



National College for
Teaching & Leadership

Mr Andrew Gilbert: Professional conduct panel outcome

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

April 2016

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

Teacher: Mr Andrew Gilbert
Teacher ref number: 0613920
Teacher date of birth: 20 August 1982
NCTL case reference: 12596
Date of determination: 13 April 2016
Former employer: Purbeck School

A. Introduction

A professional conduct panel (“the panel”) of the National College for Teaching and Leadership (“the National College”) convened on 11 to 13 April 2016 at the Ramada, Hotel and Suites, Coventry CV1 3GG to consider the case of Mr Andrew Gilbert.

The panel members were Mr Keith Jackson-Horner (teacher panellist – in the chair), Mr Ian Hughes (lay panellist) and Mrs Susan Iannantuoni (lay panellist).

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

The presenting officer for the National College was Ms Julia Faure-Walker of 2 Hare Court.

Mr Andrew Gilbert was present and was represented by Mr Steve Cooper of AMiE-ATL (Association of Managers in Education – Association of Teachers and Lecturers) Southern.

The hearing took place mainly in public and was recorded.

B. Allegations

The panel considered the allegations set out in the Notice of Proceedings dated 25 August 2015.

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

1. Whilst employed at Weymouth College (“the College”) he failed to maintain professional boundaries in that he:
 - a. entered into an inappropriate relationship with Student A;
 - b. inappropriately communicated with Student A, on one or more occasions, about matters which were not related to her education by:
 - i. Email,
 - ii. Telephone;
 - c. kissed Student A on one or more occasions;
 - d. engaged in sexual activity with Student A on one or more occasions.
2. His conduct as set out in paragraph 1 above was sexually motivated.
3. When applying for the post at Purbeck School (“the School”), he failed to declare that his employment at the College ceased because of his relationship with Student A in his:
 - a. application form,
 - b. interview.
4. When asked by his line manager at the School whether he left the College because he was having a relationship with a student he falsely stated it was “absolutely not true”, or words to that effect.
5. His actions as set out in paragraphs 3 and/or 4 above were dishonest.

In the response to the Notice of Proceedings form, Mr Gilbert has indicated that he does not admit all allegations. This case is therefore proceeding as a disputed case.

C. Preliminary applications

Mr Gilbert made an application for the hearing to be heard in private. He explained in the addendum to the response to the Notice of Proceedings form that if the hearing were held in public it would have a disproportionately negative impact upon him and his employer. Mr Gilbert is concerned that a public hearing would lead him to lose his current employment which he indicates is within the education sector but in a role that does not bring him into contact with learners. He also considers that a public hearing would have a “deleterious” impact on his health. Mr Gilbert’s representative submitted in support of this application a reference from Mr Gilbert’s medical practitioner which was not on headed paper. The presenting officer requested from the panel a direction that Mr Gilbert undertake a telephone call so that the presenting officer can establish whether the information recorded in the letter from a purported medical practitioner is authentic. The panel determined that such a telephone call was not necessary, as the panel accepted the authenticity of such evidence.

The panel has considered whether to exercise its discretion under Regulation 11 of the Teachers’ Disciplinary (England) Regulations 2012 (the “Regulations”) and paragraph 4.57 of the Disciplinary Procedures for the Teaching Profession (the “Procedures”) to exclude the public from all or part of the hearing.

When questioned by the panel, Mr Gilbert indicated that he is not currently working and was in a fixed term contract which ended on 1 April 2016. Mr Gilbert confirmed to the panel that he had not previously notified his current employer, the examination body, OCR, he was due to attend a hearing at the National College. Once he did notify them (upon the advice of his representative), he suggested that he would resign with immediate effect as his role involved him advising and supporting teachers in schools. However, his employer said that he could stay until the end of the contract on 1 April 2016.

The panel noted that the medical evidence stated that a private hearing would be easier for Mr Gilbert to manage in light of his health issues.

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

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 and also to maintain confidence in the teaching profession. The panel has noted Mr Gilbert’s concern about the impact this hearing may have on his health and that it may be necessary for confidential matters relating to his health being placed in the public domain. The panel has carefully considered Mr Gilbert’s reasons as to why he

considers the public should be excluded from the hearing. The panel has balanced Mr Gilbert's reasons against the competing reasons for which a public hearing is generally required.

The panel notes that any departure from the general rule has to be no greater than the extent reasonably necessary and that interference for a limited period of the hearing is preferable to a permanent exclusion of the public. The panel has therefore, considered whether there are any steps short of excluding the public from the entire hearing that would serve the purpose of protecting the confidentiality of matters relating to Mr Gilbert's health. The panel considers that to the extent it becomes necessary during the course of the hearing to discuss health matters, the panel can consider at that stage whether to exclude the public from that portion of the hearing only.

