



Teaching
Regulation
Agency

Mr Jonathan Whitlow: Professional conduct panel outcome

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

February 2020

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

Teacher:	Mr Jonathan Whitlow
Teacher ref number:	7741170
Teacher date of birth:	28 October 1953
TRA reference:	17602
Date of determination:	5 February 2020
Former employer:	EF Academy, Oxford (the “school”)

Introduction

A professional conduct panel (“the panel”) of the Teaching Regulation Agency (“the TRA”) convened on 3 February 2020 to 5 February 2020 at Cheylesmore House, 5 Quinton Road, Coventry, CV1 2WT, to consider the case of Mr Whitlow.

The panel members were Mr Ryan Wilson (teacher panellist – in the chair), Mr Phillip Riggon (teacher panellist) and Dr Angela Brown (lay panellist).

The legal adviser to the panel was Ms Surekha Gollapudi of Eversheds Sutherland (International) LLP solicitors.

The presenting officer for the TRA was Mr Miran Uddin of Counsel.

Mr Jonathan Whitlow was present and was represented by Mr Russell Holland of Counsel.

The hearing took place in public and was recorded.

Allegations

The panel considered the allegations set out in the notice of proceedings dated 7 November 2019.

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

1. met with Pupil A and Pupil B in The White Horse public house, Broad Street, Oxford;
2. stroked Pupil A's leg;
3. touched Pupil A's thigh;
4. touched Pupil A's bottom;
5. hugged Pupil A;
6. attempted to kiss Pupil A on the mouth;
7. hugged Pupil B
8. attempted to kiss Pupil B on the mouth;
9. by his conduct in the foregoing paragraphs he failed to observe a proper boundary appropriate to a teacher's professional position.
10. His conduct set out in the following paragraphs was sexually motivated;
 - a. paragraph 2
 - b. paragraph 3
 - c. paragraph 4
 - d. paragraph 5
 - e. paragraph 6
 - f. paragraph 7
 - g. paragraph 8

The teacher accepts the fact of allegation 1. The teacher denies the remaining allegations.

The teacher denies that the admitted fact amounts to unacceptable professional conduct and/or conduct that may bring the profession into disrepute.

Preliminary applications

There were no preliminary applications.

Summary of evidence

Documents

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

Section 1: Chronology and identification key and list of roles – pages 1 to 2

Section 2: Notice of proceedings – pages 3 to 8

Section 3: Teaching Regulation Agency witness statements – pages 9 to 21

Section 4: Teaching Regulation Agency documents – pages 21 to 54

Section 5: Teacher documents – pages 55 to 108

In addition, the panel agreed to accept the following:

Safeguarding policy – pages 109 to 125

The panel members confirmed that they had read all of the documents within the bundle, in advance of the hearing and the additional documents that the panel decided to admit.

Witnesses

The panel heard oral evidence from Pupil A, Pupil B and Witness A of the school.

The teacher gave evidence on his own behalf.

Decision and reasons

The panel announced its decision and reasons as follows:

The panel carefully considered the case before it and reached a decision.

Mr Whitlow was employed as a teacher of Biology at the school from September 2014. On 11 May 2017, it is alleged that Mr Whitlow met Pupil A (aged 20) and Pupil B (aged 17) at a pub following their last exam at the school. It is further alleged that he touched both pupils with sexual motivation, and that this amounted to a failure to observe proper boundaries.

Findings of fact

The findings of fact are as follows:

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

1. met with Pupil A and Pupil B in The White Horse public house, Broad Street, Oxford

The teacher accepted the fact of this allegation.

The panel heard oral evidence from both Pupil A and Pupil B that there was a classroom discussion towards the end of the academic year during which Mr Whitlow and the students discussed having a final meeting once everyone's exams had finished.

Pupil A and Pupil B stated they were both disappointed to miss this final meeting, as it would occur after they had already left the school. Both Pupil A and Pupil B held Mr Whitlow in high regard, and Pupil A commented that he was her favourite teacher.

There were differing accounts as to who suggested a separate meeting to take place with only Pupil A, Pupil B and Mr Whitlow. Mr Whitlow was clear in his evidence that the suggestion to meet separately came from the pupils, and that he left it to them to decide where they should meet. He did however accept that he agreed to meet Pupil A and Pupil B at The White Horse public house at 8pm.

