with Mr Brittain.

The issue of the coat is of some concern, and another oddity in the case. Mr Brittain's account of using the coat as a table is plausible. Pupil A states that this was used as a table and also to disguise the sexual contact between them as it was draped over both of them. However, the panel is of the view that any indication that a coat was being draped over both of them would have caused alarm by pupils and/or staff and therefore would not actually represent concealment of inappropriate behaviour. Indeed, Individual B was clear that had he noted a coat draped over the two of them he would have regarded this as inappropriate and intervened accordingly.

The panel has considered carefully the evidence of Individual B, who was frank and credible in evidence that he believed it was highly unlikely that the conduct could have occurred given the public nature of the rooms, particularly when some of the rooms were understood by Mr Brittain to have CCTV (TV room). However, the panel also heard evidence (which it accepted) that visibility of all areas within the room was not always perfect, and the rooms were large. Individual B's patrols were approximately hourly, and the circulation of pupils was random and irregular rather than constant.

The sexual activity described by Pupil A was also intermittent and of short duration. Whilst the panel accepts that this activity would have posed a high risk of detection in the circumstances, it does not regard this context as conclusive evidence that nothing could have happened and that it would not have been possible without witnesses.

The panel is not persuaded that this context (and the absence of direct corroboration) represents a bar to the allegations having taken place. Without any criticism of Individual B, whose views were well expressed, the panel is of the view that it was in fact conceivable, and indeed plausible, that the activity could have occurred as described without being witnessed.

Having considered corroboration and collateral matters and drawn the limited assistance highlighted above, the panel has returned to consider the evidence of Mr Brittain and Pupil A.

Whilst there was nothing about Mr Brittain which manifestly lacked credibility in these proceedings, he had shown a willingness to mislead investigators when first questioned about the events in general terms. Conversely the panel is of the view that there was no evidence that Pupil A had at any point sought to mislead or significantly exaggerate her account of these events to anyone. More particularly though, the panel is of the view that the account given by Pupil A was entirely convincing and has the ring of truth to it. Her account was both compelling and credible, and for that reason it prefers her account to that of Mr Brittain in relation to the factual matters relevant to the allegations.

The panel has found the following particulars of the allegations against you proven, to the extent set out below, for these reasons:

You are guilty of unacceptable professional conduct and/or conduct that may bring the profession into disrepute in that whilst working as a Teacher at Langley School, Norfolk between 2012 and 2014 you:

1) Engaged in inappropriate sexual behaviour with Pupil A, including:

a) Touching Pupil A on her inner thigh on or around 29 October 2012;

The panel listened carefully to the evidence in this case. It was agreed between Mr Brittain and Pupil A that he gave her a lift after the school trip to enable her mother to collect her. Mr Brittain states that he gave Pupil A a lift to the station, but Pupil A was less clear about the location in question. It was also agreed that in the course of the car journey they discussed issues such as their family backgrounds including relationships with parents. Pupil A states that Mr Brittain told her that his mother had left him alone for a period and gone to Paris, whereas Mr Brittain refutes this and says that he had never said that and nor indeed had his mother ever been to Paris. The panel noted the email from Mr Brittain's mother but regarded this collateral issue as having no bearing either way on this allegation.

Pupil A also gave a clear account of Mr Brittain comforting her whilst she was upset and describes Mr Brittain touching her leg, on the inner thigh area, in a comforting manner. Pupil A described how she was not concerned about this at the time but in retrospect regarded this as inappropriate.

Mr Brittain denied this allegation and stated that he would not behave in this way. However, he did state that at one point he touched Pupil A's shoulder in a comforting manner. The panel notes that Mr Brittain was driving Pupil A at the point when the allegation is said to have occurred. At no point has Pupil A sought to embellish her account, and her account has the ring of truth.

The panel is of the view that Mr Brittan did touch her leg, on the inner thigh on or around 29 October 2012, but even on Pupil A's account this was not clearly sexualised behaviour. The panel is of the view that it was inappropriate, but the charge is inappropriate sexual behaviour.

The panel finds this charge not proved on the basis that there is no evidence that the touching of her inner thigh was clearly sexual in action or intent. The panel has reflected on this in light of the findings under the rest of allegation 1 and is of the view that there is no evidence to link this conduct (the touching of her inner thigh) with any subsequent conduct such as to warrant a finding on the balance of probabilities that this was a preliminary incident of sexually inappropriate behaviour pursuant to subsequent actions.

b) Engaging in sexual penetration and/or sexual touching with Pupil A in the Mancroft Room;

- c) Engaging in sexual penetration and/or sexual touching with Pupil A in the TV room;**
- d) Engaging in sexual penetration and/or sexual touching with Pupil A in the Lawrence Room.**

The panel has resolved to consider these particulars of the allegation together. Pupil A stated that the sexual activity occurred on diverse dates in each of these locations. There was nothing about any of the locations that particularly distinguished one from the other. Each were communal areas into which other pupils could have and indeed did enter.

