

NATIONAL COLLEGE FOR TEACHING AND LEADERSHIP

Decision of a Professional Conduct Panel and the Secretary of State

Teacher: Mr James Walsh

Teacher ref no: 0011310

Teacher date of birth: 24 May 1961

NCTL Case ref no: 9502

Date of Determination: 29 and 30 April 2013

Former Employer: Swindon Academy

A. Introduction

A Professional Conduct Panel (“the Panel”) of the National College for Teaching and Leadership convened on 29 April 2013 at 53-55 Butts Road, Earlsdon Park, Coventry, CV1 3BH to consider the case of Mr James Walsh.

The Panel members were Dr Dena Coleman (Teacher Panellist – in the Chair), Mr Michael Lesser (Teacher Panellist) and Ms Nicole Jackson (Lay Panellist)

The Legal Adviser to the Panel was Ms Eve Piffaretti of Morgan Cole LLP Solicitors.

The Presenting Officer for the National College for Teaching and Leadership (NCTL) was Ms Louisa Atkin of Browne Jacobson LLP Solicitors.

Mr James Walsh was not present and was not represented.

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 February 2013.

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

Whilst employed at Swindon Academy, he:

- a. **formed an inappropriate relationship with Student A, including that he:**
 - i **make inappropriate comments to her, such as telling her that she was “beautiful”, on more than one occasion;**

- ii **kissed her on or around 30 November 2010;**
- b. **formed an inappropriate relationship with Student B, including that he:**
 - i **kissed her on the cheek on or around 1 December 2010;**
 - ii **gave her a lift in his car on or around 1 December 2010;**
 - iii **made inappropriate comments to her on more than one occasion during 2009 and 2010;**
 - iv **engaged in inappropriate physical contact with her on at least one occasion during 2009 and 2010.**

The alleged facts were not admitted.

C. Preliminary Applications

Proof of Service/Proceeding in the Absence of the Teacher

The Presenting Officer confirmed that the Notice of Proceedings dated 11 February 2013 had been sent to Mr Walsh at the address that was known for him as set out in the letter of referral from Swindon Academy (at page 27 of the case papers). Mr Walsh had not responded to the Notice of Proceedings. No reason for his absence had been communicated to the NCTL, nor had the correspondence been returned as undelivered. The Presenting Officer submitted that the Notice of Proceedings had been served in accordance with Rule 4.10 and that it was appropriate for the hearing to proceed in the absence of Mr Walsh. Further, the NCTL has instructed a search agent to verify Mr Walsh's address and telephone details. This revealed the correct city address and telephone number but had a different postcode. Further correspondence had been sent to the teacher at this postcode on 16 April 2013. Both the search agent and the Presenting Officer had rung to speak to Mr Walsh. He had made no attempt to return telephone calls or to respond to correspondence.

The Presenting Officer submitted that in considering its discretion to proceed in Mr Walsh's absence, the Panel should have particular regard to whether an adjournment would be likely to result in Mr Walsh's attendance on another date. Mr Walsh had exercised his right not to attend the Academy's disciplinary hearing and the Panel should also take into account the interests of witnesses who were in attendance today. One of the witnesses present was Student A, a vulnerable witness and child. An adjournment of the hearing could prove difficult for her future cooperation in this case.

The Panel announced its decision and reasons for that decision as follows:

"The Panel is aware of the importance of these proceedings to Mr Walsh and in particular that it could result potentially in the loss of his livelihood. However, we

have decided to proceed in his absence because we are satisfied that the papers were properly served to the last known address and in accordance with Rule 4.10.

Mr Walsh has not provided any reason for his absence and we are satisfied that he has waived his right to attend.

We are also satisfied that the NCTL sent follow up correspondence to Mr Walsh which again resulted in no response. We took into account that Witness A had not attended the Academy's disciplinary hearing and that if we were to adjourn then a vulnerable witness would have to be re-scheduled.

In conclusion, the Panel has decided that it is in the public interest to proceed and that no purpose would be served by adjourning."

Submission of Late/Additional Documents

The Presenting Officer requested that three documents, being the signed statement from Student A, the signed statement of Gill Barrett, and the decision of the Case Management Hearing dated 25 April 2013 should be placed before the Panel . Ms Atkin referred the Panel to the requirements of the Disciplinary Procedures in particular paragraphs 4.16 and 4.17 and said that these documents were relevant to the proceedings and that it was fair for them to be adduced as Mr Walsh had been sent unsigned versions of the statement and had also been sent the Case Management Directions.

The Panel announced its decision and reasons for that decision as follows:

"We have decided to exercise our discretion to admit the signed statements and the additional documents relied on by Ms Atkins. We accept the legal advice and note that the documents are relevant to our decision making, so that these should be added to the case papers before the Panel in the interest of fairness."