Mr Whitlow went on to state that he had some reservations about the meeting, but that he felt he could not change his mind out of, "*politeness*". He also stated that he knew now that he, "*shouldn't have agreed to go out in the first place.*" Mr Whitlow provided some evidence as to his [REDACTED] at the time of the incident, and that this may have contributed to his poor decision making in accepting the invitation.

The panel found this allegation proven on the balance of probabilities.

2. stroked Pupil A's leg

3. touched Pupil A's thigh

4. touched Pupil A's bottom

5. hugged Pupil A

6. attempted to kiss Pupil A on the mouth

7. hugged Pupil B

8. attempted to kiss Pupil B on the mouth

The teacher denied allegations 2, 4, 6 and 8 in their entirety.

In respect of allegation 3, the teacher stated that his hand briefly touched Pupil A's thigh whilst he was getting up from his seat, but that this was not intentional. In respect of allegations 5 and 7, the teacher stated that Pupil A and Pupil B instigated hugs with him. The teacher therefore denied the fact of allegations 3, 5 and 7 in that he did not intentionally touch Pupil A's thigh and that he did not attempt to hug Pupils A and B.

The panel carefully considered the evidence of Pupil A, Pupil B and the teacher.

In respect of Pupil A, she was clear in her recollection that after finding Mr Whitlow inside the pub, she and Pupil B went to sit with him. Pupil A stated that she sat next to Mr Whitlow whilst Pupil B sat beside Pupil A.

Pupil A was not clear on how long after she sat down that she first felt Mr Whitlow's hand on her thigh, but was able to demonstrate where his hand was placed. She also confirmed that he stroked her thigh with his thumb and this action occurred over a period of time. Pupil A stated that she was shocked by this, and once she realised it was not accidental, she pinched Pupil B to indicate something was wrong. She went on to say that she pinched Pupil B more than once before Pupil B noticed what was happening.

Pupil B corroborated this account.

Both pupils stated they felt uncomfortable and wanted to leave. On leaving the pub, Pupil A and Pupil B stated that Mr Whitlow attempted to hug Pupil A, and tried to kiss her on the mouth. During this action, he also touched Pupil A's bottom. He then hugged Pupil B and attempted to kiss her on the mouth. They then parted ways further up the road from the pub, and Mr Whitlow hugged them again.

Mr Whitlow's account of the evening was that he arrived at the pub at approximately 8:05pm. Pupil A and Pupil B arrived later, at approximately 8:35pm. Mr Whitlow stated that both pupils were very excitable and hugged him when they arrived. Mr Whitlow confirmed this occurred in front of the bar staff who were working that evening.

Mr Whitlow agreed that Pupil A sat next to him, whilst Pupil B sat opposite them. He stated in oral evidence that after speaking to Pupils A and B about Pupil A's previous trip to [redacted] and the pupils' future plans, Pupil A began to ask him personal questions. Mr Whitlow stated that he felt uncomfortable at this point and as they had all finished their drinks, put his hands on his knees and started to stand up to leave. During this motion, Mr Whitlow stated that Pupil A moved her leg to touch his leg, and as a result his hand came into contact with her knee.

Mr Whitlow denied that he hugged or attempted to kiss either pupil outside the pub. Mr Whitlow stated that there would have been CCTV footage available to corroborate his account, had this been investigated at the time.

Mr Whitlow went on to state that he did "air kiss" the two pupils when saying goodbye further away from the pub.

The panel preferred the evidence of Pupil A and Pupil B. The panel found Pupil A and B to be mature and credible in their account. The panel was satisfied that any minor inconsistencies in their accounts were natural, given the length of time which had passed since the alleged facts occurred. The panel particularly noted that Mr Whitlow was a favourite teacher of the two pupils. Both pupils stated he was a very good teacher and

they did not have any reason to embellish or bolster their account of the evening. The panel further considered that both pupils were sufficiently concerned about the meeting to report it to the school shortly after it occurred later that evening, even though Pupil A was reluctant to do so.