The panel also notes that information of an intimate nature may arise relating to third parties including Pupil A. Should it be necessary for such information to be referred to in the course of this hearing, the panel will consider at that time, whether the public should be excluded from the hearing, or whether it would sufficiently protect the interests of third parties to grant anonymity to those third parties without the need to exclude the public from the hearing.

Finally, the panel has noted Mr Gilbert's concern that this hearing would have an impact upon his health, however, it considers that the public interest considerations outweigh the interests of Mr Gilbert which can be mitigated by his health only being considered in private session as necessary.

The presenting officer also applied for a witness to give evidence via Skype. The legal advisor advised the panel that it must consider balancing its obligation to ensure that Mr Gilbert is not put at an unfair disadvantage in so far as it is possible to do, consistent with fairness to Mr Gilbert. The presenting officer submitted that no unfair prejudice would be caused to Mr Gilbert if this witness were to give evidence via Skype and Mr Gilbert's representative confirmed that Mr Gilbert did not object to this application. In view of this application not being opposed, the panel agreed to admit evidence via Skype.

In addition, the presenting officer requested additional documentation relating to the health of Pupil A be admitted to the bundle which explains why she is not being called to give oral evidence. Mr Gilbert's representative confirmed that Mr Gilbert did not object to Pupil A not being called to give evidence. The panel agreed to admit this evidence into the bundle.

Prior to Mr Gilbert giving evidence, the panel considered whether handwritten notes prepared by Mr Gilbert to aid his memory in oral evidence should be permitted. The panel considers that in light of Mr Gilbert's health issues, the panel was content for Mr Gilbert to

refer to such notes occasionally as an *aide memoire*, as a reasonable adjustment. However if Mr Gilbert refers to his notes on frequent occasions and it appears to the panel that he is using such notes as a script, the panel are not comfortable with this, as it will amount to prepared answers as opposed to oral evidence. In this situation, the panel will request that Mr Gilbert no longer refer to his notes.

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 5

Section 2: Notice of Proceedings and Response – pages 6 to 16

Section 3: National College's witness statements – pages 17 to 45

Section 4: National College's documents

- Weymouth College documents – pages 46 to 97
- Policies – pages 98 to 180

Section 5: Teacher documents – pages 181 to 231

In addition, the panel agreed to accept the following:

Section 6: Additional documents

- Letter from Royal Manor Health Care – page 232
- Letter from Dorset County Hospital NHS Foundation Trust – page 233
- Two letters from The Bridges Medical Practice – pages 234 to 235

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

Witnesses

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

1. Witness A – former vice principal for financial operations at Weymouth College
2. Witness B – headteacher at Purbeck School
3. Witness C – assistant headteacher and head of sixth form at Purbeck School

4. Witness D – vice principal of finance and business planning

The panel heard oral evidence from the following on behalf of Mr Gilbert:

5. Mr Gilbert
6. Witness E – principal and chief executive of Weymouth College

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.

From September 2006 to September 2013, Mr Gilbert was employed at Weymouth College (“the College”) as a director of collaborative education. However, following a report of a relationship with a pupil, he was suspended and following investigation he was dismissed in September 2013. Mr Gilbert subsequently made an application to teach at Purbeck School (“the School”) in October 2013. He was appointed and started at the School as Head of Psychology on 16 December 2013. Mr Gilbert failed to notify the School of the reasons for his dismissal from the College.

Findings of fact

Our findings of fact are as follows:

The panel has found the following particulars of the allegations 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:

- 1. Whilst employed at Weymouth College (“the College”) you failed to maintain professional boundaries in that you:**
 - a. entered into an inappropriate relationship with Student A;**

The documents in the bundle refer to Pupil A throughout, which the panel regard as a reference to Student A. Student A will be referred to as Pupil A throughout this decision as a result. The College is a further education college. Pupil A was a pupil in the College’s sixth form provision. Mr Gilbert taught her AS level psychology.

The presenting officer indicated that the relationship with Pupil A developed around March 2013 when Pupil A was due to sit her examinations. The presenting officer stated that Mr Gilbert provided his personal email address to Pupil A and they arranged to meet in person for no legitimate educational reason. The presenting officer further stated that

Pupil A visited Mr Gilbert's house whilst his girlfriend was out and Mr Gilbert and Pupil A would often kiss when they met up.

Witness A met with various staff at the College and Pupil A and her mother as part of the College's investigation into whether an inappropriate relationship with Pupil A had been formed. Pupil A and Mr Gilbert's accounts differed on the detail. Mr Gilbert admitted there was an inappropriate relationship in the course of the College's investigation.