The documents were added to the bundle of documents before the Panel.

D. Summary of Evidence

29 April 2013

Documents

- Section 1: Anonymised Pupil List, with page numbers from 2 to 3
- Section 2: Notice of Proceedings and response, with page number from 5 to 11
- Section 3: Witness Statement, with Page numbers from 13 to 24
- Section 4: NCTL Documents, with page numbers from 26 to 198

The Panel Members confirmed that they had read all of the documents in advance of the Hearing.

In addition, the Panel agreed to accept the following:

- Signed statement of Student A dated 21 April 2013, with page numbers from 17a to 20a
- Signed statement of Witness A dated 28 February 2013, with page numbers from 21a to 24a
- Email chain relating to Search Agent request ending with Email from Presenting Officer to Individual A of the NCTL dated 29 April 2013, with page numbers 200 to 202
- Email chain relating to Student B ending with Email from Presenting Officer's firm to NCTL, dated 24 April 2013, with page number 204
- Letter to Mr Walsh from NCTL dated 16 April 2013, with page number 205
- Decision of Professional Conduct Panel at Case Management Hearing dated 25 April 2013, with page numbers 206 to 208

On 30 April 2013 the Panel agreed to accept the following:

- Signed statement of Student B dated 19 April 2013, with page number 13a to 16a
- Statement of Fitness for Work dated 22 April 2013, with page number 209
- Statement of Fitness for Work dated 26 April 2013, with page number 210

Opening statement

The Presenting Officer confirmed that allegation (a) relates to an inappropriate relationship that was formed between Student A and Mr Walsh. Student A was present to give evidence and would refer to her statement and record of interview with police. She would give a clear account of what occurred on or around 30 November 2010 and the Panel would have the opportunity to test her evidence fully.

Allegation (b) relates to an inappropriate relationship that was formed between Student B and Mr Walsh. Student B was not present today. Her unsigned statement was in the bundle. The Presenting Officer was making on-going attempts for Student B to be in attendance by telephone or failing that for medical evidence to be provided to the Panel to explain why she was not able to do so. She would update the Panel on the position during the hearing.

Mr Walsh had accepted in relation to allegation b (ii) that he had given Student B a lift in his car on or around 1 December 2010. Witness A would provide evidence as to the Academy's Policy of giving lifts.

Both Student A and Student B had been determined to be vulnerable witnesses. Student A is also a child as she is under the age of 18 at the date of the hearing.

Brief summary of evidence given

Please note that this is intended to be a summary – it does not reflect the complete evidence given.

Student A

Student A's statement at pages 17a to 20a of the case papers was taken as read.

In answer to questions from the Presenting Officer, she stated:

- During 2011 she was in year 11.
- Mr Walsh was friendly but unprofessional. He used inappropriate language and would swear to make students laugh
- One of the boys in her class was quite large and Mr Walsh called him "fat boy slim". He said things to the class such as "shut the fuck up". He used colloquial language.
- Mr Walsh made comments to her such as "that she was beautiful" a lot. It made her feel special at the time.
- She didn't say anything about it at the time but now she realised now that what he had done was inappropriate.
- When Mr Walsh kissed her he took her down to the sixth form area. He had her textbook in his hand. He opened the cupboard door and kissed her on the lips.
- She did not say anything at the time; she just stood there because she did not know how to react. She was scared about what had happened as Mr Walsh was her teacher.
- She was scared about what people would think. She knew that Mr Walsh would get into trouble. She did not want to be the person who got him into trouble as at the time she thought of him as her friend.
- She had seen Mr Walsh and Student B together. Student B would go into his classroom and he would come and speak to her outside school. Student B was older than her. She thought that Student B trusted Mr Walsh a lot.
- Student A confirmed that the transcript of her interview with the Police from pages 50 to 83 of the case papers was a truthful account of what happened.
- Student B lived just down the road from her and on leaving school one day Student B told her that she was going to get a taxi. She then saw Student B in Mr Walsh's car.
- She did not ask Mr Walsh for help with her English coursework. She had taken her English exam in Year 10 and got the highest mark in the year for her coursework. In year 11 she did English for higher level students to try and get another GCSE. She was very good at English so didn't need his help.
- Mr Walsh's behaviour upset her and had made it very difficult for her to trust men. She was going to be 18 soon and found that she still became scared of men when she went out. She was even at one point scared of being on her own with her grandfather. She did not go to get help from her male English teacher at the moment because she finds that she does not trust people.
- She talked to her tutor, Individual B about what had happened. She also went to see Student B and told her what had happened to her. Student B then told Student A that the same things had happened to her. Mr Walsh had told Student B that she was beautiful and special.