The panel contrasted this with Mr Whitlow's evidence which whilst also affected by the passage of time, was not credible. For example on the balance of probabilities, the panel did not accept his explanation that his hand touched Pupil A's thigh whilst he was attempting to stand up and found this was not plausible. The panel further did not accept that Mr Whitlow attempted to stop the pupils from hugging him whilst saying goodbye to the pupils, as he went on to say that he "air kissed them" at the same time. The panel went on to consider Mr Whitlow's oral evidence which contained new evidence which had not been raised previously within the school investigation or within these proceedings, and found this showed a lack of consistency in his account.

The panel found allegations 2, 3, 4, 5, 6, 7, and 8 proven on the balance of probabilities.

9. by your conduct in the foregoing paragraphs you failed to observe a proper boundary appropriate to a teacher's professional position.

The teacher denied this allegation.

The panel noted that Mr Whitlow accepted that he met Pupil A and Pupil B in a pub immediately following their final exam at the school. The panel found this accepted conduct to amount to a failure to observe a proper boundary appropriate to a teacher's professional position. Mr Whitlow was an experienced teacher and should have known not to arrange to meet pupils alone at a local pub on the day of their last exam without the prior authorisation and knowledge of the school.

The panel further considered that by touching Pupil A and attempting to kiss Pupil A and Pupil B whilst hugging them, Mr Whitlow further failed to observe proper boundaries with Pupil A and Pupil B.

The panel accepted Mr Whitlow's evidence that he was suffering from a [redacted] that may have affected his decision making at the time. However the panel did not consider that this was relevant to the question of whether proper boundaries had been maintained with Pupil A and Pupil B.

The panel found this allegation proven on the balance of probabilities.

10. Your conduct set out in the following paragraphs was sexually motivated;

a. paragraph 2

b. paragraph 3

c. paragraph 4

d. paragraph 5

e. paragraph 6

f. paragraph 7

g. paragraph 8

As with all findings of fact, the panel carefully considered this question applying the balance of probabilities. The panel considered whether, on the balance of probabilities, reasonable persons would think that the actions found proven could be sexual. The panel then considered whether, in all the circumstances of the conduct in the case, that the teacher's purpose of such actions was sexual.

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

The panel noted the evidence of Pupil A and Pupil B that prior to the incident Mr Whitlow was a favourite teacher of both pupils. However both Pupil A and Pupil B felt very shocked and uncomfortable as a result of Mr Whitlow's behaviour that evening and were sufficiently concerned to speak to the school shortly after the incident. Pupil A stated that she was concerned because someone who had taught her shortly before the meeting had behaved in this way.

The panel considered that allegations 2 to 8 were proven. On the balance of probabilities, the panel went on to find that these actions were sexually motivated.

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

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

In doing so, the panel had regard to the document Teacher Misconduct: The Prohibition of Teachers, which is referred to as "the Advice".

The panel was satisfied that the conduct of Mr Whitlow, in relation to the facts found proved, involved breaches of the Teachers' Standards. The panel considered that, by reference to Part 2, Mr Whitlow was in breach of the following standards:

- Teachers uphold public trust in the profession and maintain high standards of ethics and behaviour, within and outside school, by

- treating pupils with dignity, building relationships rooted in mutual respect, and at all times observing proper boundaries appropriate to a teacher's professional position
 - having regard for the need to safeguard pupils' well-being, in accordance with statutory provisions
- Teachers must have proper and professional regard for the ethos, policies and practices of the school in which they teach
 - Teachers must have an understanding of, and always act within, the statutory frameworks which set out their professional duties and responsibilities.

The panel was satisfied that the conduct of Mr Whitlow amounted to misconduct of a serious nature which fell significantly short of the standards expected of the profession.

The panel also considered whether Mr Whitlow's conduct displayed behaviours associated with any of the offences listed on pages 10 and 11 of the Advice. The panel found that the offence of sexual activity was relevant.

The Advice indicates that where behaviours associated with such an offence exist, a panel is likely to conclude that an individual's conduct would amount to unacceptable professional conduct.

The panel took into account the way the teaching profession is viewed by others and considered the influence that teachers may have on pupils, parents and others in the community. The panel also took account of the uniquely influential role that teachers can hold in pupils' lives and the fact that pupils must be able to view teachers as role models in the way that they behave.

