



National College for  
Teaching & Leadership

# **Mr David Fenwick: Professional conduct panel outcome**

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

**November 2017**

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

**Teacher:** Mr David Fenwick

**Teacher ref number:** 9544792

**Teacher date of birth:** 30 May 1973

**NCTL case reference:** 15294

**Date of determination:** 22 November 2017

**Former employer:** Oxclose Community Academy, Tyne and Wear

### **A. Introduction**

A professional conduct panel (“the panel”) of the National College for Teaching and Leadership (“the National College”) convened on 20 November 2017 to 22 November 2017 at 53 to 55 Butts Road, Earlsdon Park, Coventry CV1 3BH to consider the case of Mr David Fenwick.

The panel members were Mr Michael Lesser (teacher panellist – in the chair), Ms Mick Levens (teacher panellist) and Mr Maurice McBride (lay panellist).

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

The presenting officer for the National College was Ms Holly Quirk of Browne Jacobson LLP.

Mr David Fenwick was not present and was not represented.

The hearing took place in public, save for parts of the hearing in which Pupil A gave evidence, which were heard in private. The entire hearing was recorded.

## B. Allegations

The panel considered the allegations set out in the Notice of Proceedings dated 26 July 2017.

It was alleged that Mr David Fenwick was guilty of unacceptable professional conduct and/or conduct that may bring the profession into disrepute, in that whilst employed as a teacher at Oxclose Community Academy between 6 November 2002 and 23 February 2016, he:

1. Failed to maintain professional boundaries and/or had inappropriate contact with one or more pupils, including former pupils, in that:
  - a. At the school prom in 2013 he:
    - i. Kissed and/or attempted to kiss Pupil A;
    - ii. Allowed Pupil A to nibble his ear for a photograph;
    - iii. Kissed Pupil B on the cheek for a photograph;
    - iv. Pointed at Pupil A's breasts and/or made inappropriate comments; about Pupil A's breasts;
  - b. He had an inappropriate relationship with Pupil A after she had left school, in particular he:
    - i. Watched Pupil A perform at the [redacted] in or around 2013;
    - ii. Drove Pupil A in his car on one or more occasion(s);
    - iii. Suggested to Pupil A they should run away together;
    - iv. Messaged Pupil A;
    - v. Sent one or more video(s) to Pupil A;
    - vi. Sent one or more indecent image(s) to Pupil A;
    - vii. Allowed Pupil A to perform oral sex;
    - viii. Had sexual contact with Pupil A;
    - ix. Went to City A with Pupil A;
2. His actions toward Pupil A, as may be found proven, at allegation 1 was sexually motivated.

An email from Mr Fenwick's legal representative indicates that he accepted he failed to maintain professional boundaries and/or had inappropriate contact with one or more pupils, including former pupils and admitted the factual particulars of all the allegations except for allegations 1.b.iii, 1.b.vii, 1.b.viii, 1.b.ix and 2.

## **C. Preliminary applications**

### Application to proceed in Mr Fenwick's absence

The presenting officer made an application for this hearing to continue in the absence of Mr Fenwick.

The presenting officer submitted that the Notice of Proceedings dated 26 July 2017 was sent to Mr Fenwick and a follow-up letter was sent to the same address. The presenting officer submitted that Mr Fenwick has previously responded to the National College from this address. The panel was satisfied that the National College has complied with the service requirements of paragraph 19.a. to 19.c. of the Teachers' Disciplinary (England) Regulations 2012, ("the Regulations").

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

The panel understood that its discretion to commence a hearing in the absence of Mr Fenwick had to be exercised with the utmost care and caution, and that its discretion was a severely constrained one.