On questioning by the Panel, Student A stated that:

- Mr Walsh had been a friend to all students in his class and she had respected him as a teacher. Her attitude had now changed and she hated him. She felt

that what had happened must have been her fault but now realised that it was not her fault. Mr Walsh was old enough to know what he was doing whereas she was immature at that time.

- She had attended the hearing to give evidence before the Panel because she was hoping that Mr Walsh would be there. She wanted him to know how much he had hurt her.
- Mr Walsh had opened a cupboard door because there was a glass panel in the door to the sixth form area so that he could have been seen had the cupboard door not been open.
- Mr Walsh was sneaky, he would touch her leg under the table and would sit next to her.
- At the time Mr Walsh had made her feel special. Now she feels dirty about what had happened like he had used her.
- Student A liked school and was enthusiastic about it. She had achieved well and was motivated by school and motivated to be good at things. She had become a prefect and ran classes for other students in junior school.
- She had not been in trouble with Mr Walsh. He had spoken to her when she was in Year 10 as she had got the best grade for English course work.
- She recalled that the book that she had been studying at the time that she was kissed by Mr Walsh was Christmas Carol. She cannot recall whether or not they had gone to the sixth form room to get a copy of Christmas Carol but she did recall that Mr Walsh had a copy of her textbook in his hand.

Witness A, Associate Principal, Swindon Academy

Witness A's statement at pages 21a to 24a of the case papers was taken as read.

In answer to questions from the Presenting Officer she stated:

- She is now employed by United Learning as a Professional Lead for United teaching. She had been employed at the Academy from 2004 until October 2007, initially as deputy head but her job title had changed to Associate Principal when Swindon School attained Academy status. She left the Academy in October 2012.
- Witness A only became aware of allegations in relation to Student B after Student A had made a disclosure to her class tutor, Individual B. She telephoned Student A's mum to attend the school and Student A's mum had told her about another student being involved.
- There was no reason for Student A to be in the sixth form area of the school. This is a common area for students in the sixth form to use and generally staff do not go in and out of that area or socialise. There was no reason for other years to go into the sixth form area unless there was an absolute necessity. There is a card reader at both ends and CCTV cameras in place.
- The Academy had a clear policy that staff should not carry students in their personal cars. The only situation in which they should carry students would be in an emergency and they should be accompanied by another adult otherwise students should be transported by school transport for example for sports events. If staff were transporting students in an emergency they should also notify their head of year.

- The notes of meeting with Individual C at pages 121 to 125 of the case papers were a true record of that meeting.
- James Walsh starting working at the Academy as a supply teacher in 2008 before his full time employment commenced in 2009. She had not been involved in his recruitment.
- Mr Walsh was effective in some ways and the results of the English Department were good. He had his own style and was fairly laid back. His classes had a relaxed atmosphere and he was quite didactic in his approach. This caused some problems in particular the Academy's Ofsted inspection indicated that his teaching was satisfactory rather than good.
- Her personal observation was that Mr Walsh had a different approach to his class to other teachers. Sometimes he made jokes which were completely out of place. He walked close to the line but she had not witnessed him step over the line of appropriate boundaries with students.
- The notes of meeting with Mr Walsh at pages 126 to 135 of the case papers were an accurate record of that meeting. They had been signed by Mr Walsh.
- Student A was vulnerable but not volatile. She had a creative spirit and was a typical teenager. She was very well behaved with a secure academic base.
- Student B would also not be described as volatile. She was also a dancer. She was creative and passionate about what she believed in. She was a bright girl but had more ups and downs in her school career, but had never been in trouble.
- She never doubted Student A's account. She did not have a one to one discussion with Student B because the police had become involved at that stage. Neither Student had deviated from their initial disclosure.
- Mr Walsh tended to provide a response only once she provided information to him about the evidence she had. An example of this was in relation to whether he had been with Student A in the sixth form area. He was not sure if he had met Student A there initially. When she had indicated that there was CCTV footage to support that he had, he did remember.
- Page 49 was a document that was downloaded from social networking site showing the conversations between Student A and Mr Walsh.
- The language used including "writers bollox" "perhaps a massage" "OK I'll give you a massage" was unacceptable. A teacher was offering to provide a student a massage and using inappropriate language. The Academy were very clear that teachers should not have social networking relationships with students and this policy should be applied across the board in both the students' and teachers' interests.

On questioning by the Panel, Witness A stated that:

- Mr Walsh was relaxed as a teacher, a maverick. He was close to the edge in the way he spoke with children he would laugh and joke with them and tell to "sod off".
- She had responsibility for safeguarding training in the school and this was provided on a regular basis. The policy of the school in relation to lifts and social networking were clear and staff were aware of them. Staff attended training and accepted that they were aware of these policies.
- She had conducted a dozen or so disciplinary investigations.