Mr Gilbert's oral evidence was that the nature of the inappropriate relationship with Pupil A developed by email and in person. Pupil A made a pass at him and initially he rebuffed her advances. Mr Gilbert admitted in the course of the hearing that in June 2013 he and Pupil A would meet each other every other day, outside of College and outside of home. The meetings occurred in summer 2013 following Pupil A's end of year examinations.

Mr Gilbert denied that he had arranged a hotel stay with Pupil A as Pupil A suggests in her statement. Pupil A further states in her statement that she stayed overnight at Mr Gilbert's home and that she had stayed up to a week at one time. Mr Gilbert stated this was not true, he has lived at the same address with his girlfriend (now fiancée) for 5 years. As Pupil A was not called to give oral evidence at the hearing, the panel was unable to test the strength and credibility of her evidence in this regard.

Mr Gilbert's representative confirmed at the start of the hearing that Mr Gilbert admits this particular of the allegations.

The panel has therefore found this particular of the allegations proven on the balance of probabilities.

b. inappropriately communicated with Student A, on one or more occasions, about matters which were not related to her education by:

i. Email,

In her opening statement, the presenting officer submitted that Mr Gilbert gave his personal email address to Pupil A through which discussions on non-school-related or non-education related matters took place. In his oral evidence Mr Gilbert said he chose to give his personal email address to Pupil A as he knew their communication was wrong and it should not take place via College email addresses. Mr Gilbert's representative confirmed at the start of the hearing that Mr Gilbert admits this particular of the allegations.

This particular of the allegations is found proven on the balance of probabilities.

ii. Telephone,

Pupil A's witness statement indicated that she and Mr Gilbert exchanged mobile numbers and they had frequent telephone calls. Mr Gilbert stated in oral evidence that Pupil A acquired his telephone number and he and Pupil A did talk by telephone.

Mr Gilbert's representative confirmed at the start of the hearing that Mr Gilbert admits this particular of the allegations. This particular of the allegations is found proven on the balance of probabilities.

c. kissed Student A on one or more occasions,

The panel noted from Pupil A's witness statement that on one occasion at Mr Gilbert's house in late March or early April 2013, she and Mr Gilbert kissed each other (with tongues) and she refers to them kissing on subsequent occasions also. Mr Gilbert stated in oral evidence that he and Pupil A did kiss each other with tongues.

Mr Gilbert's representative confirmed at the start of the hearing that Mr Gilbert admits this particular of the allegations. This particular of the allegations is found proven on the balance of probabilities.

d. engaged in sexual activity with Student A on one or more occasions.

In her witness statement, Pupil A states that when staying over at Mr Gilbert's house their relationship became sexual and that she wanted to have sexual relations with Mr Gilbert.

Mr Gilbert's oral evidence was that sexual activity with Pupil A did take place, namely kissing and sexual activity (touching beneath clothes) which was as "close to sex" without becoming "penetrative sex". He also indicated that Pupil A never stayed overnight with him.

Mr Gilbert's representative confirmed at the start of the hearing that Mr Gilbert admits this particular of the allegations. This particular of the allegations is found proven on the balance of probabilities.

2. Your conduct as set out in paragraph 1 above was sexually motivated.

Mr Gilbert denies this particular of the allegations.

The panel was advised by the legal advisor that the first question the panel needs to ask itself is whether reasonable persons would think the facts found proven against Mr Gilbert could be motivated by sexual desire 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 Gilbert's conduct or purpose towards Student A was sexually motivated, i.e. the subjective test.

Mr Gilbert's representative submitted that Mr Gilbert does not deny that inappropriate sexual contact took place with Pupil A but there was no sexual motivation towards initiating contact with and continuing a relationship with Pupil A.

When cross examined, Mr Gilbert was asked by the presenting officer whether he wanted a relationship with Pupil A. Mr Gilbert stated that his motivation for starting a relationship with Pupil A related to getting to know her and talking to Pupil A as she gave him compliments and made him feel better about the stresses relating to his job and health concerns. He did not set out to have a sexual relationship with Pupil A, the friendship developed and there came to be a point where he did want sexual activity with Pupil A. He further stated in oral evidence that he did not invite her over to his home for the purposes of sexual activity. However, he admitted that his conduct went beyond kissing and went much further but stopped before sexual intercourse.

Further in his oral evidence, Mr Gilbert explained that if he had been motivated by a desire for sex with Pupil A he would have sought to have had sexual activity with Pupil A at the first opportunity.

The panel considered that Mr Gilbert's initial motivation in pursuing an inappropriate relationship with Pupil A was not motivated by sexual desire. The panel consider that the more likely explanation on the balance of probabilities, was that he was flattered by the attention. Therefore, the panel considered that Mr Gilbert's conduct as referred to in allegations 1(a) to 1(b) was not sexually motivated.

