



National College for
Teaching & Leadership

Mr Mark Hewes: Professional conduct panel outcome

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

May 2016

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

Teacher: Mr Mark Hewes

Teacher ref number: 9946313

Teacher date of birth: 24 May 1972

NCTL case reference: 13776

Date of determination: 6 May 2016

Former employer: Egguckland Community College Academy Trust

A. Introduction

A professional conduct panel (“the panel”) of the National College for Teaching and Leadership (“the National College”) convened on 5 and 6 May 2016 at 53 to 55 Butts Road, Earlsdon Park, Coventry CV1 3BH to consider the case of Mr Mark Hewes.

The panel members were Mr John Pemberton (teacher panellist – in the chair), Mrs Alison Thorne (lay panellist) and Mrs Julia Bell (teacher panellist).

The legal adviser to the panel was Ms Patricia D’Souza of Eversheds LLP.

The presenting officer for the National College was Ms Samantha Paxman of Browne Jacobson LLP.

Mr Mark Hewes was not present and was not represented.

The hearing took place in public and was recorded, despite the application from Mr Hewes for the hearing to be heard in private.

B. Allegations

The panel considered the allegations set out in the Notice of Proceedings dated 8 February 2016 (as amended during the course of the hearing as set out below).

It was alleged that Mr Hewes was guilty of unacceptable professional conduct and/or conduct that may bring the profession into disrepute, in that whilst employed at Egguckland Community College Academy Trust in 2014, he:

1. Engaged in inappropriate communication via text message with Pupil A ;
2. Used inappropriate language when communicating with Pupil A, including but not limited to:
 - i. Cleavage;
 - ii. Boobs;
 - iii. As in a friend whose willy you touch?
 - iv. Not sure that was for me love! Way too many clothes if it was [emotive icon];
3. His actions in relation to allegation 1 and/ or 2 above were sexually motivated.

In the statement of agreed and disputed facts, Mr Hewes admits the facts of allegations 1 and 2, however he denies allegation 3. He also denies that such conduct amounted to unacceptable professional conduct and/or conduct that may bring the profession into disrepute. Therefore, these allegations are taken to not have been admitted, as a whole, and this case is proceeding as a disputed case.

C. Preliminary applications

Proceeding in absence

As Mr Hewes was not in attendance, the presenting officer made an application for this hearing to continue in his absence.

The panel is satisfied that the National College has complied with the service requirements of paragraph 19 a to c of the Teachers' Disciplinary (England) Regulations 2012, (the "Regulations").

The panel is also satisfied that the Notice of Proceedings complies with paragraphs 4.11 and 4.12 of the Teacher Misconduct: Disciplinary Procedures for the Teaching Profession, (the "Procedures").

The panel has determined to exercise its discretion under Paragraph 4.29 of the Procedures to proceed with the hearing in the absence of Mr Hewes.

The panel understands that its discretion to commence a hearing in the absence of a teacher has to be exercised with the utmost care and caution, and that its discretion is a severely constrained one.

In making its decision, the panel has noted that a teacher may waive his right to participate in the hearing. The panel has taken account of the various factors drawn to its attention from the case of *R v Jones* [2003] 1 AC1. As Mr Hewes has provided written representations to the National College dated 29 November 2015, it is clear that he is actually aware of these proceedings. The panel also considers that more than 8 weeks' notice of the hearing has been provided as the Notice of Proceedings was sent on 8 February 2016. Mr Hewes signed and returned the Notice of Proceedings form on 9 February 2016 which indicates that he did not intend to attend this hearing. The presenting officer also drew the panel's attention to the information included in the preliminary application bundle which the panel agreed to admit in the course of the hearing. Within this bundle there is a photocopied page of a letter dated 5 April 2016 from the presenting officer to Mr Hewes which the presenting officer submits containing annotations and a signature in Mr Hewes' handwriting ("the annotated page"). The panel noted that Mr Hewes had indicated on this page that he was content for this hearing to proceed in his absence and that there were no special measures that could be put in place to assist him with attending the hearing. The panel therefore considers that Mr Hewes has waived his right to be present at the hearing in the knowledge of when and where the hearing is taking place.