However, the panel was persuaded by the clarity of Pupil A's evidence that sexual activity in the form of sexual touching took place and that this related to both Mr Brittain touching her vaginal area, and her masturbating Mr Brittain.

The panel notes that when first asked about digital penetration, in the ABE interview, Pupil A stated that she 'could not remember' and was subsequently less clear about whether actual digital penetration had taken place as opposed to intimate touching of her vaginal area. For example at the criminal trial she stated that Mr Brittain was 'trying' to digitally penetrate her (page 140) and was not clear that this action had fully taken place.

However, Pupil A was completely clear about both the fact of sexual touching of her by Mr Brittain, and also of her touching his private areas. The panel is thus satisfied that this allegation is proven on the balance of probabilities in relation to each of b) to d) on the basis that Mr Brittain engaged in sexual touching of Pupil A in each of the above locations on dates between 2013 and 2014.

There was also an allegation by Pupil A that Mr Brittain had attempted to take her into a toilet and engaged in sexual touching. Mr Brittain denied this. However this is not a separate allegation. The panel is not of the view that resolving this factual dispute has any bearing on the other allegations, and there was nothing about the factual background to this complaint which undermined the credibility of Pupil A's evidence, or supported Mr Brittain's account, with regards to the matters alleged at Allegations 1 b) to d). Again, Pupil A has always given a broadly consistent account of this event, and Mr Brittain has always denied it.

2. Your conduct as may be found proven at allegation 1 above was sexually motivated.

The panel has gone on to consider whether those particulars and elements of allegations 1 found proven (b), c) and d)) amount to conduct which was sexually motivated.

The panel has received legal advice in relation to how to approach the issue as to whether conduct can be described as sexually motivated and has accepted that advice.

The panel has assessed in detail the circumstances in which the conduct took place to consider whether, on the balance of probabilities, a sexual motivation on the part of Mr Brittain can be inferred in as far as it could be said that his actions were motivated by an intention to obtain sexual gratification.

The panel is satisfied that Mr Brittain's conduct at allegations 1 b) to d) was clearly sexual activity and this was motivated by his desire for sexual gratification and was therefore sexually motivated.

The panel is satisfied that allegation 2 is found proven to this extent.

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

Having found a number of the allegations to have been proven, the panel has gone on to consider whether the facts of those proven allegations amount to unacceptable professional conduct and/or conduct that may bring the profession into disrepute.

In doing so, the panel has had regard to the document Teacher Misconduct: The Prohibition of Teachers, which we refer to as “the Advice”.

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

The panel has also considered whether Mr Brittain's conduct displayed behaviours associated with any of the offences listed on pages 10 and 11 of the Advice. The panel is satisfied that Mr Brittain has involved himself in unacceptable professional conduct which involves sexual misconduct, and it can also be said that this behaviour is directly

associated with unlawful sexual activity. In consequence, the panel has found that this behaviour, listed on pages 10 and 11 of the Advice, is relevant.

Such behaviour by Mr Brittain represents a departure from the statutory frameworks within which teachers are required to work relating to safeguarding and consideration of the best interests and welfare of pupils.

This conduct clearly affects the way Mr Brittain fulfils his teaching role and could lead to pupils being exposed to or influenced by his behaviour in a harmful way. The panel is satisfied that Mr Brittain's conduct in relation to the allegations found proven amounts to 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 Brittain's actions at allegations 1 and 2 constitute conduct that may bring the profession into disrepute.

Panel's recommendation to the Secretary of State

Given the panel's findings in respect of unacceptable professional conduct and conduct that may bring the profession into disrepute, it is necessary for the panel to go on to consider whether it would be appropriate to recommend the imposition of a prohibition order by the Secretary of State.

In considering whether to recommend to the Secretary of State that a prohibition order should be made, the panel has to consider whether it is an appropriate and proportionate measure, and whether it is in the public interest to do so. Prohibition orders should not be given in order to be punitive, or to show that blame has been apportioned, although they are likely to have punitive effect.

The panel has considered the particular public interest considerations set out in the Advice and having done so has found a number of them to be relevant in this case.

In light of the panel's findings against Mr Brittain which involved his engagement in inappropriate sexual activity with Pupil A, there is a strong public interest consideration in respect of the protection of pupils, the maintenance of public confidence in the profession and declaring and upholding proper standards of conduct.

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

In view of the clear public interest considerations that were present, the panel considered carefully whether or not it would be proportionate to impose a prohibition order taking into account the effect that this would have on Mr Brittain.

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 Brittain.

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;
- sexual misconduct, eg 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 Brittain had a previously good record as a teacher. However, Mr Brittain's conduct was deliberate and there was no evidence that he was acting under duress.

Mr Brittain has contested this case, and not made any admissions of his conduct and the panel is thus not in a position to assess whether Mr Brittain has or is capable of developing insight into his behaviour. Mr Brittain presented no additional mitigation material or character references beyond the numerous references and character testimonies within the Bundle (pages 448 to 454) and the oral evidence of Individual A.

