



National College for
Teaching & Leadership

Paul Birch: Professional Conduct Panel outcome

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

March 2015

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Professional Conduct Panel decision and recommendations, and decision on behalf of the Secretary of State

Teacher:	Mr Paul Birch
Teacher ref no:	7101413
Teacher date of birth:	23 June 1950
NCTL Case ref no:	0010979
Date of Determination:	6 March 2015
Former employer:	Bedford Modern School

A. Introduction

A professional conduct panel (“the panel”) of the National College for Teaching and Leadership (“the National College”) convened on 6 March 2015 at 53-55 Butts Road, Earlsdon Park, Coventry, CV1 3BH to consider the case of Mr Paul Birch.

The panel members were Robert Cawley (Teacher Panellist - Chair), Fiona Tankard (Teacher Panellist) and Mel Gunstone (Lay Panellist).

The Legal Adviser to the panel was Patricia D’Souza (Eversheds LLP).

The Presenting Officer for the National College was Sarah Przybylska (2 Hare Court Chambers).

Mr Paul Birch was not present and was not represented.

The hearing took place in public, and was recorded, save for the oral evidence of Pupil A which was heard in private.

B. Allegations

The panel considered the allegations set out in the Notice of Proceedings dated 8 December 2014.

It was alleged that Mr Paul Birch was guilty of unacceptable professional conduct and/or conduct that may bring the profession into disrepute in that whilst working as a Teacher at Bedford Modern School (“the School”) in or around 1975:

1. In relation to Pupil A he:
 - a. asked and/or told him to come into the Master’s Dressing Room,
 - b. asked and/or told him to pull down/remove his shorts,
 - c. asked and/or told him to pull down/remove his pants,
 - d. suggested and/or told Pupil A to roll/pull back his foreskin,
 - e. looked at Pupil A’s penis,
 - f. told him ‘that his balls would drop’ or words to that effect,
 - g. said to him “males can pleasure themselves and the way they can do this is to pull their foreskin back” or words to that effect,
 - h. asked him in relation to males pleasuring themselves, “do you want me to show you how?” or words to that effect;
2. In relation to Pupil B he:
 - a. asked and/or told him to pull down/remove his shorts,
 - b. asked and/or told him to pull down/remove his pants,
 - c. suggested and/or told Pupil B to roll/pull back his foreskin,
 - d. visually inspected his penis/genitals;
3. His actions set out at paragraphs 1 and/or 2 above were:
 - a. unacceptable,
 - b. inappropriate,
 - c. a breach of your position of trust,
 - d. sexually motivated.

C. Preliminary applications

The panel considered as a preliminary point whether it had jurisdiction to consider the case. The question is whether Mr Birch is now subject to the jurisdiction of the Secretary of State for Education given that he resigned from his full time teaching position at the School in 2013 and has not, as far as the panel are aware, taken any paid teaching employment since 2013.

The issue for the panel to determine was whether the phrase “is employed or engaged to carry on teaching work”, within section 141A of the Education Act 2011 and Regulation 2, encompasses the situation in this case.

The panel was advised that the legal meaning of an enactment is the meaning that corresponds to the legislator’s intention in passing the enactment. The panel was advised to consider the words used in section 141A and regulation 2 in the context of the enactment as a whole, and the panel’s attention was specifically drawn to section 141D which applies where an employer has ceased to use the services of a teacher or the teacher has ceased to provide those services.

The panel was advised to consider whether it was of the view that the legal meaning of the phrase “is employed or engaged to carry on teaching work” was plain and unequivocal or ambiguous because there were alternative ways of interpreting the phrase.

The panel was advised that if it considered the legal meaning of the phrase to be plain, then it would not need to interpret the phrase further.

However, if the panel did consider the phrase to be ambiguous, then the panel should consider what the intended legal meaning was, and that it should reach a balanced and common sense judgment. The panel were directed to the following principles that it may wish to consider in determining this, including that the law should:

- serve the public interest;
- be just;
- be certain and predictable;
- be coherent and self-consistent.

The panel was also told that it should be presumed that Parliament will have intended:

- for the provision to be given its literal meaning on an ordinary and natural interpretation;
- the provision to meet legislative purpose and remedy the issue it was directed towards;

- the provision not to be interpreted in a way that produces an absurd, unworkable or impractical result;
- the provision not to be interpreted in a way that produces unjustifiable inconvenience in terms of unnecessary technicalities, inconvenient to business, taxpayers or legal proceedings;
- the provision not to be interpreted in a way that produces an anomaly;
- the provision not to be interpreted in a way that produces a futile, pointless or artificial result, including pointless legal proceedings.