- She had no evidence that Student A and B had colluded in their evidence. She thought that Student B had been supportive of Student A because of the same experiences having happened to her.
- Student A had not been in any trouble with the school or Mr Walsh. Nor had Student B. Student A had been a prefect at the school. This was because she demonstrated good leadership qualities and was a role model. We felt that she embodied the good values of the Academy and that she could lead other students. She was a trustworthy and honest student.
- The Academy's advised teachers to have an open door policy to protect themselves from allegations.
- In some ways all students in the school were vulnerable but Student A had strong parental support. Student B had a more strained relationship with her parents that was more turbulent.
- Student B was a qualified dance teacher and taught dance classes in the school but for academic purposes she was a student.
- Mr Walsh had had no formal disciplinary proceedings taken against him at the Academy. Individual C had spoken to him informally about observing professional boundaries.

Adjournment

The Presenting Officer requested an adjournment of the hearing so that further steps could be taken to contact Student B. The Presenting Officer submitted that the school would be attending on Student B that afternoon if possible to obtain copies of medical evidence to be submitted to the Panel and a signed copy of her statement. It would also be discussed with her whether she would provide evidence by telephone but the Presenting Officer anticipated that that would be unlikely as to date Student B had indicated that she was not well enough to do so.

The Legal Adviser provided the following advice:

Under rule 4.53, the Panel may, at any stage of the proceedings where it considers it fair and appropriate adjourn the case. The Presenting Officer was seeking an adjournment of the case until 9am on 30 April 2013 so that attempts could be made to clarify the position in relation to Student's B evidence.

The Panel confirmed that it would adjourn the proceedings for today and return at 9am tomorrow being 30 April 2013 so that the Presenting Officer could further action in relation to Student B's evidence as outlined in her submissions.

30 April 2013

Submission of Late/Additional Documents

The Presenting Officer requested that three documents obtained during the adjournment, being the signed statement from Student B, dated 29 April 2013 and two Statements of Fitness for Work dated 22 April 2013 and 26 April 2013, should be placed before the Panel. Ms Atkin referred the Panel to the requirements of the Disciplinary Procedures in particular paragraphs 4.16 and 4.17 and said that these

documents were relevant to the proceedings and that it was fair for them to be adduced as Mr Walsh had been sent unsigned versions of Student B's statement.

Before the Panel considered its decision, the Legal Adviser declared the following advice:

The Disciplinary Procedures for the Regulation of the Teaching Profession provide, at paragraph 4.24 that where the Presenting Officer wishes to rely on a document which is not served in accordance with Service and inspection of documents, then that document may only be admitted at the discretion of the Panel. In exercising this discretion, the Panel should have regard to any prejudice to the teacher. Student B's unsigned statement had already been sent to Mr Walsh and the signed statement were identical. The Statements of Fitness to Work had been provided by Student B to support her contention that she was unable to attend the hearing due to her ill health.

The Panel announced its decision and reasons for that decision as follows:

"We have decided to exercise our discretion to admit the signed statement and the additional documents relied on by Ms Atkins. We accept the legal advice and note that the documents are relevant to our decision making, so that these should be added to the case papers before the Panel in the interest of fairness."

The documents were added to the bundle of documents before the Panel.

Attendance of witness

Student B

The Presenting Officer stated that Student B was unable to attend or provide evidence via video-link or telephone due to her ill health and referred the Panel to two Statements of Fitness for Work (at pages 209 and 210 of the case papers). Ms Atkins outlined the efforts that had been made to secure Student B's attendance and / participation in the hearing. In particular, she referred to the application for Student B to be treated as a vulnerable witness so the special measures that had been directed to enable her evidence to be provided by telephone or video link. At the Case Management Hearing on 25 April 2013, the Panel had decided that Student A was a vulnerable witness on the basis that the allegations against Mr Walsh were of a sexual nature and Student B was an alleged victim. In addition, the medical evidence now before the Panel indicated that Student B had a physical disability. The Presenting Officer described the contact that had been made with Student B by the school and the Presenting Officer to obtain clarification of Student B's attendance and her medical condition.

The Presenting Officer stated that it would be prejudicial to Student B's welfare for her to provide evidence to the Panel and therefore her evidence should not be given in person. Further evidence in support of this submission could be found in the Swindon Borough Council Strategy Minutes dated 16 March 2011 (at page 172 of the case papers) it is recorded that Student B "has been reluctant to give a statement as she is fearful of attending court" and in the Strategy Minutes dated 12

May 2011 (at page 175 of the case papers) where it was recorded that Student B was not coping well.

The Legal Adviser provided the following legal advice:

Hearsay evidence is admissible in NCTL proceedings where it is relevant and its admission is fair. The Panel should take note that the Teacher had not objected to the admission of Student B's evidence. The Panel should consider treating hearsay evidence with caution and consider carefully what weight it considers can be attached to it.