However, the panel further considered that a natural consequence of the close relationship or friendship that had developed between Mr Gilbert and Pupil A was sexual activity. As soon as the relationship became sexually intimate, the panel considered, from that point, Mr Gilbert's conduct was sexually motivated. The panel has found that sexual activity between Mr Gilbert and Pupil A took place whilst she was still a pupil of the College. The panel considered that both the objective and subjective tests were met. A reasonable person would believe that the conduct found proven in relation to particulars 1(c) and 1(d) of the allegations was sexually motivated. The panel also considered that Mr Gilbert's behaviour in relation to those same particulars of the allegations was sexually motivated.

Particular 2 of the allegations is found proven in relation to particulars 1(c) and 1(d) only.

3. When applying for the post at Purbeck School ("the School"), you failed to declare that your employment at the College ceased because of your relationship with Student A in your:

a. application form,

The panel noted from the bundle that on the application form to the School, Mr Gilbert gave specific reasons for leaving the College. He made no reference to the College's decision to dismiss him. Mr Gilbert had stated on the application form that he had "low

job satisfaction”, health issues, and a desire to “teach more and manage less”. Mr Gilbert’s oral evidence was that at the time he applied to the College, negotiations regarding a settlement agreement were in progress from November 2013. Mr Gilbert felt he was unable at this stage to reveal the true reason for leaving.

Mr Gilbert’s representative confirmed at the start of the hearing that Mr Gilbert admits this particular of the allegations. This particular of the allegations is found proven on the balance of probabilities.

b. interview.

In his oral evidence, Mr Gilbert stated that he knew that on occasion a settlement agreement would be signed if a teacher wished to leave an employer. Mr Gilbert said he did not understand the meaning of this agreement and in particular the “secrecy” clause 4.2 which states that the “*Employee agrees to keep the fact of this agreement and the terms on which his/her employment terminated strictly confidential and agrees not to disclose, communicate or otherwise make public the same to anyone (save that he/she may make such disclosures as are required by law or, on a confidential basis, to the Employee’s immediate family or to any legal or financial adviser)*”. Mr Gilbert’s representative submitted that Mr Gilbert misunderstood clause 4.2, as he considered that there should be no disclosure of the reasons for leaving his former employment.

When questioned by the presenting officer, Mr Gilbert admitted that this clause did not prevent him stating that he is in difficulty in providing the true reasons for leaving or that a prospective employer should ask the College about his reasons for leaving. However, he still believed, at this time, that he was not permitted to tell the School in interview of the true reason for leaving the College.

Mr Gilbert’s oral evidence was that he understands now that he can reveal the true reason for leaving the College. Witness E’s oral evidence was that he considered clause 4.2 to be extraordinary and that it seems, upon its reading, that it suggests that Mr Gilbert is prevented from revealing the true reason for his leaving the College for confidentiality reasons.

Mr Gilbert’s representative confirmed at the start of the hearing that Mr Gilbert admits this particular of the allegations. This particular of the allegations is found proven on the balance of probabilities.

4. When asked by your line manager at the School whether you left the College because you were having a relationship with a student you falsely stated it was “absolutely not true”, or words to that effect.

Witness A confirmed in his oral evidence that following Mr Gilbert’s dismissal from the College, the College agreed with Mr Gilbert a form of words which would explain the reason why he had left the College. Witness A does not know how this statement was agreed, but he imagines that the principal, Mr Gilbert and his legal representative

discussed and agreed this wording. The panel noted from Witness A's witness statement that this wording stated "*Dismissal due to an undisclosed relationship with an over 18 year old student*".

Witness C confirmed in her witness statement and in oral evidence that it had been reported to her that Mr Gilbert had left the College because he had had a relationship with a student there. Witness C asked Mr Gilbert directly about this and he stated that this was "absolutely not true" which he stated quite forcefully and was believable. Further, Witness C's oral evidence was that Mr Gilbert stated to her that he had been very "put upon", by the College and he had wanted to leave. Mr Gilbert was calm and not agitated when he spoke to Witness C.

Witness C believed Mr Gilbert and spoke to the students who had reported that he had had a relationship with a pupil previously and told them to stop spreading such rumours.

Mr Gilbert's representative submitted that Mr Gilbert never meant to mislead the School and when questioned by the School about the reasons for leaving the College, he believed he was "gagged" by virtue of the settlement agreement he had signed with the College. Mr Gilbert believed the wording of the settlement agreement prevented him from revealing this information to third parties. He simply panicked when he said that it was not true that he had had a relationship with a student.