The panel has had regard to the requirement that it is only in rare and exceptional circumstances that a decision should be taken in favour of the hearing taking place. There is no indication that an adjournment might result in Mr Hewes attending the hearing.

The panel has had regard to the extent of the disadvantage to Mr Hewes in not being able to give his account of events, having regard to the nature of the evidence against him. The panel has the benefit of written representations provided by Mr Hewes to the National College on or around November 2015 and April 2016 and is able to ascertain the lines of defence.

The panel took into account that in his written representations of 29 November 2015 Mr Hewes indicated that he had not had sufficient time to seek professional or legal assistance. However, the panel noted that he made no reference to this issue in the written representations he forwarded to the National College in April 2016. As the hearing is taking place in May 2016, and Mr Hewes was provided with notice of this in the Notice of Proceedings dated 8 February 2016, the panel considers that there has been sufficient time for Mr Hewes to seek representation if he wished.

The panel has noted that two witnesses are present, and may be called by the presenting officer on behalf of the National College to give oral evidence. The panel can test that evidence and put questions to the witnesses on behalf of Mr Hewes, where appropriate and reasonable. The panel has not identified any significant gaps in the documentary evidence provided to it and should such gaps arise during the course of the hearing, the panel may take such gaps into consideration in considering whether the hearing should be adjourned for such documents to become available and in considering whether the presenting officer has discharged the burden of proof. The panel is also able to exercise vigilance in making its decision, taking into account the degree of risk of the panel reaching the wrong decision as a result of not having heard Mr Hewes' account.

The panel considers that it would be inconvenient and distressing for the two witnesses present today to return if the hearing were adjourned.

The panel has had regard to the seriousness of this case, and the potential consequences for Mr Hewes and has accepted that fairness to Mr Hewes is important. However, it considers that Mr Hewes has waived his right to appear and the panel, by taking such measures referred to above, will be able to address any unfairness insofar as it is possible. Taking account of the inconvenience an adjournment would cause to the witnesses; on balance the panel considers these are serious allegations and the public interest in this hearing proceeding within a reasonable time is in favour of this hearing continuing today.

Application for the hearing to be held in private

The panel noted from the Notice of Proceedings form dated 9 February 2016 that Mr Hewes indicated that he wished this hearing to be heard in private. His reasoning for his application was that his relatives deserve protection if this matter were made public.

The panel has considered whether to exercise its discretion under paragraph 11(3)(b) of the Teachers' Disciplinary (England) Regulations 2012 (the "Regulations") and the second bullet point of paragraph 4.57 of the Teacher Misconduct: Disciplinary Procedures for the Teaching Profession (the "Procedures") to exclude the public from all or part of the hearing. This follows a request by Mr Hewes that the hearing should be in private.

The panel has had regard to whether Mr Hewes' request runs contrary to the public interest.

The panel has taken into account the general rule that hearings should be held in public and that this is generally desirable to maintain public confidence in the administration of these proceedings, in an open and transparent manner, and also to maintain confidence in the teaching profession.

On this occasion, however, the panel considers that the request for the hearing to be heard in private, namely concern for the impact this matter may have on Mr Hewes'

family does not outweigh the public interest. The presenting officer submitted to the panel that this is not a sufficient reason to exclude the public from the hearing.

The panel is required to announce its decisions in public as to whether the facts have been proven and whether those facts amount to unacceptable professional conduct and/or conduct that may bring the profession into disrepute. In the event that the case continues, any decision of the Secretary of State must be published in accordance with Regulation 8 of the Regulations. The panel was mindful of the guidance given in the Ex p Kaim Todner case which states that:

“In general, however, parties and witnesses have to accept the embarrassment and damage to their reputation and the possible consequential loss which can be inherent in being involved in litigation. The protection to which they are entitled is normally provided by a judgement delivered in public which will refute unfounded allegations. Any other approach would result in wholly unacceptable inroads on the general rule.”

The panel noted that Mr Hewes had provided no objective evidence to support his request for the hearing to be in private and the impact a public hearing may have on either himself or his family.