The panel is of the view that there is a risk of the conduct in question being repeated and pupils being exposed to a risk of harm.

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, notwithstanding the fact that Mr Brittain was a man of good character. Recommending that publication of adverse findings is sufficient in the case would unacceptably compromise the public interest considerations present in this case, despite the severity of consequences for the teacher of prohibition.

The panel is of the view that prohibition is both proportionate and appropriate. The panel has decided that the public interest considerations outweigh the interests of Mr Brittain, and this 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 it to recommend that a review period of the order should be considered. The panel were mindful that the Advice advises 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 a review period being recommended. One of these behaviours includes serious sexual misconduct, eg where the act was sexually motivated and resulted in or had the potential to result in, harm to a person or persons, particularly where the individual has used their professional position to influence or exploit a person or persons.

The panel has found that Mr Brittain has been responsible for sexually motivated behaviour which had an adverse impact on the welfare of Pupil A. Mr Brittain did not demonstrate any insight into his behaviour.

The panel felt the findings indicated a situation in which a review period would not be appropriate and as such decided that it would be proportionate in all the circumstances for the prohibition order to be recommended without provision for a review period.

Decision and reasons on behalf of the Secretary of State

I have given very careful consideration to this case and to the recommendation of the panel in respect of both sanction and review period.

In considering this case, I have also given very careful attention to the Advice that the Secretary of State has published concerning the prohibition of teachers.

In this case, the panel has found some of the allegations proven and found that those proven facts amount to unacceptable professional conduct and conduct that may bring the profession into disrepute. In this case, the panel has found allegation 1 a) not proven. I have therefore put those matters entirely from my mind.

The panel has made a recommendation to the Secretary of State that Mr Brittain should be the subject of a prohibition order, with no provision for a review period.

In particular, the panel has found that Mr Brittain 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 an understanding of, and always act within, the statutory frameworks which set out their professional duties and responsibilities.

The panel has also set out that it "is satisfied that the conduct of Mr Brittain amounts to misconduct of a serious nature which fell significantly short of the standards expected of the profession."

The panel has also considered whether Mr Brittain's conduct displayed behaviours associated with any of the offences listed on pages 10 and 11 of the Advice. The panel has said that it "is satisfied that Mr Brittain has involved himself in unacceptable professional conduct which involves sexual misconduct, and it can also be said that this behaviour is directly associated with unlawful sexual activity. In consequence, the panel has found that this behaviour, listed on pages 10 and 11 of the Advice, is relevant."

The findings of misconduct in this case 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 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 Brittain, and the impact that will have on him, is proportionate and in the public interest.

In this case, I have considered the extent to which a prohibition order would protect children. The panel has observed that in its view the, “conduct clearly affects the way Mr Brittain fulfils his teaching role and could lead to pupils being exposed to or influenced by his behaviour in a harmful way.” 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, which the panel sets out as follows, “Mr Brittain did not demonstrate any insight into his behaviour.”

In my judgement, the lack of insight means that there is some risk of the repetition of this behaviour and this puts at risk 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 that 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.” 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 the public might regard a failure to impose a prohibition order 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 Brittain himself. The panel observe, “Mr Brittain had a previously good record as a teacher. However, Mr Brittain's conduct was deliberate and there was no evidence that he was acting under duress.”

The panel also say, “Mr Brittain has contested this case, and not made any admissions of his conduct and the panel is thus not in a position to assess whether Mr Brittain has or is

capable of developing insight into his behaviour. Mr Brittain presented no additional mitigation material or character references beyond the numerous references and character testimonies within the Bundle (pages 448 to 454) and the oral evidence of Individual A.”

A prohibition order would prevent Mr Brittain from teaching and 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 and the serious misconduct found.

I have given less weight in my consideration of sanction therefore, to the contribution that Mr Brittain 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 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 intended aims of a prohibition order.

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

I have considered the panel’s comments “The panel has found that Mr Brittain has been responsible for sexually motivated behaviour which had an adverse impact on the welfare of Pupil A. Mr Brittain did not demonstrate any insight into his behaviour.”

I have considered whether allowing for no review period reflects the seriousness of the findings and is proportionate to achieve the aim of maintaining public confidence in the profession. In this case, three factors mean that a no review period is necessary to achieve the aim of maintaining public confidence in the profession. These elements are the sexual misconduct found, the impact on the welfare of Pupil A and the lack of insight.

I consider therefore that allowing for no review period is necessary to maintain public confidence and is proportionate and in the public interest.

This means that Mr Robbie Brittain is prohibited from teaching indefinitely and cannot teach in any school, sixth form college, relevant youth accommodation or children’s home in England. Furthermore, in view of the seriousness of the allegations found proved against him, I have decided that Mr Robbie Brittain shall not be entitled to apply for restoration of his eligibility to teach.

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

Mr Robbie Brittain 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.

Al C M

Decision maker: Alan Meyrick

Date: 21 December 2018

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