Rule 4.67 of the Disciplinary Procedures provides that "*the Panel may require any person to attend and give evidence or to produce documents or any other material evidence at the hearing.*" The Panel could also take into account the efforts that had been made to secure the witness's attendance and the Statements of Fitness to Work signed by Student B's General Practitioner. Furthermore, the Panel had already decided, at a Case Management Hearing, that Student B was a vulnerable witness on the basis that the allegations against Mr Walsh were of a sexual nature and Student B was an alleged victim. Rule 4.70 and 4.71 of the Disciplinary Procedures states that "a Panel will only decide that ..a vulnerable witness will give evidence if it decides, after hearing representations [by and on behalf of the teacher] and the presenting officer, that the welfare of the ...vulnerable witness will not be prejudiced."

The Panel announced its decision and reasons for that decision as follows:

"We have taken into account that at a Case Management Hearing on 25 April 2013, it was decided that Student B is a vulnerable witness, on the basis that the allegations against Mr Walsh are of a sexual nature and Student B is an alleged victim. Furthermore, we have noted the medical evidence from Student B's General Practitioner, being two statement of fitness for work notes, which indicate Student B is unwell. One of these notes ran out on the 29 April 2013 but the other remains valid to 7 May 2013. We are satisfied that Student B can not attend the hearing at the present time due to her ill health.

We have also noted that within Swindon Borough Council Strategy Minutes dated 16 March 2011 (at page 172 of the case papers) it is recorded that Student B "has been reluctant to give a statement as she is fearful of attending court" and in the Strategy Minutes dated 12 May 2011 (at page 175 of the case papers) it is recorded that Student B was not coping well.

In the light of Student B's vulnerability, we are satisfied that her welfare would be prejudiced if she were directed to attend this hearing to give evidence even if her physical health were to improve. Under the provisions of Rule 4.70 the Panel has decided to proceed without requiring Student B to give evidence in person and is satisfied that further special measures would not be sufficient to safeguard her interests."

Closing submission

The Panel was reminded of a key principle in that it was for the NCTL to bring the case and prove the allegations against Mr Walsh.

The Presenting Officer referred to the live evidence that had been provided by Student A and Witness A in relation to allegation a (i) and (ii) and allegation b (ii). Student A provided oral evidence in relation to the comments made to her by Mr Walsh . These included telling her that she was “beautiful”, that he “fancied her”, and that he “had soft spot for beautiful blonds”. This made her feel flattered and special. In response to allegation a(ii) Student A had explained that Mr Walsh had opened the cupboard door and kissed her on lips and that it made her feel uncomfortable and upset.

Student A had given consistent and credible evidence. She was a truthful witness and this had been confirmed by Witness A. Witness A had given oral evidence as to Mr Walsh’s laid back style of teaching and that he had been very friendly with students. This was consistent with the description of his teaching style given by Student A. Witness A had never doubted Student A’s account and her view in contrast of Mr Walsh’s account was that he would not confirm things until he was confronted with evidence of matters that she had evidence of.

Student B did not give oral evidence but her signed statement had been provided. Student A confirmed in her evidence that she saw Mr Walsh and Student B in Mr Walsh’s car. This was accepted by Mr Walsh in his police interview (at page 45 of the case papers). Witness A’s oral evidence confirmed the school’s policy regarding lifts and she stated that Mr Walsh knew about that policy. Witness A confirmed the origins of the document on page 49 of the bundle which showed an inappropriate conversation between Mr Walsh and Student B, with references to him offering a massage to the student.

The hearsay evidence of Student B would need to be carefully assessed in terms of its weight as against the evidence provided by Mr Walsh. In considering the weight to be attached to allegations b(i), (b)(iii) and b (iv) the Panel should take into account the evidence provided by Witness A as to Student B’s credibility. Mr Walsh had agreed that he and Student B were friends and that the relationship between them was perceived was a good relationship.

There was no clear evidence as to the motive for Student B to create a lie or series of lies in relation to the conduct of Mr Walsh. She provided a detailed account to the Police. Student B had not come forward herself but was approached after it had been revealed by Student A’s mother that another Student had been involved in an inappropriate relationship with Mr Walsh. The description provided by Student A should not be interpreted in a sinister light. Student B believed Student A because of what had happened to her.

The Presenting Officer referred to page 112 and 117 of the case papers where its noted that Student B blamed herself for what had happened to Student A in that had she said something earlier what happened with Student A may not have occurred. Although the Panel should approach the weight to attach to Student B’s evidence with care there is no evidence of any sinister form of collusion between Students A and B.