The panel considers that the public interest is satisfied by the public announcements referred to above. Those public announcements will ensure that public confidence in these proceedings and in the standards of the profession are maintained. The panel could find no reason as to why it should make an exception to the general rule that hearings of this nature proceed in public.

Therefore the panel has determined not to exercise its discretion under paragraph 11(3)(b) of the Regulations and the second bullet point of paragraph 4.57 of the Procedures that the public should be excluded from the entire hearing.

Amendment of allegation 2iv

The presenting officer also made an application to amend the wording of allegation 2(iv) from its current wording of “Don’t think this [photo] was meant for me – if it was, way too many clothes”. The presenting officer submitted that if the panel were minded to amend the allegation it could either include “words to the effect of” in the stem of allegation 2, which then would not result in the current wording of 2iv being amended substantially. Or the panel could consider amending the allegation to the wording of the relevant text message included in the bundle which states: “Not sure that was for me love! Way too many clothes if it was [emotive icon]”.

The presenting officer further submitted that Mr Hewes was notified of the presenting officer’s intention to make an application to amend the wording of allegation 2iv in her letter to Mr Hewes of 5 April 2016. The panel noted from this letter that Mr Hewes was advised that the presenting officer would submit at the hearing that such an amendment would not change the meaning of particular 2iv. Neither would it alter the seriousness of

this particular allegation nor would it cause any prejudice to Mr Hewes. The panel also noted from the annotated page that Mr Hewes provided no response to the presenting officer's application to amend allegation 2iv.

The panel were mindful that any amendment of an allegation, particularly where a teacher is absent, should not cause unfairness or prejudice if it changes the nature of the allegation, makes it more serious than before, or changes the factual basis upon which the allegation is founded. The legal advisor advised the panel to ask itself whether Mr Hewes' case would have been presented differently if the amendment had been made at an earlier stage.

The panel noted that Mr Hewes admitted in the statement of agreed and disputed facts that he used inappropriate language such as, "don't think this [photo] was meant for me – if it was, way too many clothes". The panel considered that on balance, it was preferable for the wording of allegation 2iv to reflect the actual wording of the text message within which Mr Hewes has admitted using inappropriate language. The panel considered that such a change to the actual wording of the text message did not change the nature, scope or seriousness of the allegation and considered that it simply corrected minor errors in the drafting of the allegation. The panel were also content that Mr Hewes had been provided with notice of and the reasoning behind the presenting officer's application and the panel did not consider that its acceptance of this application would prejudice Mr Hewes' case in any way. The panel therefore agreed to amend allegation 2iv to "Not sure that was for me love! Way too many clothes if it was [emotive icon]".

Application to admit oral and witness evidence from Pupil A

The presenting officer also made an application to admit documentary witness evidence and oral evidence on behalf of Pupil A. The presenting officer submitted that initial attempts to contact Pupil A did not result in any contact, either direct by the National College and/or through the relevant college. The National College then undertook a trace to locate an up-to-date address for Pupil A as it is the National College's policy to notify any individual who is referenced in allegations of these proceedings. The outcome of that trace only became available at the start of April 2016.

A witness statement of 8 April 2016 was obtained from Pupil A and sent to Mr Hewes on 11 April 2016. On 11 April 2016, the presenting officer notified Mr Hewes that an application to rely on Pupil A's witness evidence would be made at today's hearing and he had the opportunity to comment or object to this. The presenting officer submitted that Pupil A provided a second statement to the National College dated 19 April 2016 which clarified the impact of these events (or lack thereof). This second statement was sent to Mr Hewes on 19 April 2016. In the letter from the presenting officer of 19 April 2016 to Mr Hewes, he was advised that the National College now intended to apply to the panel for Pupil A's oral evidence to be admitted. The presenting officer submits that some elements of Pupil A's potential evidence are favourable to Mr Hewes and the disclosure obligation on the National College is to put forward all relevant information before the

panel. The presenting officer considers it would be wrong for the National College not to make an application for the panel to admit this evidence.

The presenting officer submitted that Pupil A may be able to assist the panel with some elements of the factual matrix that are in dispute, namely, the timeframe for attendance at the relevant college, how much time Pupil A spent at the college and the motivation for the electronic communications Pupil A received from Mr Hewes. Such elements in dispute may have an impact on any decision relating to unacceptable professional conduct and/or conduct that may bring the profession into disrepute, if this case reaches that stage of the proceedings.