In making its decision, the panel noted that Mr Fenwick may waive his right to participate in the hearing. The panel took into account the various factors drawn to its attention from the case of *R v Jones* [2003] 1 AC1. The panel noted from the presenting officer's submissions that the Notice of Proceedings was sent to the last known address for Mr Fenwick and it was dated 26 July 2017. The email from Mr Fenwick's union representative dated 15 October 2017 included in the bundle and a subsequent email from the same union representative dated 9 November stated that Mr Fenwick did not intend to attend the professional conduct panel hearing. The presenting officer submitted for consideration by the panel a replacement Notice of Proceedings form dated and signed 8 November 2017 which stated that Mr Fenwick did not intend to attend today. As a result, the panel was satisfied that Mr Fenwick was actually aware of the proceedings. The panel therefore considered that Mr Fenwick had waived his right to be present at the hearing in the knowledge of when and where the hearing was taking place.

The panel had regard to the requirement that it is only in rare and exceptional circumstances that a decision should be taken in favour of the hearing taking place. There was no indication that an adjournment might result in Mr Fenwick attending the hearing. The email from Mr Fenwick's union representative dated 15 October and 9 November 2017 also stated that the union did not intend to provide representation for Mr Fenwick in his absence.

The panel had regard to the extent of the disadvantage to Mr Fenwick in not being able to give his account of events, having regard to the nature of the evidence against him. The panel had the benefit of a record of the representations on behalf of Mr Fenwick during the course of the School's investigation. The panel had Mr Fenwick's evidence addressing mitigation or his circumstances at the time of the alleged conduct, and was able to take this into account at the relevant stage. The panel noted that all witnesses to be relied upon by the National College were to be called to give evidence and the panel would be able to test that evidence in questioning those witnesses, considering such points as were favourable to Mr Fenwick, as were reasonably available on the evidence. The panel was 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 Fenwick's account.

The panel also noted that there were a number of witnesses present at the hearing, including three former pupil witnesses who were prepared to give evidence, and that it would be inconvenient and distressing for them to return again.

The panel noted from two emails to the presenting officer dated 9 November 2017 indicated that Mr Fenwick would not be present at the hearing and that he wished it to go ahead in his absence. The panel had regard to the seriousness of this case, and the potential consequences for Mr Fenwick and accepted that fairness to Mr Fenwick was of prime importance. However, it considered that in light of Mr Fenwick's waiver of his right to appear; by taking such measures referred to above to address that unfairness insofar as was possible; and taking account of the inconvenience an adjournment would cause to the witnesses; that on balance, these are serious allegations and the public interest in this hearing proceeding within a reasonable time, was in favour of this hearing continuing.

#### Application on behalf of Mr Fenwick for the entire hearing to proceed in private

The emails from Mr Fenwick's union advisor dated 15 October and 9 November 2017 indicated that Mr Fenwick would prefer this matter to be considered in private without a hearing. The panel therefore considered whether to exercise its discretion under paragraph 11 of the Regulations and paragraph 4.57 of the Procedures to exclude the public from all or part of the hearing. The legal advisor advised the panel that as not all

the factual particulars of the allegations had been admitted by Mr Fenwick and there was no Statement of Agreed Facts to confirm this, it was inappropriate for this matter to proceed other than as a hearing.

The panel noted from the email from Mr Fenwick's union representative dated 9 November 2017 that he had school age children and he was concerned about the impact on them of unnecessary publicity which may cause them distress.

The presenting officer submitted that Mr Fenwick had not provided substantive reasons to justify the entire hearing being heard in private. The presenting officer confirmed to the panel that the outcome of this hearing would be published. The presenting officer therefore opposed Mr Fenwick's application for the entire hearing to be in private.

The panel took into account the general rule that hearings should be held in public and that this was generally desirable to maintain public confidence in the administration of these proceedings and also to maintain confidence in the teaching profession. The panel balanced the reasons why Mr Fenwick requested that the public be excluded against the competing reasons for which a public hearing was required.

The panel noted 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 therefore, considered whether there were any steps short of excluding the public that would serve the purpose of protecting Mr Fenwick's family.