The question of unacceptable professional conduct and/or conduct which brings the profession into disrepute is for the Panel's judgement. Student A's evidence reflected the impact that those events had on her education and well being. Mr Walsh had abused his position as a teacher and a failure of a teacher to safeguard the well being of pupils.

E. Decision and Reasons

The Panel announced its decision and reasons as follows:

We have now carefully considered the case before us and have reached a decision.

We confirm that we have read all the documents provided in the bundle in advance of the hearing.

Mr Walsh was employed at Swindon Academy ("the Academy") as the Assistant Curriculum Leader KS4 and KS5 in English from 1st March 2009. On 3 December 2010, Student A reported to Individual B, her tutor at Swindon Academy, that Mr Walsh had kissed her. Mr Walsh was suspended so that an investigation could be undertaken and a referral was made to Wiltshire Police and Swindon Borough Council.

On 7 December 2010, Wiltshire Police attended the Academy, to speak to Student A. The police also spoke to Student B, who disclosed that Mr Walsh had made inappropriate comments to her, kissed her and touched her on the knee.

The matter was referred to the Crown Prosecution Service and the Academy's disciplinary process was suspended whilst criminal proceedings were on-going during 2011 and early 2012. On 18 February 2012, Mr Walsh was found not guilty on three counts of adult abuse of position of trust; sexual activity with a girl 13 to 17 under the Sexual Offences Act 2003 at Swindon Crown Court. Following this, the Academy wrote to Mr Walsh to inform him that he would remain suspended pending the outcome of the disciplinary investigation.

A disciplinary hearing was held on 30 May 2012 to consider allegations regarding Mr Walsh's conduct in relation to Student A and Student B. Mr Walsh was dismissed for gross misconduct with immediate effect from 31 May 2012 and referred to the Teaching Agency. The Professional Conduct Panel considered allegations that Mr Walsh was guilty of unacceptable professional conduct and/ conduct which may bring the profession into disrepute. The allegations were not admitted and Mr Walsh did not attend the hearing and was not represented.

Findings of fact

Our findings of fact are as follows:

Whilst employed at Swindon Academy, Mr Walsh:

- a. **formed an inappropriate relationship with Student A, including that he:**

- (i) made inappropriate comments to her, such as telling her that she was “beautiful”, on more than one occasion;**

We have carefully listened to and tested, by our own questions, the evidence given to the hearing by Student A. We are satisfied that she has told the truth and can be believed. We find Student A to be entirely credible and consistent in her evidence.

Student A described to us how Mr Walsh had made comments to her such as: that she was “beautiful” on more than one occasion; that he “fancied her”; and that he had “a soft spot for beautiful blondes”. He made her feel flattered and special. In her witness statement she said that he had commented to her that he always fell for the wrong kind of women and that he liked his relationships “sizzling”. We have noted that Student A is described as “very honest” and as having “a good moral compass” by Student A’s tutor, Individual B, in his statement (at pages 31 and 33 of the case papers).

We also have carefully listened to and tested, by our own questions, the evidence given to us by Witness A. We find that Witness A was a witness who provided a careful account of her investigation and we believe her evidence. We also feel able to accept her assessment of Student A’s credibility.

Witness A told us that Student A was honest and trustworthy and was chosen to be a prefect at the Academy because of her role model qualities. Witness A confirmed that, to the best of her knowledge, Student A was not in any trouble with Mr Walsh and this corroborated Student A’s account. We are satisfied that Student A’s motivation for the disclosure was not malicious.

Mr Walsh denied that he had made comments about Student A’s appearance (at page 43 of the case papers). However, on the balance of probabilities, we prefer the oral evidence of Student A and conclude that inappropriate comments were made to her by Mr Walsh as described in her evidence. By contrast, we find the denial made by Mr Walsh to be unconvincing, thus confirming Witness A’s impression when she interviewed Mr Walsh that he was fairly unresponsive unless he was presented with the evidence that the Academy had.

We therefore find the particulars set out at (a) (i) proven.

(ii) kissed her on or around 30 November 2010

Student A told us that Mr Walsh kissed her on the lips and we find Student A to be entirely credible and consistent in her evidence in relation to this incident. In her live evidence, Witness A told us that there was no need for Mr Walsh to take a Year 11 student into a sixth form area. In the notes of meeting held at the Academy on 19th March 2012 (at page 123 of the case papers) Individual C, Mr Walsh’s departmental line manager, stated to Witness A that Mr Walsh “would know they (copies of Christmas Carol) wouldn’t be kept in the KS5 cupboard”.

We are again satisfied that Student A has told the truth and can be believed for the reasons set out in (a) (i) above.