The findings of misconduct are serious, and the conduct displayed would be likely to have a negative impact on the individual's status as a teacher, potentially damaging the public perception.

Having found the facts of particulars 1, 2, 3, 4, 5, 6, 7, 8, 9, and 10 proved, the panel further found that Mr Whitlow's conduct amounted to both unacceptable professional conduct and conduct that may bring the profession into disrepute.

Panel's recommendation to the Secretary of State

Given the panel's findings in respect of unacceptable professional conduct and conduct that may bring the profession into disrepute, it was 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 had to consider whether it would be an appropriate and

proportionate measure, and whether it would be 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 had regard to the particular public interest considerations set out in the Advice and, having done so, found a number of them to be relevant in this case, namely, the protection of pupils, the maintenance of public confidence in the profession, declaring and upholding proper standards of conduct and the interest of retaining the teacher in the profession.

The panel's findings against Mr Whitlow involved meeting two pupils off school grounds and inappropriate contact with both pupils.

There was a strong public interest consideration in respect of the protection of pupils, given the finding of inappropriate sexually motivated contact with two pupils following their last exam at the school.

Similarly, the panel considered that public confidence in the profession could be seriously weakened if conduct such as that found against Mr Whitlow were not treated with the utmost seriousness when regulating the conduct of the profession.

The panel was of the view that a strong public interest consideration in declaring proper standards of conduct in the profession was also present as the conduct found against Mr Whitlow was outside that which could reasonably be tolerated.

The panel considered whether there was a strong public interest consideration in retaining the teacher in the profession, since no doubt had been cast upon his abilities as an educator and he is able to make a valuable contribution to the profession.

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

In carrying out the balancing exercise, the panel had regard to the public interest considerations both in favour of, and against, prohibition as well as the interests of Mr Whitlow. 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 proved. In the list of such behaviours, those that were relevant in this case were:

- serious departure from the personal and professional conduct elements of the Teachers' Standards
- misconduct seriously affecting the education and/or well-being of pupils
- abuse of position or trust (particularly involving vulnerable pupils) or violation of the rights of pupils

- sexual misconduct, for example, 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 some of the behaviour found proved in this case indicated that a prohibition order would be appropriate, the panel went on to consider the mitigating factors. Mitigating factors may indicate that a prohibition order would not be appropriate or proportionate.

The panel found that Mr Whitlow had a previous good history, encompassing his career of over 40 years. The panel accepted that the incident was wholly out of character for Mr Whitlow, and it was a one-off occurrence. The panel accepted the [redacted] evidence put forward by Mr Whitlow. The panel found that there was a possibility that his judgement may have been impaired at the time of the allegations, and to that extent, the panel did not find his behaviour to have been premeditated.

The panel went on to consider the evidence of Pupil A and Pupil B, who praised Mr Whitlow's teaching. In particular Pupil A stated that, *"for me he was a really great teacher. Biology was not my thing. I just picked it because I had to pick a science as a higher level... He made a lot of effort and he explained it very well. He was a really really good teacher. He made my enemy [subject] into my friend."*

The panel first considered whether it would be proportionate to conclude this case with no recommendation of prohibition, considering whether the publication of the findings made by the panel would be sufficient.

The panel was of the view that, applying the standard of the ordinary intelligent citizen, it would not be a proportionate and appropriate response to recommend no prohibition order. Recommending that the publication of adverse findings would be sufficient would unacceptably compromise the public interest considerations present in this case, despite the severity of the consequences for Mr Whitlow of prohibition.

The panel was of the view that prohibition was both proportionate and appropriate. The panel decided that the public interest considerations outweighed the interests of Mr Whitlow, even after taking into account the statements made by Pupil A and Pupil B in oral evidence about his effectiveness as a teacher. The finding of sexual motivation was a significant factor in forming that opinion. Accordingly, the panel made a recommendation to the Secretary of State that a prohibition order should be imposed with immediate effect.

The panel went on to consider whether or not it would be appropriate for it to decide to recommend a review period of the order. The panel was mindful that the Advice states that a prohibition order applies for life, but there may be circumstances, in any given case, that may make it appropriate to allow a teacher to apply to have the prohibition order reviewed after a specified period of time that may not be less than 2 years.