Witness B commented in her oral evidence that when she asked Mr Gilbert about his reasons for leaving the College in October 2013, he had not signed the settlement agreement with the College at that point. She therefore considered there was nothing to stop Mr Gilbert revealing the true reason for his departure.

When questioned by the presenting officer, Mr Gilbert confirmed that when he responded to Witness C's question, he did not wish her to find out about the relationship. He says that he did not intentionally mislead Witness C but he was in a difficult situation (due to the settlement agreement). He accepts that he did mislead Witness C but it was not intentional. He felt he was put on the spot and his response was the wrong response. When he answered questions from Witness B in a subsequent formal meeting, he stated, in oral evidence, that he answered honestly. The presenting officer reminded Mr Gilbert that such questions were asked after the School had received corroborating evidence that a relationship had occurred. He had not volunteered this information in advance.

Upon questioning by the panel, Witness D indicated that the wording of clause 4.2 is unclear. It is not clear whether Mr Gilbert was required to disclose the reasons for leaving the College in subsequent applications to schools (who may also seek references) as coming under the obligation to make disclosures "as are required by law". Witness D would expect any applicant to be clear and honest about breaks in employment history and reason for leaving previous employers.

In his oral evidence, Mr Gilbert confirmed that he did not disclose the relationship with Pupil A in his application form or in interview, as he had a verbal then written settlement agreement which he considered prevented him from revealing this information. This, together with the discussion with the College about potentially returning to work there, and the two references agreed with the College, further contributed to his failure to reveal the true reason for leaving. One reference just gave his dates of employment and the other was more detailed and referred to the reason for his dismissal.

Mr Gilbert's representative confirmed at the start of the hearing that Mr Gilbert admits this particular of the allegations. This particular of the allegations is therefore found proven.

5. Your actions as set out in paragraphs 3 and/or 4 above were dishonest.

This allegation is disputed.

The legal advisor advised the panel that the relevant test for dishonesty was established by the case of R v Ghosh. In accordance with the Ghosh case, the first question the panel must ask itself is, were Mr Gilbert's actions dishonest by the standards of reasonable and honest persons. The case of Hussain v GMC from November 2014 updated the objective test so that the question the panel should ask itself was: whether according to the standard of reasonable and honest doctors, in that case, what was done dishonest. The corollary in these proceedings would be the standard of reasonable and honest teachers.

The legal advisor also advised the panel that if it considered that Mr Gilbert's actions were dishonest by those standards then, and only then, must the panel ask itself the second stage of the test, the subjective test. The panel has to consider whether Mr Gilbert must have known that what he did was dishonest by those standards, although a person should not escape a finding of dishonesty because he sets his own standards of dishonesty.

It was Witness C's opinion that Mr Gilbert did not answer her honestly when she asked if he had left the College as a result of a relationship with a pupil. She considered that there was no ambiguity in this question and there was no other explanation for Mr Gilbert's answer other than dishonesty.

It was also Witness B's opinion that Mr Gilbert failed on three occasions to act honestly in the application process; during the interview with the School; and when asked the direct question by Witness C about the relationship. She considered that Mr Gilbert should not have believed that the terms of the settlement agreement prevented him revealing the true reason for leaving the College.

In his oral evidence, Mr Gilbert accepts that in "black and white", it appears as if he has acted dishonestly. However, he maintains that he did not intentionally seek to deceive Witness C when he made the comment referred to in particular 4 of the allegations.

The panel considered that objectively, by the standards of reasonable and honest teachers, that Mr Gilbert acted dishonestly when he failed to reveal the true reason for his leaving the College on his application form, in his interview with the School and when he responded to the direct question asked of him by Witness C. In addition, the panel considered that subjectively Mr Gilbert knew or must have known that what he was doing (as referred to in particulars 3 and 4 of the allegations) was dishonest by those standards.

This particular of the allegations is therefore found proven.

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

Having found all the particulars of the allegations to have been proven, the panel has gone on to consider whether the facts of those proven particulars of the 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 refer to as “the Advice”.

The panel is satisfied that the conduct of Mr Gilbert in relation to the facts found proven, involved breaches of the Teachers’ Standards. The panel considers that by reference to Part Two, Mr Gilbert 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.
- Teachers must have an understanding of, and always act within, the statutory frameworks which set out their professional duties and responsibilities.

The panel is satisfied that the conduct of Mr Gilbert in developing an inappropriate relationship with a pupil that became sexual, even if the pupil was aged 18 at the time, fell significantly short of the standards expected of the profession. Such conduct was unprofessional, breached his position of trust and did have a negative impact on Pupil A’s well-being.