To assist the panel in its decision making the panel requested that the legal advisor review the statements of Pupil A without the panel having seen those first. The legal advisor advised the panel that the witness evidence of Pupil A, on balance, may assist the panel in determining whether the factual particulars of the allegations have been proved on the balance of probabilities. Taking all relevant considerations into account, the panel considered that it would be fair to admit Pupil A's documentary witness evidence and oral evidence. This in the panel's view would be in the public interest and also would be fair to Mr Hewes, as the panel can test the evidence on such points as are favourable to Mr Hewes.

D. Summary of evidence

Documents

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

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

Section 2: Notice of Proceedings and Response – pages 5 to 15

Section 3: National College's witness statements – pages 16 to 21

Section 4: National College's documents – pages 22 to 100

Section 5: Teacher documents – pages 101 to 104

In addition, the panel agreed to accept the following:

Section 6: Preliminary Application Bundle Index – pages 105 to 115

Section 7: Witness statements from Pupil A – pages 116 to 121

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

Witnesses

The panel heard oral evidence from the following called on behalf of the National College:

- Pupil A;
- Witness A, the headteacher of the College.

No witnesses gave oral evidence on behalf of Mr Hewes.

E. Decision and reasons

The panel announced its decision and reasons as follows:

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

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

Mr Hewes was employed at Eggbuckland Community College (“the College”) in April 2003 as a temporary teacher of Geography. This position became permanent from September 2004. In March 2009, Mr Hewes took on permanent responsibility as house leader alongside his teaching role. By this time, Mr Hewes was teaching Psychology. On 23 July 2013 Pupil A disclosed to the headteacher of the College that she was concerned about electronic communications she had received from Mr Hewes which were sent during the period January 2014 to August 2014. This led to an initial informal College investigation. Mr Hewes resigned from the College on 12 September 2014.

Findings of fact

The panel’s findings of fact are as follows:

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

You are guilty of unacceptable professional conduct and/or conduct that may bring the profession into disrepute, in that whilst employed at Eggbuckland Community College Academy Trust in 2014, you:

1. Engaged in inappropriate communication via text message with Pupil A ;

The panel noted from the statement of agreed and disputed facts that Mr Hewes admits the particulars of this allegation.

However, the panel also noted from his written representations to the National College included in the bundle, that Mr Hewes states that he was not aware that Pupil A was still

a pupil at the College at the relevant time. He believed that she had left at the end of Year 13 (July 2013) and was in full time employment. He further indicates in those written representations that he would never have engaged in such communication with Pupil A using the language referred to in the allegations had he known that Pupil A had remained on the College's admission roll. He further understood that Pupil A was considering re-taking a module in her A2 level Psychology examination which Pupil A informed him she would fund herself and sit at a different examination centre to the College. In her oral evidence, Pupil A stated that she believed she was enrolled at the College and may have been entered for examinations, however, she could not be certain as she thought she had to pay to be entered.

Witness A's oral evidence was that Pupil A was enrolled at the College for Year 14 in September 2013 and she remained on the admission roll until the end of the academic year (i.e. August 2014). Witness A also stated in oral evidence that there was an expectation at the College that Pupil A would sit examinations that year, although she was due to fund this herself. Witness A did state that the College had already entered Pupil A for examinations. The panel found both Pupil A and Witness A to be credible and accepted their evidence that Pupil A was a pupil of the College at the time that Mr Hewes sent text messages to her during the period January to August 2014.

Mr Hewes further states in his written representations that Pupil A told him in December 2013/January 2014 that work demands meant she was no longer looking to pursue her re-take.

The panel considered Mr Hewes' use of inappropriate nicknames for Pupil A such as "Spazmo" and the use of language such as "mardybum", "mentalist" and "gorgeous girl" in the text messages he sent were inappropriate. Also, the panel noted that some of the text messages from Mr Hewes were sent late at night.

Taking all the evidence into account, this allegation is found proven.