The panel's attention was drawn to a Professional Conduct Panel's decision in a previous case. In that case, the matters were alleged to have occurred in 2008, at the time the relevant person was teaching. The panel came to consider the case in 2013, and the individual had not been engaged in teaching work since July 2010. In that case, the Professional Conduct Panel determined that it did have jurisdiction on the basis that:

- Parliament could not have intended only those currently teaching to be within the legislative regime;
- Someone who was not currently engaged in teaching, does not preclude them from returning to a teaching role in the future;
- Parliament must have intended the phrase is "employed or engaged" to include individuals who were teaching at the time of the alleged incident even if they no longer work in the profession.

The panel was reminded that each case should turn on its own facts.

The panel bore in mind that the fact that someone is not currently engaged in teaching does not preclude them from returning to a teaching role in the future and that not being able to explore an allegation that has been made against an individual who is not currently teaching would not be in the public interest. The panel does not consider that this would have been Parliament's intention.

The panel therefore considers it does have jurisdiction to consider this matter, as Mr Birch is a teacher, as set out in s141A of the Education Act 2011 and the Regulations. The effect of s141D which applies where an employer has ceased to use the services of a teacher or the teacher has ceased to provide those services was pertinent to the panel's decision. The panel considers that Parliament would have intended the regime to operate in a manner that was both certain and practical. For this case to not be within the jurisdiction of the Secretary of State would mean that there would have to be some definitive point at which someone would dip out of the jurisdiction, leading to uncertainties as to when that would be. The panel notes that Mr Birch has not contended that his case is not eligible to be considered. The panel considers that on a common sense view, the regulatory regime applies to Mr Birch even if he has not engaged in teaching work since 2013, as he could return to teaching at any time, irrespective of his age.

In light of Mr Birch not being present at today's hearing and that the alleged conduct in issue took place in or around 1975, the panel asked the Presenting Officer to make submissions on whether the pursuit of these proceedings was an abuse of process. The panel was mindful of the advice it had received that even where a delay was unjustifiable, a permanent stay to proceedings, as a result of an abuse of process concerns, should be the exception rather than the rule. The panel considered that even though these matters may have happened many years ago, these allegations only came to light as recently as 2013, and in light of this, the panel considered that there had not been a significant delay between this and today's hearing. Therefore the panel considered it was not an abuse of process for these proceedings to continue.

The panel has considered whether this hearing should continue in the absence of the Mr Birch.

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

The panel is also satisfied that the Notice of Proceedings complies with paragraphs 4.11 and 4.12 of the Teacher misconduct - Disciplinary Procedures for the teaching profession ("the Procedures").

The panel has determined to exercise its discretion under paragraph 4.29 of the Procedures to proceed with the hearing in the absence of the teacher.

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

In making its decision, the panel has noted that the teacher may waive his right to participate in the hearing. The panel has taken account of the various factors drawn to its attention from the case of *R v Jones* [2003] 1 AC1. As the Notice of Proceedings was sent by first class post on 8 December 2014 indicating that the hearing would take place on 6 March 2015, Mr Birch has had more than 8 weeks notice of the hearing date. Mr Birch has signed and returned the Notice of Proceedings form to indicate that he did not wish to attend this hearing and did not intend to be represented at the hearing. He has also completed the statement of agreed facts with yes and no responses to various factual elements of the allegations referred to above. Also the National College has advised the Legal Advisor that the documents included in the bundle were sent by first class post to Mr Birch on 13 February 2015 and the covering letter to that notice reminded Mr Birch that the hearing date was today's date. It is apparent to the panel that Mr Birch is aware of these proceedings. The panel therefore considers that Mr Birch has

waived his right to be present at the hearing in the knowledge of when and where the hearing is taking place.

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

The panel has had regard to the extent of the disadvantage to Mr Birch in not being able to give his account of events, having regard to the nature of the evidence against him. The panel has the benefit of Mr Birch's comments in the statement of agreed facts and the documents in the bundle, such as the Agency reporting form for allegations against staff and volunteers working with children and the notes of meetings with the local authority or School. The panel is therefore able to ascertain the lines of defence. The panel has evidence relating to mitigation in relation to health concerns which is mentioned in the minutes of meetings with the local authority and is able to take this into account at the relevant stage. The panel has noted that the only witness relied upon to be called to give evidence will have their evidence tested by the panel questioning that witness, considering such points as are favourable to Mr Birch, as are reasonably available on the evidence. The panel has not identified any significant gaps in the documentary evidence provided to it and should such gaps arise during the course of the hearing, the panel may take such gaps into account in considering whether the hearing should be adjourned for such documents to become available and in considering whether the presenting officer has discharged the burden of proof. The panel is also able to exercise vigilance in making its decision, taking into account the degree of risk of the panel reaching the wrong decision as a result of not having heard Mr Birch's account.