The panel has also considered whether Mr Gilbert's conduct displayed behaviours associated with any of the offences listed in the Advice. The panel has found that the offences of serious dishonesty and sexual activity are relevant. The Advice indicates that where behaviours associated with such offences exist, a panel is likely to conclude that an individual's conduct would amount to unacceptable professional conduct.

Mr Gilbert's representative submitted that Mr Gilbert seriously regrets his actions and that health issues at the time affected his judgement. The panel noted those issues. However, the panel is satisfied that Mr Gilbert is guilty of unacceptable professional conduct. His behaviour was contrary to the sections of the Teachers' Standards referred to above.

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 had a negative impact on Mr Gilbert's status as a teacher. The fact that he had had a sexual relationship with a pupil and news of this passed on from the College to the School undoubtedly had a negative impact on him and damaged the public perception of the profession.

The panel therefore finds that Mr Gilbert's actions also constitute conduct that may bring the profession into disrepute.

The panel noted that Mr Gilbert admitted in the course of the hearing that his conduct as a whole in relation to the particulars of the allegations amounted to unacceptable professional conduct and/or 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 Gilbert, in that his behaviour ultimately resulted in sexually motivated conduct towards Pupil A, 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 Gilbert were not treated with the utmost seriousness when regulating the conduct of the profession.

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

Notwithstanding the 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 Gilbert.

In carrying out the balancing exercise the panel has considered the public interest considerations both in favour of and against prohibition as well as the interests of Mr Gilbert. The panel took further account of the Advice, which suggests that a prohibition order may be appropriate if certain behaviours of a teacher have been proven. In the list of such behaviours, those that are relevant in this case are:

- serious departure from the personal and professional conduct elements of the Teachers' Standards;
- misconduct seriously affecting the education and/or well-being of pupils, and particularly where there is a continuing risk;
- abuse of position or trust (particularly involving vulnerable pupils) or violation of the rights of pupils;
- dishonesty especially where there have been serious consequences, and/or it has been repeated and/or covered up;
-or other deliberate behaviour that undermines pupils, the profession, the school or colleagues;
- 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 militate against a prohibition order being an appropriate and proportionate measure to impose, particularly taking into account the nature and severity of the behaviour in this case. The panel considers that the investigation undertaken by the

College to some extent caused Mr Gilbert confusion over whether the terms of the settlement agreement would prohibit him from revealing the reasons for leaving the College. However, the panel considers that a reasonable and honest teacher would have realised that not revealing the true nature of his departure would call into question his probity and honesty.

In light of the panel's findings, the panel considers that Mr Gilbert's actions were deliberate. He did not seek to proactively cease contact with Pupil A even when he realised that he wished to undertake sexual activity with Pupil A. Mr Gilbert's representative submitted that poor health was, in his view, duress which impacted on Mr Gilbert's judgment at the time. Even though he was under a lot of job pressure and personal pressure (including health concerns and loss of a relative) at the time, the panel did not consider that Mr Gilbert was acting under duress.

The panel accepted Mr Gilbert's representative's submission that Mr Gilbert was of previous good history and the panel accepts that his relationship with Pupil A, as stated by Witness E in oral evidence, was out of character. Witness E stated that he would have Mr Gilbert teaching at the College "tomorrow". The panel noted that Witness E however was unaware of the reasons Mr Gilbert was dismissed from the School. The presenting officer invited the panel to accordingly place less weight on Witness E's comments as a result.

The presenting officer advised the panel that there are no previous disciplinary orders in Mr Gilbert's case. Mr Gilbert's oral evidence was that he has not previously been subject to disciplinary proceedings apart from those undertaken by the College and School.

Mr Gilbert's representative urged the panel to remember that Mr Gilbert was confused by the wording of the settlement agreement which was unclear. Mr Gilbert's representative submitted that the College insisted on two different references being provided as part of that settlement agreement. This was, in Mr Gilbert's representative's view, because the College held Mr Gilbert in high regard and discussions were already underway with regard to Mr Gilbert's potential return to the College.

The presenting officer considers that Mr Gilbert has undertaken a repeated pattern of dishonest behaviour in relation to not revealing the true reason for leaving the College in the application process and when asked directly by Witness C. It is of concern that Mr Gilbert has not told Witness E of the reasons for his dismissal from the School.

The panel took into account the extensive character evidence in the bundle namely four character references from former pupils and four from former colleagues of Mr Gilbert. The former pupils indicate in their character references that Mr Gilbert was a dedicated teacher, who demonstrated passion for teaching and enthusiasm for his subject and that he always offered additional support to students when required. He stressed that his "door was always open" for students who needed it. Another character reference from a former pupil indicated that Mr Gilbert had a genuine interest in his students and he really

cared about his students getting the best grades they were capable of. He was inspirational and lessons were always extremely well planned and “every minute” was used to help students gain an understanding of a particular topic. Mr Gilbert also supported students during difficult times during their studies which was greatly appreciated by his students who went on to perform well in higher education. Another student stated that Mr Gilbert’s concern for his students’ learning experience and awareness of their needs was almost unparalleled.