During his interview with Wiltshire Police on 10 January 2011 (at page 44 of the case papers) and in his meeting with Witness A on 26 March 2012 (at page 131 to 132 of the case papers), Mr Walsh denied that he had kissed Student A. However, on the balance of probabilities, we prefer the oral evidence of Student A and conclude that Mr Walsh did kiss her on the lips on or around 30 November 2010, whilst in the sixth form area. We find the denial made by Mr Walsh to be unconvincing. Witness A told us that when she questioned Mr Walsh about the incident he told her that he didn't remember whether he had gone to the sixth form area with Student A. However, after Witness A told him that the Academy had CCTV footage for the sixth form area at the relevant time, he did remember. Witness A told us that "he wouldn't confirm information until he knew that I knew". She said that such information that did come forth from him was only disclosed after she had first told him that she had that information.

We therefore find the particulars set out at (a) (ii) proven.

Having found the particulars of a (i) and (ii) proven, we find that Mr Walsh had formed an inappropriate relationship with Student A.

b. formed an inappropriate relationship with Student B, including that he:

(i) kissed her on the cheek on or around 1 December 2010;

We carefully and cautiously considered the contents of Student B's signed statement (at pages 13a to 16a of the case papers) and the transcript of Student B's interview with Wiltshire Police. We note that Student B provided a clear and consistent account of this incident.

We find Witness A to be a witness who provided a careful account of her investigation and we believed her live evidence. Witness A told us that Student B was not in any trouble with Mr Walsh and had a good working relationship with him. Student A confirmed that Student B considered Mr Walsh to be a friend. We note that Student B did not initiate a disclosure until approached by the Academy after Student A's disclosure. We are, therefore, satisfied that Student B's motivation for the disclosure was not malicious. We are satisfied that Student B's motivation when she did come forward was that she felt guilty for not disclosing incidents earlier because this might have avoided the subsequent incidents involving Student A and Mr Walsh .

During his meeting with Witness A on 26 March 2012 (at pages 131 and 132 of the case papers) Mr Walsh denied that he had kissed Student B. However, on the balance of probabilities, we prefer the written evidence of Student B. By contrast, we note the denial made by Mr Walsh to be unconvincing, thus confirming Witness A's impression when she interviewed Mr Walsh, that he was fairly unresponsive unless he was presented with the evidence that the Academy had.

We therefore find the particulars set out at (b) (i) proven.

(ii) gave her a lift in his car on or around 1 December 2010;

Student B states in her signed witness statement (at page 15 a of the case papers) that Mr Walsh offered her a lift home so she got into his car. Student A's evidence to us corroborates this account. During his interview with Wiltshire Police (at page 45 of the case papers) and the meeting with Witness A on 26 March 2012 (at page 128 of the case papers), Mr Walsh admitted that he gave Student B a lift in his car.

Furthermore, we accept the oral evidence of Witness A and the note of the meeting with Individual C (at page 125 of the case papers) to the effect that all staff knew that to give a student a lift in a personal staff car, without another adult present, was contrary to the Academy's policy. All staff, including Mr Walsh, had signed the Academy policy to acknowledge that this was the case.

We therefore find the particulars set out at (b) (ii) proven.

(iii) made inappropriate comments to her on more than one occasion during 2009 and 2010;

Witness A told us that extracts of correspondence between Mr Walsh and Student B were downloaded from a social networking site and confirmed that these were transcribed and appear at page 49 of the case papers. This contained a number of inappropriate comments from Mr Walsh to Student B: "writers bollox", he also made reference twice to giving Student B a massage – "perhaps a massage" ; "ok I'll give you a massage when its done" .

Mr Walsh acknowledged that he had contact with lots of students on Facebook (at page 146 of the case papers). However, we note his denial that he had used a social networking site to offer a student a massage (at page 147 of the case papers) . We find Mr Walsh's account lacks credibility and prefer the account provided by Student B.

As set out in relation to (b)(i) above, we are again satisfied that Student B has told the truth and can be believed . This is further corroborated by the oral and written evidence of Witness A and the content of the case papers.

We are satisfied that Mr Walsh made inappropriate comments to Student B: about her relationship with her boyfriend including "he doesn't deserve you"(at page 14a and pages 92 to 93 of the case papers) ; about her bottom (at page 14a); suggesting taking her out and spending a night in a hotel (at page 14a and page 97) and stating that he had dreams about Student B " sexual ones that we were in a hotel room together and it was the best night of his life" (at page 93 and page 108); "you look nice today" (at page 13a); "its really hard for me not to kiss you right now" (at page 15a and page 101); "you've got pretty eyes"(at page 15a); " I fancy you, you're gorgeous" (at page 94).

We therefore find the particulars set out at (b) (iii) proven.

(iv) engaged in inappropriate physical contact with her on at least one occasion during 2009 and 2010.