The panel was mindful that the allegations against Mr Fenwick were serious and it was in the public interest for these matters to generally be considered in public. The panel noted that in accordance with 4.59 of the Procedures the outcome of stage 1 of this hearing, regarding whether the facts had been proven and on stage 2, whether those facts amounted to unacceptable professional conduct and/or conduct that may bring the profession into disrepute, would be announced in public.

The panel therefore determined not to exercise its discretion under paragraph 11(3)(a)(b) of the Regulations and the second bullet point of paragraph 4.57 of the Procedures in favour of Mr Fenwick's application. Therefore, the public should not be excluded from the entire hearing.

#### Application for Pupil A's evidence to heard in private

The presenting officer made an application that part of the hearing should be heard in private whilst Pupil A gave oral evidence. It was submitted that Pupil A was very nervous and she was aware that two members of the public were present as observers. The presenting officer further submitted that Pupil A had indicated that giving her evidence in

private would reduce her anxiety. The presenting officer considered that the public interest would not be affected as the other witnesses would give evidence in public session and there was no need for Pupil A's oral evidence to be heard in public. Upon questioning by the panel, the presenting officer submitted that there was a high risk that Pupil A would refuse to give evidence at all if she was required to give her evidence in public, as she was very concerned about the public nature of the hearing.

The panel took into account the general principles referred to above relating to hearings of this nature generally being conducted in public. In addition, the panel had regard to paragraph 4.71 of the Procedures which relates to vulnerable witnesses. The panel was satisfied that the submissions from the presenting officer indicated that Pupil A was vulnerable as it was very likely that her evidence would be adversely affected were she to give evidence in public. The panel also noted, under paragraph 4.71, that vulnerable witness measures may be granted for witnesses where allegations against the teacher are of a sexual nature and the witness was the alleged victim. These circumstances apply to Pupil A.

The panel was concerned that in order for it to be able to make findings of fact and/or any findings relating to alleged unacceptable professional conduct or conduct which may bring the profession into disrepute, it would need to obtain the best evidence possible from Pupil A. The panel was mindful that any proposed departure from the general rule for the entire hearing to be in public should be limited and to no more than the extent that the panel considered reasonably necessary. In light of Pupil A's vulnerability and that she was the alleged victim of Mr Fenwick's alleged sexual behaviour, the panel considered it was reasonably necessary for Pupil A's evidence to be heard in private, and for the rest of the hearing to proceed in public.

#### Admissibility of late documents/evidence

The presenting officer applied to admit further documents relating to:

- clearer copies of photographs already included in the bundle;
- documentation received on behalf of Mr Fenwick from his union representative;
- video evidence (see below).

The presenting officer made an application to be able to present to the panel a video of Mr Fenwick. The presenting officer submitted that the video is of him, taken by him. Although Mr Fenwick had been offered the opportunity to view this evidence at her office, he had not chosen to do so. It was submitted that the National College did not seek to rely on the substance of the video, as it simply amounted to Mr Fenwick miming the words to a song, however it may be relevant to allegation 1.b.v.



This legal advisor advised that none of the documents referred to in the presenting officer's application were served in accordance with the requirements of paragraph 4.20 of the Procedures. Therefore, the panel was required to decide whether those documents should be admitted under paragraph 4.25 of the Procedures. The panel exercised caution in exercising this discretion given that it has determined to proceed with this hearing in the absence of Mr Fenwick.

The panel noted that the Procedures did not specifically provide for the use of video evidence save in respect of it being a measure that may be used to safeguard the interests of a child or vulnerable witness.

The central question for the panel was whether it is fair in the circumstances to allow evidence to be put forward by the presenting officer which had not already been served on Mr Fenwick and the panel.

However, the panel noted that pursuant to paragraph 4.18 of the Procedures, the panel may admit any evidence where it is fair to do so, which may reasonably be considered to be relevant to the case.

The panel considered it was fair and reasonable to admit photocopies of photographs as there would be no prejudice to Mr Fenwick as these were simply better copies of documents already in the bundle. In addition, the panel considered it was in the interest of Mr Fenwick and fairness to admit the now completed Notice of Proceedings Form and the additional emails from his union representative. The panel agreed to paginate such documents as set out below.