Witness E’s character reference included in the bundle stated that Mr Gilbert was a very effective head of School and he undertook all of his responsibilities diligently and effectively. He was an inspirational and excellent teacher and he had several years of 100% success rates with students with weak GCSE profiles. Witness E regarded Mr Gilbert as someone with an “impeccable teaching background”, “a highly promising junior colleague with middle management experience” and excellent character. In his character statement and in oral evidence, Witness E stated that he considers that Mr Gilbert had made a terrible error of judgment and as a result was forced to leave the College following a breakdown in the position of trust in which he was held. Witness E considers that it would be “tragic” were a teacher such as Mr Gilbert prevented from continuing in the teaching profession.

Another colleague at the College states in his character statement that Mr Gilbert was a highly successful teacher who worked hard, helped students gain good results and provided support to both members of staff and students. He led meetings effectively, organised meetings with parents and helped students discuss and plan their futures well. His results were amongst the best in the sixth form and students frequently obtained their highest results in psychology.

It was clear to the panel that Mr Gilbert was highly regarded for his teaching capability and proficiency. The presenting officer invited the panel to place less weight on the above mentioned character references as a number of the statement makers were not aware of the reasons for his dismissal from the School or the College. The panel noted the concern. Mr Gilbert stated in oral evidence that five (of the eight statement providers) were aware of the reasons for dismissal. Witness E volunteered to provide a character reference and appear as a character witness for Mr Gilbert.

However, 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 Gilbert. The sexually motivated conduct towards Pupil A (as set out in particulars 1(c) and 1(d)) and his repeated dishonesty in failing to reveal the true reason for leaving the College on three separate occasions (as referred to in allegations 3 and 4) were significant factors in forming that opinion. Accordingly, the panel makes a recommendation to the Secretary of State that a prohibition order should be imposed with immediate effect.

The panel went on to consider whether or not it would be appropriate for them 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. These behaviours includes serious dishonesty and 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. Even though it is arguable that the findings against Mr Gilbert amounted to serious dishonesty and serious sexual misconduct, the panel decided that there were extensive counter-balancing factors in this case that would render it disproportionate and unreasonable for a prohibition order to be imposed without provision for a review period.

The panel considered that the College caused Mr Gilbert great confusion over the impact and meaning of the settlement agreement that it asked Mr Gilbert to sign. Witnesses from the College confirmed in oral evidence that the meaning of the secrecy clause was unclear. The panel could understand why Mr Gilbert could have felt he could not reveal the true reason for his dismissal from the College. Also, the panel believed that the College's conduct reasonably led Mr Gilbert to believe that the College did not find that the relationship with Pupil A was a significant or grave error of judgment. The College invited him in to discuss further employment opportunities not long after he signed the settlement agreement. Witness E stated in oral evidence that the principal of the College at the time, did not consider that what Mr Gilbert had done was significantly wrong, given the age of Pupil A at the time. It is clear that the College gave Mr Gilbert mixed messages and this contributed to his misunderstanding over the severity of his conduct.

Mr Gilbert expressed, both in his written representations and his oral evidence, how sorry he was for the "grave" error in judgment that he made when he entered into and continued his relationship with Pupil A. He accepts that this relationship, in part, continued as he failed to seek help and support from other more appropriate individuals. He has received treatment for health concerns and he now considers that he is much better equipped to deal with a similar situation in the future. Even though he has concerns for his health in the future, he considers that he will be able to cope by seeking appropriate support and guidance from appropriate third parties.

He also now accepts that his belief about the settlement agreement preventing him from revealing to the School his true reason for leaving the College was wrong. Mr Gilbert was at pains to explain to the panel the extent of his health concerns which, by his own admission, did not excuse his behaviour, but did have an impact on his judgment at the time. In his closing submissions, Mr Gilbert's representative indicated that such errors of

judgment would not be repeated in the future. The panel considered that Mr Gilbert is beginning to develop insight into the triggers for his behaviour. Given more time, the panel considers that such insight will develop further and he may be able to take steps in the future to ensure that similar behaviour were not repeated. Mr Gilbert expressed his deep regret for the effect of his behaviour on the College and Pupil A and he is deeply ashamed over his conduct. His behaviour was out of character.