2. Used inappropriate language when communicating with Pupil A, including but not limited to:

- i. Cleavage;**
- ii. Boobs;**
- iii. As in a friend whose willy you touch?**
- iv. Not sure that was for me love! Way too many clothes if it was [emotive icon];**

The panel had regard to the statement of agreed and disputed facts in which Mr Hewes admits the particulars of allegations 2i, 2ii, and 2iii.

With regard to allegation 2iv, the panel noted that Mr Hewes admitted in the statement of agreed and disputed facts that he used inappropriate language such as, “don’t think this [photo] was meant for me – if it was, way too many clothes”. At the time Mr Hewes signed the statement of agreed and disputed facts, the wording of allegation 2iv differed (as set out above in the preliminary application section of this decision). Despite this, the panel regarded Mr Hewes’ comments relating to this allegation to be an admission to the overall substance of allegation 2iv even though the wording of this allegation was amended in the course of this hearing as set out above.

The panel also had regard to copies of relevant text conversations included in the bundle between Mr Hewes and Pupil A. It noted that the wording referred to in each of allegations 2i, 2ii, 2iii and 2iv was included by Mr Hewes in those messages, which Pupil A confirmed, were sent via iMessaging and Whatsapp.

In addition, the panel noted from his written representations to the National College that Mr Hewes stated that he took responsibility for the over-familiar and unprofessional language used in communications with Pupil A and he further stated that this would not have happened had he known that Pupil A was still a pupil at the College.

This allegation is found proven.

3. His actions in relation to allegation 1 and/ or 2 above were sexually motivated.

This allegation is not admitted by Mr Hewes.

The panel was advised by the legal advisor that the first question the panel needs to ask itself is whether a reasonable person would think the facts found proven against Mr Hewes could be sexually motivated i.e. an objective test. If so, the panel would then need to go on to ask itself a second question: whether, in all the circumstances of the conduct in the case, Mr Hewes’ purpose towards Pupil A was sexually motivated, i.e. the subjective test.

In his written representations to the National College Mr Hewes states that his language in his communications with Pupil A was over-familiar and he appreciates these messages were supposed to be humorous and that, “out of context”, could be misread as “something altogether different”. This was not his intention and whilst he was Pupil A’s teacher and pastoral mentor during her time in the College’s sixth form, her well-being was of paramount importance to him. Mr Hewes explains his motives were “purely” to provide an “avenue of contact” at a time when Pupil A felt unsure of her future and he wished to be a positive and reliable connection to (what he thought was) a former pupil who still required support before taking the next step in her academic career.

In her opening statement, the presenting officer submitted there is much sexual innuendo included in the text messages Mr Hewes sent to Pupil A.

Pupil A stated in oral evidence that Mr Hewes had a laugh with all students and was friendly and there was never any question of him overstepping any professional boundaries. He would often use nicknames for pupils.

In her oral evidence, Witness A stated that she believed that Pupil A had turned for support to Mr Hewes and other staff with whom she felt comfortable. At the time Pupil A was coping with sensitive personal issues and Witness A believed that Mr Hewes was a great source of comfort to Pupil A in this period.

When questioned by the panel, Pupil A's oral evidence was that she found such words and phrases as "boobs", "cleavage" and "As in friend whose willy you touch?" and other references inappropriate in the text messages Mr Hewes sent to her. The messages made her feel uncomfortable. In a text message that Pupil A sent to Witness A, included in the bundle, Pupil A stated she was made to feel "emotionally blackmailed" by Mr Hewes. However, she did not consider that Mr Hewes had any adverse motive behind these messages. She considered that Mr Hewes misconstrued the friendliness of the relationship that they had.

The presenting officer submitted that the sexual innuendo in the messages between himself and Pupil A were always initiated by Mr Hewes and drew the panel's attention to the pattern of text messages, which increase in sexual innuendo through the months.

The panel considered that a reasonable person would believe that the conduct found proven in relation to allegations 1 and 2 was sexually motivated, particularly the references in messages to "willy", "boobs" and "cleavage" and the panel therefore considered the objective test was met.