The panel has had regard to the seriousness of this case, and the potential consequences for Mr Birch and has accepted that fairness to Mr Birch is of prime importance. The panel considers that Mr Birch has waived his right to appear and that by taking such measures referred to above to address that unfairness insofar as is possible; and taking account of the inconvenience an adjournment would cause to the witness; that on balance, these are serious allegations and it is in the public interest for this hearing to proceed.

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 – 3

Section 2:	Notice of Proceedings and Response	Pages 4 – 11
Section 3:	National College for Teaching and Leadership Witness Statements	Pages 12 – 19
Section 4:	National College for Teaching and Leadership Documents	Pages 20 – 71
Section 5:	Teacher Documents	Pages 72 - 76

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

Witnesses

The panel heard oral evidence from Pupil A in private session.

E. Decision and reasons

The panel announced its decision and reasons as follows:

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

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

Mr Birch had been employed as a Mathematics and sport teacher at the School since 1971. He was a high level table tennis coach and was heavily involved in table tennis leagues held at the School's premises. Mr Birch resigned as head of Mathematics in 2010 and was re-employed as a part-time Examination Officer. Mr Birch also subsequently became a volunteer table tennis coach. Following, a report to the police in 2013, that a pupil of the School had overheard a relative speaking about sexual abuse by Mr Birch, Mr Birch was suspended by the School and table tennis association pending investigation. Mr Birch resigned from his Examination Officer position in November 2013.

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:

1. In relation to Pupil A you:

- a. asked and/or told him to come into the Master's Dressing Room,**

Pupil A stated in his oral evidence and in his written statement that on a Saturday afternoon when he was around 11/12 years old he attended a table tennis practice session in the School gym with another 10-15 boys being coached by Mr Birch. Towards the end of the coaching session Pupil A indicated that Mr Birch asked him to go into the Master's dressing room which was located down a short corridor away from the gym. This was a master's changing room which was separate to a changing room for the pupils, who at that time, were all boys as it was a single sex school. Pupil A indicated that pupils were not usually allowed to enter the Master's dressing room. The dressing room itself had no windows.

Mr Birch closed the door when Pupil A entered and Mr Birch stated that he considered that Pupil A had self-confidence issues. Pupil A confirmed he was only 11 or 12 years old so he did exactly as he was told as the request was made by a teacher. Pupil A did not recall any fear or trepidation at being called into the room, even though it had not happened before.

The panel noted that Mr Birch admits that he did call Pupil A into the staff dressing room in the Agency Reporting form for allegations against staff or volunteers included in the bundle. The panel therefore found this allegation proven.

b. asked and/or told him to pull down/remove his shorts,

Pupil A also stated in his oral evidence and his written statement that as the Master's dressing room was very small, when he was in there with Mr Birch, Mr Birch was standing very close to Pupil A. Mr Birch asked him to drop his shorts to his ankles which Pupil A did. The Agency Reporting form and statement of agreed facts included in the bundle reflects Mr Birch agreeing that he asked Pupil A to pull down his shorts. The panel therefore found this allegation proven.

c. asked and/or told him to pull down/remove his pants,

In his statement, Pupil A stated he was wearing pants, which Mr Birch could see when Pupil A pulled down his shorts. Mr Birch commented that he should not be wearing pants when playing sports and asked Pupil A to pull down his pants as well. Pupil A did so. Mr Birch again admitted to having done this in the Agency Reporting form and statement of agreed facts included in the bundle. The panel therefore found this allegation proven.

d. suggested and/or told Pupil A to roll/pull back his foreskin,

Pupil A stated further in his written statement that during his time in the Master's dressing room, Mr Birch spoke to him about puberty. It is not clear from his statement, whether Mr Birch asked Pupil A to roll or pull back his foreskin. However, Mr Birch admits in the Agency Reporting form and statement of agreed facts included in the bundle that he suggested or told Pupil A to roll back his foreskin. Therefore the panel found this allegation proven.