In light of Mr Gilbert's remorse and developing insight, the panel considered its findings indicated a situation in which a review period would be appropriate. As such, the panel decided that it would be proportionate in all the circumstances, in particular, the counter-balancing factors (referred to above) for the prohibition order to be recommended with provision for a review period of 4 years.

Decision and reasons on behalf of the Secretary of State

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

This case has two main limbs to it. The first is connected with the relationship that Mr Gilbert established with Pupil A. The second limb concerns the information that Mr Gilbert provided when applying for a job after he had left the College.

The panel has set out its findings clearly in both of these areas.

On the first element, the panel has found that Mr Gilbert's conduct in respect of particulars 1(c) and 1(d) was sexually motivated. The panel found that sexual activity between Mr Gilbert and Pupil A took place whilst she was still a pupil of the College. The panel considered that both the objective and subjective tests were met. The panel are clear that "A reasonable person would believe that the conduct found proven in relation to particulars 1(c) and 1(d) of the allegations was sexually motivated."

On the second element the panel are also clear on their findings. The panel considered that objectively, by the standards of reasonable and honest teachers, that Mr Gilbert acted dishonestly when he failed to reveal the true reason for his leaving the College on his application form, in his interview with the School and when he responded to the direct question asked of him by Witness C. In addition, the panel considered that subjectively Mr Gilbert knew or must have known that what he was doing (as referred to in particulars 3 and 4 of the allegations) was dishonest by those standards.

I have read the guidance published by the Secretary of State and it is clear to me that these two elements each comprise unacceptable professional conduct.

Mr Gilbert 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.
- Teachers must have an understanding of, and always act within, the statutory frameworks which set out their professional duties and responsibilities.

I have also noted that the panel found that Mr Gilbert’s actions also constitute conduct that may bring the profession into disrepute.

The panel also noted that Mr Gilbert admitted in the course of the hearing that his conduct as a whole in relation to the particulars of the allegations amounted to unacceptable professional conduct and/or conduct that may bring the profession into disrepute.

I have taken into account the need to be proportionate. I have also balanced the public interest with the individual interests of Mr Gilbert.

I agree with the recommendation of the panel that Mr Gilbert should be prohibited from teaching.

I turn now to the issue of a review period. I have read with great care the thinking of the panel and have given this matter a great deal of consideration.

Mr Gilbert has been found guilty of behaviour which falls across two very serious elements; sexually motivated behaviour with a pupil and dishonesty.

I have read carefully the panel’s thinking in relation to Mr Gilbert’s record as a teacher. I have also given careful consideration to the degree of insight and remorse expressed. I have noted the issues relating to health and judgement put forward by Mr Gilbert.

In my judgement the panel have given greater weight to these issues than I believe is appropriate. Mr Gilbert denied that his behaviour was sexually motivated, when it is clear from the findings of the panel that it was sexually motivated. Indeed the panel state that “Mr Gilbert’s oral evidence was that sexual activity with Pupil A did take place, namely kissing and sexual activity (touching beneath clothes) which was as “close to sex” without becoming “penetrative sex”.

On the second element of this case, the dishonesty, the panel note, "...Mr Gilbert acted dishonestly when he failed to reveal the true reason for his leaving the College on his application form, in his interview with the School and when he responded to the direct question asked of him by Witness C. In addition, the panel considered that subjectively Mr Gilbert knew or must have known that what he was doing (as referred to in particulars 3 and 4 of the allegations) was dishonest by those standards."

I have also noted the comments relating to the apparent confusion that Mr Gilbert had about his behaviour.

I have also noted that the panel have said that "Mr Gilbert is beginning to develop insight into the triggers for his behaviour. Given more time, the panel considers that such insight will develop further and he may be able to take steps in the future to ensure that similar behaviour were not repeated." The panel has also said that "Mr Gilbert expressed his deep regret for the effect of his behaviour on the College and Pupil A and he is deeply ashamed over his conduct. His behaviour was out of character."

The panel also say that Mr Gilbert has "remorse and developing insight,"

In my opinion, the fact that there are two very serious matters at play in this case has not been sufficiently taken into account by the panel.

In my judgement this is a case where, having considered the guidance published by the Secretary of State, no review is proportionate and appropriate. That guidance indicates that no review may be appropriate where there is, "serious dishonesty" and serious sexual misconduct e.g. where the act was sexually motivatedwhere the individual has used their professional position to...exploit a person".

In my view this case meets that description. The sexual misconduct was serious, even if it did not extend to "penetrative sex" and the dishonesty was serious as it occurred in the face of clear questions that were responded to in a dishonest way.

For these reasons I believe no review period is the right decision.

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

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

Mr Andrew Gilbert 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.

ALC MW

Decision maker: Alan Meyrick

Date: 14 April 2016

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