In her signed witness statement (at pages 13a to 16a of the case papers), Student B described a number of occasions, during 2009 and 2010, when Mr Walsh engaged in inappropriate physical contact with her including running his hand up her leg, rubbing her knee, hugging her and rubbing her arm when she was upset.

As set out in relation to (b)(i) to (iii) above, we are again satisfied that Student B had told the truth and provided a credible account in relation to this particular. Mr Walsh denied inappropriate physical contact with Student B but we believe Student B's written evidence, on the balance of probabilities.

We therefore find the particulars set out at (b)(iv) proven.

Having found particulars (b) (i) to (iv) proven, we are satisfied that Mr Walsh formed an inappropriate relationship with Student B.

Findings as to Unacceptable Professional Conduct/Conduct that may bring the profession into disrepute

Having found the facts of the allegations proved, we further find that Mr Walsh's conduct amounts to unacceptable professional conduct and conduct which brings the profession into disrepute. Mr Walsh's conduct was wholly inappropriate and unacceptable. He caused considerable distress and anxiety to Student A and Student B by his failure to observe proper professional boundaries and to respect their rights and welfare.

In our judgement, Mr Walsh's conduct falls significantly short of the standards of behaviour expected of a teacher. He has failed to comply with the Teachers' Standards in relation to his personal and professional conduct, in particular:

Every teacher is required to uphold public trust in the profession and maintain high standards of ethics and behaviour, within and outside the school, by:

- treating pupils with dignity, building relationships rooted in mutual respect, and at all times observing proper boundaries appropriate to teacher's professional position
- having regard to the need to safeguard pupils' well-being, in accordance with statutory provisions.

A teacher must also have proper regards for the ethos, policies and practices of the school in which they teach.

A teacher must also have an understanding of, and always act within, the statutory frameworks which set out their professional duties and responsibilities.

Panel's Recommendation to the Secretary of State

In deciding whether to recommend the imposition of a Prohibition Order to the Secretary of State the Panel considered the issue of the public interest. We are satisfied that a Prohibition Order is appropriate to protect the interests of children and other members of the public, to maintain public confidence in the teaching profession and the declaration and upholding of proper standards of conduct.

We have carefully considered the relevant factors set out in the guidance on the Prohibition of Teachers. We consider that this case involves a serious departure from the personal and professional conduct elements of the latest Teachers' Standards, as published by, or on behalf of, the Secretary of State; misconduct seriously affecting the education and / or well being of pupils, and this is a continuing risk and an abuse of position / trust. A particularly serious aspect of this case is Mr Walsh's failure to recognise appropriate personal and professional boundaries with students.

We have considered whether the imposition of Prohibition Order is proportionate, weighing the interests of the public against those of the teacher. Mr Walsh has not engaged with these proceedings. We have not received any mitigation from him nor do we have any evidence of insight on his part. Our view is that his actions were deliberate and he was not acting under duress at the relevant time.

The Panel has, therefore, decided to recommend that the Secretary of State should make a Prohibition Order in the public interest in this case and is satisfied that this is a proportionate sanction.

We further recommend that the minimum period before the end of which Mr Walsh may apply for a review of the Prohibition Order should be five years.

Secretary of State's Decision and Reasons

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

The Panel has found all of the allegations made against Mr Walsh proven. Mr Walsh has failed to maintain the appropriate boundaries and his behaviour has caused real distress to pupils and students.

Mr Walsh has failed to treat pupils with dignity and he has also failed to safeguard the well-being of pupils. In these failures, Mr Walsh has fallen significantly short of the standards of behaviour expected of a teacher.

The Panel has recommended that Mr Walsh is prohibited. I have considered this, and taken into account the need to be proportionate and to act in the public interest. Having taken those matters into account I support the recommendation of the Panel that Mr Walsh be prohibited from teaching.

I have also considered the issue of a review period. The Panel has recommended a 5 year review period. It is clear that Mr Walsh has not engaged in these proceedings,

and so it is impossible to see whether he has any real insight into the behaviours he has exhibited. Ordinarily such lack of insight and failure to express remorse would lead to a denial of any review period. However, although the findings are very serious, they are not, as indicated by the Crown Court's finding, at the most serious end of the spectrum. I believe therefore that it is proportionate that a 5 year review period applies. Mr Walsh will need to demonstrate significant insight and make a successful application if he is permitted to teach again, but the 5 years should allow him opportunity to reflect on his misconduct.

This means that Mr James Walsh 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 9 May 2018, 5 years from the date of this order at the earliest**. If he does apply, a Panel will meet to consider whether the Prohibition Order should be set aside. Without a successful application, Mr James Walsh remains barred from teaching indefinitely.

This Order takes effect from the date on which it is served on the Teacher.

Mr James Walsh 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.

NAME OF DECISION MAKER: Alan Meyrick

DATE: 1 May 2013