In addition, the panel considered that subjectively Mr Hewes must have and did realise that the purpose behind the language he used in his text messages was sexual. The message referred to in allegation 2iv, which was sent in August 2014, "Not sure that was for me love! Way too many clothes if it was" was particularly relevant. Pupil A's statement said that Mr Hewes' response to her informing him that she had reported the text messages to the College was "after all the help I've given you". The panel found such a response suggests that he knew that what he had done was wrong.

Having found allegations 1 and 2 proven, the panel also found that the subjective test was met. Therefore this allegation is proven.

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

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

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

The panel is satisfied that the conduct of Mr Hewes in relation to the facts found proven, involved breaches of the Teachers’ Standards. The panel considers that by reference to Part Two, Mr Hewes is in breach of the following standards:

- Teachers uphold public trust in the profession and maintain high standards of ethics and behaviour, within and outside school, by
 - treating pupils with dignity, building relationships rooted in mutual respect, and at all times observing proper boundaries appropriate to a teacher’s professional position;
 - having regard for the need to safeguard pupils’ well-being, in accordance with statutory provisions;
- Teachers must have proper and professional regard for the ethos, policies and practices of the school in which they teach, and maintain high standards in their own attendance and punctuality.

The presenting officer submitted that the proximity between the text messages and the time at which Pupil A was on the College’s admission roll shows a clear breakdown of the appropriate boundaries of a pupil/teacher relationship. The panel noted that Mr Hewes stated in his written representations that he believed that Pupil A was not a pupil at the time that he was sending messages to her. However, the panel found Witness A and Pupil A’s oral evidence more credible and there was no doubt that Pupil A was still enrolled at the College.

The presenting officer submitted that the College considered Pupil A to be vulnerable and all teachers at the College, including Mr Hewes, were aware of this, and yet he sent messages which contained language of a sexual nature and had sexual innuendo. The presenting officer further submitted this breached the position of trust that Mr Hewes was placed in as a teacher.

The panel has also considered whether Mr Hewes’ conduct displayed behaviours associated with any of the offences listed on pages 8 and 9 of the Advice and the panel has found that none of these offences are relevant.

The presenting officer submitted that the College’s Code of Conduct provided clear guidance that it would be an abuse of the professional relationship for any member of staff to enter into an improper association with a student.

The panel notes that the inappropriate communications with Pupil A took place outside of the education setting. Such conduct affects the way Mr Hewes fulfils his teaching role or may lead to pupils being exposed to or influenced by the behaviour in a harmful way, as pupils should not receive inappropriate text messages.

The panel is satisfied that the conduct of Mr Hewes fell significantly short of the standards expected of the profession. Accordingly, the panel finds Mr Hewes guilty of unacceptable professional conduct.

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

The findings of misconduct are serious and the conduct displayed would likely have a negative impact on Mr Hewes' status as a teacher, potentially damaging the public perception of the profession.

The panel therefore finds that Mr Hewes' actions 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, namely: the protection of pupils, the maintenance of public confidence in the profession and declaring and upholding proper standards of conduct.

In light of the panel's findings against Mr Hewes, which involved inappropriate text communications with Pupil A over a period of several months, there is a strong public interest consideration in respect of the protection of pupils.

Similarly, the panel considers that public confidence in the profession could be seriously weakened if conduct such as that found against Mr Hewes were not treated with 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 Hewes was outside that which could reasonably be tolerated.

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

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 Mr Hewes. 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;
- abuse of position or trust (particularly involving vulnerable pupils) or violation of the rights of pupils;
- sexual misconduct, e.g. involving actions that were sexually motivated or of a sexual nature and/or that use or exploit the trust, knowledge or influence derived from the individual's professional position;

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

There was no evidence before the panel that Mr Hewes' actions were anything other than deliberate nor that he was acting under any duress. The panel consider that Mr Hewes was of previous good history as the presenting officer submitted there was no evidence that indicated that Mr Hewes was previously subject to previous disciplinary proceedings or warnings. The presenting officer also confirmed that there are no previous disciplinary orders imposed by the Secretary of State or other relevant body in relation to Mr Hewes.

In his written representations to the National College, Mr Hewes states that he has been a very good teacher at the College for over 10 years and a professional, reliable and well-respected manager for 7 of those years. He is respected by students, parents, staff and governors.