e. looked at Pupil A's penis,

Pupil A did not indicate in his written or oral evidence that Mr Birch looked at his penis whilst he was in the Master's dressing room. However, Mr Birch indicated in the Agency Reporting form included in the bundle that he got no sexual gratification from looking at Pupil A's penis. Therefore it is implicit that Mr Birch accepts he did look at Pupil A's penis. Also the panel inferred from Pupil A's written evidence, that as Mr Birch stated that he would start to grow pubic hair that it is more likely than not that this allegation is proven.

f. told him 'that his balls would drop' or words to that effect,

Pupil A stated in his oral evidence that Mr Birch stated that "his balls would drop". Pupil A was an 11 year old in the 1970s, and he considered that it was bizarre to have such a discussion with a teacher. Pupil A did not know what this meant at the time.

In the Agency Reporting form included in the bundle Mr Birch is recorded as saying that he could not remember what he had said to Pupil A but he was only giving him advice about his changing body. In the statement of agreed facts, Mr Birch denies stating that Pupil A's "balls would drop" but he did confirm in the Notice of Proceedings form that the only allegation he did not admit was allegation 3d. On the balance of probabilities, the panel found this allegation proven.

g. said to him "males can pleasure themselves and the way they can do this is to pull their foreskin back" or words to that effect,

Pupil A stated in his oral evidence that at 11 years old he had no idea what Mr Birch was referring to when talking about males pleasuring themselves. Pupil A said his recollection was clear that Mr Birch stated to him that as boys mature and become interested in girls, males could pleasure themselves by pulling back their foreskin. In the Agency Reporting form Mr Birch strongly denies speaking to Pupil A about masturbation. However, as stated above, Mr Birch has accepted in the statement of agreed facts that he did ask Pupil A to roll back his foreskin but he denies this allegation. On the balance of probabilities, the panel found this allegation proven.

h. asked him in relation to males pleasuring themselves, "do you want me to show you how?" or words to that effect;

In his written and oral evidence, Pupil A stated that when he was in the Master's dressing room, Mr Birch mentioned to him how males could pleasure themselves. Mr Birch asked Pupil A if he wanted him to show him how to do this. Mr Birch was standing very close to Pupil A and Pupil A told the panel that he strongly believed Mr Birch meant to touch him and show him how to do this, rather than demonstrating on himself. Pupil A told the

panel that he was scared and he made up an excuse that he was ill and ran home immediately (his home was close to the School).

Despite Mr Birch's denial in the Agency form that he would ever have touched Pupil A or masturbated him, the panel found this allegation proven on the balance of probabilities.

2. In relation to Pupil B you:

- a. asked and/or told him to pull down/remove his shorts,**
- b. asked and/or told him to pull down/remove his pants,**
- c. suggested and/or told Pupil B to roll/pull back his foreskin,**
- d. visually inspected his penis/genitals,**

The panel had regard to a written statement from the father of Pupil B, in which he stated that many years ago Pupil B told him of an incident that took place when Pupil B was 11 years old and a pupil of the School. Pupil B indicated to his father that after a games lesson, Mr Birch asked Pupil B to go to the playing field's changing room stating that he wanted to "check his physique". Mr Birch asked Pupil B to strip in front of another pupil. The panel noted that the Agency Reporting form included in the bundle contained a summary of a telephone conversation with Pupil B who now lives abroad. This summary states that Pupil B said that Mr Birch told him to take off his shorts and pants and to pull back his foreskin. Mr Birch then examined Pupil B visually before telling him to pull back his foreskin. Pupil B stated that there was no touching involved.

Mr Birch accepts in the Agency reporting form that he treated Pupil B in the same way as Pupil A and he could not remember when this was. In addition, the statement of agreed facts reflects Mr Birch's agreeing that he asked Pupil B to remove his shorts and pants, told Pupil B to pull back his foreskin and visually inspected Pupil B's penis. Taking all relevant information into account, the panel found allegation 2a, 2b, 2c and 2d proven.

3. Your actions set out at paragraphs 1 and/or 2 above were:

- a. unacceptable,**
- b. inappropriate,**

Pupil A, in his oral evidence, considered that there was no reason for Mr Birch to ask him to attend the Master's dressing room and in his view, Mr Birch's behaviour was not attributable to a discussion on hygiene or puberty. The panel considered that as a result of its findings under allegation 1 and 2, Mr Birch's behaviour was neither acceptable nor appropriate. In the statement of agreed facts Mr Birch admits allegations 3a and 3b. Taking into account all of these facts, the panel found allegations 3a and 3b proven.

c. a breach of your position of trust,

Any member of staff is in a position of trust. The panel found that Mr Birch's conduct did breach his position of trust as both Pupil A and B followed his instruction as a teacher and undressed in front of him. It is clear from Pupil A's written statement and the record of the telephone conversation with Pupil B that Mr Birch's request for them to pull back their foreskin made them both uncomfortable. Pupil A was concerned that Mr Birch might touch him inappropriately. The panel found this allegation proven.

d. sexually motivated.