The Advice indicates that there are behaviours that, if proved, would militate against the recommendation of a review period. One of these behaviours is serious sexual misconduct, such as 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 his professional position to influence or exploit a person or persons. The panel considered this factor but whilst it found that Mr Whitlow was responsible for sexually motivated touching of two pupils, it found his conduct was at the lower end of the scale.

The panel decided that the findings indicated a situation in which a review period would be appropriate and, as such, decided that it would be proportionate, in all the circumstances, for the prohibition order to be recommended with provisions for a review period after 2 years. The panel found that this would allow the teacher the opportunity to develop his insight into the importance of maintaining proper boundaries with pupils to ensure appropriate safeguarding of both himself and pupils.

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 all of the allegations proven and found that those proven facts amount to unacceptable professional conduct and conduct that may bring the profession into disrepute.

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

In particular, the panel has found that Mr Whitlow 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
 - o treating pupils with dignity, building relationships rooted in mutual respect, and at all times observing proper boundaries appropriate to a teacher's professional position
 - o having regard for the need to safeguard pupils' well-being, in accordance with statutory provisions
- Teachers must have proper and professional regard for the ethos, policies and practices of the school in which they teach
- Teachers must have an understanding of, and always act within, the statutory frameworks which set out their professional duties and responsibilities.

The panel finds that the conduct of Mr Whitlow fell significantly short of the standards expected of the profession.

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

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 Whitlow, 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, "There was a strong public interest consideration in respect of the protection of pupils, given the finding of inappropriate sexually motivated contact with two pupils following their last exam at the school." A prohibition order would therefore prevent such a risk from being present in the future.

I have gone on to consider the extent to which a prohibition order would maintain public confidence in the profession. The panel observe, "the panel considered that public confidence in the profession could be seriously weakened if conduct such as that found against Mr Whitlow were not treated with the utmost seriousness when regulating the conduct of the profession." I am particularly mindful of the finding of sexual motivation 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 Whitlow himself. The panel said that Mr Whitlow had, "a previous good history, encompassing his career of over 40

years. The panel accepted that the incident was wholly out of character for Mr Whitlow, and it was a one-off occurrence.”

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

I have given less weight in my consideration of sanction, to the contribution that Mr Whitlow 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, in light of the circumstances in this case, that is not backed up by demonstration of full remorse or insight, does not in my view satisfy the public interest requirement concerning public confidence in the profession.

For these reasons, I have concluded that a prohibition order is proportionate and in the public interest in order to achieve the 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 a 2 year review period.

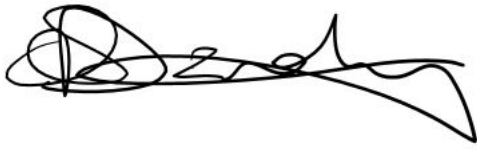
I have considered the panel’s comments, “The panel found that this would allow the teacher the opportunity to develop his insight into the importance of maintaining proper boundaries with pupils to ensure appropriate safeguarding of both himself and pupils.”

I have considered whether a 2 year review period reflects the seriousness of the findings and is a proportionate period to achieve the aim of maintaining public confidence in the profession. In this case, my view is that there are three factors that mean a two-year review period is not sufficient to achieve the aim of maintaining public confidence in the profession. These elements are the sexual motivation found, the fact that it affected two pupils and the lack of demonstrated insight or remorse. I believe this applies appropriate weight to the seriousness of the misconduct, allows adequate time for insight and remorse to be fully developed and is required to maintain public confidence in the profession.

This means that Mr Jonathan Whitlow is prohibited from teaching indefinitely and cannot teach in any school, sixth form college, relevant youth accommodation or children’s home in England. He may apply for the prohibition order to be set aside, but not until 19 February 2025, 5 years from the date of this order at the earliest. This is not an automatic right to have the prohibition order removed. If he does apply, a panel will meet to consider whether the prohibition order should be set aside. Without a successful application, Mr Whitlock remains prohibited from teaching indefinitely.

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

Mr Whitlow has a right of appeal to the Queen’s Bench Division of the High Court within 28 days from the date he is given notice of this order.

A handwritten signature in black ink, appearing to read 'Dawn Dandy', with a stylized flourish at the end.

Decision maker: Dawn Dandy

Date: 10 February 2020

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