The panel noted that no references have been provided by Mr Hewes from any colleagues that can attest to his abilities as a teacher. However, in her oral evidence, Witness A stated that many thought Mr Hewes was a "stunning teacher" and his lessons were often "outstanding". Witness A's evidence was also that Mr Hewes had a good relationship with other pupils. He was a "larger than life character" who referred to himself

as “Hewsey”, and he had a banter type approach in class. Most students liked him. Witness A stated that Mr Hewes was not the easiest person to manage.

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 Hewes. The inappropriate nature of his text communications, the disregard for the College’s Code of Conduct and breach of the position of trust were significant in the panel’s 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 decide to recommend that a review period of the order should be considered. The panel was mindful that the Advice states that a prohibition order applies for life, but there may be circumstances in any given case that may make it appropriate to allow a teacher to apply to have the prohibition order reviewed after a specified period of time that may not be less than 2 years.

The Advice indicates that there are behaviours that, if proven, would militate against a review period being recommended. The panel considered whether serious sexual misconduct, e.g. where the act was sexually motivated and resulted in or had the potential to result in, harm to a person or persons, particularly where the individual has used their professional position to influence or exploit a person or persons, was relevant. Even though the panel has found that Mr Hewes’ behaviour was sexually motivated, the panel considered that the nature of his text messages did not result and did not have the potential to harm Pupil A, as Pupil A’s oral evidence was that she was not affected by these incidents. The panel found Pupil A’s honesty and demeanour whilst giving oral evidence to be persuasive and thus satisfied the panel that she had sustained no lasting damage from these events. The panel regarded Mr Hewes behaviour as a serious misjudgement, but it was not satisfied that his behaviour amounted to serious sexual misconduct. Therefore the panel went on to further consider whether it would be appropriate to recommend a review period.

In his written representations to the National College, Mr Hewes expressed distress at the knowledge that his comments in communications with Pupil A caused her offence. In her closing submissions, the presenting officer stated that Witness A’s oral evidence was that when Witness A asked him about the text messages between him and Pupil A, he denied that the text messages were sent by him. The presenting officer submitted that this demonstrates a lack of insight.

The panel considered in time, Mr Hewes may develop appropriate insight and taking the severity of his conduct into account, which was at the lower end of the spectrum, considered the findings indicated a situation in which a review period would be appropriate. The panel therefore decided that it would be proportionate in all the circumstances for the prohibition order to be recommended with provision for a review period of 2 years.

Decision and reasons on behalf of the Secretary of State

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

In this case the panel has found that all of the allegations are proved.

The panel has found that the behaviours exhibited by Mr Hewes involved breaches of the Teachers' Standards. The panel considered that Mr Hewes 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, and maintain high standards in their own attendance and punctuality.

The panel also took into account the Advice published by the Secretary of State, 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 the panel found to be relevant in this case are:

- serious departure from the personal and professional conduct elements of the Teachers' Standards;
- abuse of position or trust (particularly involving vulnerable pupils) or violation of the rights of pupils;
- sexual misconduct, e.g. involving actions that were sexually motivated or of a sexual nature and/or that use or exploit the trust, knowledge or influence derived from the individual's professional position;

I have taken into account the recommendation made by the panel. I have also taken into account the guidance published by the Secretary of State. I have taken into account the need to balance the interests of the public with those of Mr Hewes. I have also taken into account the need to be proportionate.

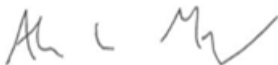
In my judgement the panel's recommendation is the right one. Mr Hewes's behaviour is such that a prohibition order is appropriate and proportionate.

I have gone on to consider the matter of a review period. The panel has given this matter careful consideration. I have noted their comments about insight and remorse. I support the recommendation of the panel that there should be an opportunity for Mr Hewes to reflect upon his behaviours. Although this is a prohibition order for life, I support the recommendation that Mr Hewes be able to apply for a review after two years.

This means that Mr Mark Hewes 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 17 May 2018, 2 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 Mark Hewes remains prohibited from teaching indefinitely.

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

Mr Mark Hewes 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.



Decision maker: Alan Meyrick

Date: 9 May 2016

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