Pupil A indicated in his evidence that he did not think Mr Birch's motivation for calling him into the Master's dressing room or speaking to him in the way he did was for a medical or hygiene reason but because Mr Birch got some sort of sexual benefit from looking at naked young boys.

Mr Birch indicated in the Agency Form that he used to hear a group of "4 lads ripping each other about their bodies" and he was only giving advice to Pupil A about his changing body. Even though he denies this allegation, it was unclear to the panel why he would need to inspect two pupils' penises in person or why he called Pupil A to a discrete room which was usually not accessed by pupils and that had no windows.

Pupil A considers that if he had not left the room, Mr Birch would have touched him inappropriately.

Pupil A also stated in his written evidence that Mr Birch got a "cheap thrill" from watching boys run naked through the showers at School. Even though Mr Birch denies that he got any sexual gratification from looking at Pupil A and B's penises, upon being talked to by the head teacher at the time, he realised his actions were "stupid" and that he had never done anything like that since. The statement of agreed facts reflects Mr Birch's denial of this allegation. The panel found sexual motivation was the most likely reason for Mr Birch's behaviour towards Pupil A and B as set out in allegations 1 and 2. On the balance of probabilities, this allegation is therefore proven.

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

In considering the allegations that the panel has found proven, the panel has had regard to the definitions in The Teacher Misconduct – Prohibition of Teachers Advice, which we refer to as the 'guidance'.

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

- Teachers uphold public trust in the profession and maintain high standards of ethics and behaviour, within and outside school, by
 - treating pupils with dignity, building relationships rooted in mutual respect, and at all times observing proper boundaries appropriate to a teacher's professional position;
 - having regard for the need to safeguard pupils' well-being, in accordance with statutory provisions;
- Teachers must have an understanding of, and always act within, the statutory frameworks which set out their professional duties and responsibilities.

The panel is satisfied that the conduct of Mr Birch fell significantly short of the standards expected of the profession as he breached his position of trust and asked pupils to remove their clothes and inspected their bodies when there was, in the panel's view, no legitimate reason for him to do so. It was highly inappropriate to place children in that position.

The Presenting Officer submitted that the protection of pupils was as basic to the teaching profession in the 1970s as it is now. Even though some of the teaching practices at that time would be regarded by modern standards as inappropriate, Mr Birch's conduct was a threat to the well-being of Pupil A or Pupil B. The fact that the parents of Pupil A were appalled by Mr Birch's conduct and complained to the school is evidence of just how unacceptably Mr Birch's conduct was viewed at the time.

The panel has also considered whether Mr Birch's conduct displayed behaviours associated with any of the offences listed on page 8 and 9 of the guidance and the panel has found that sexual activity is relevant. The guidance indicates that where behaviours associated with such an offence exist, a panel is likely to conclude that an individual's conduct would amount to unacceptable professional conduct. Accordingly, the panel is satisfied that Mr Birch is guilty of unacceptable professional conduct.

The panel has taken into account how the teaching profession is viewed by others and considered the influence that teachers may have on pupils, parents and others in the community. The panel has taken account of the uniquely influential role that teachers can hold in pupils' lives and that pupils must be able to view teachers as role models in the way they behave. Mr Birch's conduct was highly inappropriate and Mr Birch acknowledged in an interview with the School that the former headmaster had given him a "severe" talking to at the time, and he realised how "naive" and stupid he had been and he regretted his actions. The panel therefore found that Mr Birch's actions also constituted 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 guidance 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 Birch, which involved unacceptable and inappropriate behaviour towards Pupil A and Pupil B in asking them to remove their underclothes and inspecting their penises, there is a strong public interest consideration in respect of the protection of pupils given the serious findings of sexually motivated behaviour towards both Pupil A and Pupil B. The presenting officer submitted that Mr Birch would present a continuing risk to pupils in light of Pupil A's evidence that he would not be comfortable with either of his children being alone in Mr Birch's presence.

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

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

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 Birch. The panel took further account of the guidance, which suggests that a prohibition order may be appropriate if certain behaviours of a teacher have been proven. In the list of such behaviours, those that are relevant in this case are:

- serious departure from the personal and professional conduct elements of the teachers' standards

- misconduct seriously affecting the education and/or well-being of pupils, and particularly where there is a continuing risk
- abuse of position or trust (particularly involving vulnerable pupils) or violation of the rights of pupils
- sexual misconduct, eg involving actions that were sexually motivated or of a sexual nature and/or that use or exploit the trust, knowledge or influence derived from the individual's professional position;

The panel found that Mr Birch had committed a serious abuse of his position of trust and violated the rights and dignity of Pupil A and B by asking them to remove their clothing so that he could inspect their penises. Such conduct, in the panel's view, was sexually motivated and represented serious misconduct that affected the well-being of both Pupil A and B. This in the panel's view also amounted to a serious departure from the personal and professional conduct elements of the teachers' standards.

Even though there were behaviours that would point to the appropriateness of a prohibition order, the panel went on to consider whether or not there were sufficient mitigating factors to militate against this being an appropriate and proportionate measure to impose, particularly taking into account the nature and severity of the behaviour in this case. There was no evidence that Mr Birch's actions were anything other than deliberate.

The panel noted that it was not provided with character statements or references on behalf of Mr Birch and therefore the panel was unable to determine whether Mr Birch was previously of good character, though he has taught in the same school for 40 years. The panel also noted that the minutes of joint evaluation meetings conducted by the local authority reflect that no other allegations have ever been made against Mr Birch. The panel accepted that there was no evidence to suggest Mr Birch had been subject to any disciplinary proceedings or warnings, other than the stern talking to he received from the former headmaster (which Mr Birch referred to, in his interview with the School on 30 October 2013).

The panel also took into account the reference in the minutes of the third joint evaluation meeting which took place on 11 September 2013 to Mr Birch's distress and health concerns following investigation of the allegations referred to above.

Having taken all of the above into account, 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 Birch. The sexual motivation of Mr Birch's behaviour was the critical factor in forming that opinion. Accordingly, the panel makes a recommendation to the Secretary of State that a prohibition order should be imposed with immediate effect.

The panel went on to consider whether or not it would be appropriate for them to decide to recommend that a review period of the order should be considered. The panel was

mindful that the guidance advises that a prohibition order applies for life, but there may be circumstances in any given case that may make it appropriate to allow a teacher to apply to have the prohibition order reviewed after a specified period of time that may not be less than two years.

The guidance indicates that there are behaviours that, if proven, would militate against a review period being recommended. One of these behaviours includes 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. The panel has found that Mr Birch's behaviour towards Pupil A and Pupil B was sexually motivated. This in the panel's view was serious misconduct of a sexual nature which not only had the potential but did in fact result in harm to both Pupil A and Pupil B. Mr Birch used his position of trust as a teacher to influence Pupil A and B to remove their clothing in front of him. Neither pupil should have been placed in such an inappropriate and vulnerable position.

The documents in the bundle indicate that Mr Birch regretted his actions at the time the former headmaster spoke to him about his conduct in 1975. However, whatever the ethos of the School at the time of the incidents upon which the allegations are based, the panel considered that Mr Birch shows no current insight in relation to the severity of his actions, because he considered his conduct would only be of concern if it became public knowledge. From the information considered by the panel it does not appear that Mr Birch has had any concern for the effect of his conduct on Pupil A or Pupil B's well-being. As a result of this, the panel considered this is a situation in which a review period would not be appropriate and as such decided that it would be proportionate in all the circumstances for the prohibition order to be recommended without provisions for a review period.

Decision and reasons on behalf of the Secretary of State

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

In this case the panel has found in relation to the facts that have been found proved that Mr Birch's behaviour fell short of the professional standards expected of teachers in the follow areas:

- Teachers uphold public trust in the profession and maintain high standards of ethics and behaviour, within and outside school, by
treating pupils with dignity, building relationships rooted in mutual respect, and at all times observing proper boundaries appropriate to a teacher's professional position;

having regard for the need to safeguard pupils' well-being, in accordance with statutory provisions;

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

The panel has gone on to find that the proven behaviours are sexually motivated.

This is a serious case involving an abuse of the trust that pupils should expect from their teachers.


I have considered the guidance published by the Secretary of State and have also taken into account the need to be proportionate. I have also considered the balance of the public interest against the interest of Mr Birch.

I support the recommendation of the panel in respect of both sanction and review period.

This means that Mr Paul Birch 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 Paul Birch 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 Paul Birch 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: 10 March 2015

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