The panel decided it was appropriate to exercise its discretion and allow the presenting officer to rely on the video evidence. In exercising that discretion, the panel balanced its obligation to ensure that Mr Fenwick was not put at an unfair disadvantage, as against the panel's duty in the public interest to investigate the allegations in so far as possible consistent with fairness to Mr Fenwick.

The panel considered the importance of the video evidence and whether it constituted a critical part of the evidence against Mr Fenwick. The panel noted that the wording of allegation 1.b.v related to Mr Fenwick allegedly sending "one or more videos to Pupil A". Therefore, the panel determined that it would be fair to admit the evidence, particularly as the presenting officer submitted that Mr Fenwick has had an opportunity to review this evidence and he has raised no objection to its inclusion in the bundle.

## D. Summary of evidence

### Documents

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

- Section 1: Chronology and anonymised pupil list – pages 1 to 4;
- Section 2: Notice of Proceedings and response – pages 5 to 15;
- Section 3: National College’s witness statements – pages 16 to 27;
- Section 4: National College’s documents – pages 28 to 255 (including video of Mr Fenwick singing);

By reason of the above, the panel decided to admit each of the following documents in the course of the hearing. These were paginated as follows:

- Notice of Proceedings Response form – replacement - pages 10 to 13;
- Section 6: Additional documents:
  - Better copies of colour photographs already in the bundle - pages 257 to 266;
  - Copies of redacted pages in the bundle which were included in another section of the bundle in unredacted form – there was no need to paginate these documents separately;
- Email correspondence from Mr Fenwick’s union representative dated 9 November 2017, pages 267 to 270.

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

### Witnesses

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

- Pupil A;
- Pupil B;
- Pupil D; and
- Witness A, teacher at Oxclose Community Academy.

## **E. Decision and reasons**

The panel announced its decision and reasons as follows:

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

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

Mr Fenwick has been a qualified teacher since 1996 and he was appointed initially as a teacher in the special educational needs department at Oxclose Community Academy (“the School”) in 2002. On 7 October 2015 a former-pupil of the School, Pupil A, disclosed to a teacher of the School, Witness A, at a careers event hosted by the School, that Mr Fenwick had tried to kiss her at the School prom in June 2013 when she was a pupil. Pupil A further stated that she had been in contact with Mr Fenwick for a few months following this and inferred there had been a relationship. The School commenced a disciplinary investigation and found Mr Fenwick guilty of gross misconduct and he was summarily dismissed on 23 February 2016. Mr Fenwick appealed against the outcome of the School’s disciplinary process and on 27 April 2016 Mr Fenwick was informed that the appeals committee had upheld the original decision of gross misconduct.

### **Findings of fact**

The panel’s findings of fact are as follows:

The panel has made the following findings in relation to the particulars of the allegations against you, for these reasons:

#### **Whilst employed as a teacher at Oxclose Community Academy between 6 November 2002 and 23 February 2016, you:**

- 1. Failed to maintain professional boundaries and / or had inappropriate contact with one or more pupils, including former pupils, in that:**
  - a. At the school prom in 2013 you:**
    - i. Kissed and/or attempted to kiss Pupil A;**

The panel had regard to a report to the personnel committee of the School dated January 2016 in the bundle which stated that Mr Fenwick commenced employment at the School on 6 November 2002. Minutes of a personnel disciplinary committee, confirmed that Mr Fenwick was dismissed from the School on 23 February 2016.

The panel took into account the chronology included in the bundle which states that a prom took place on 21 June 2013. In addition, both Pupil A and Pupil B confirmed in their witness statements and oral evidence, that they and Mr Fenwick attended the School prom on 21 June 2013.

The panel noted from the emails from his union representative dated 15 October and 9 November 2017 that Mr Fenwick admits the factual particulars of this allegation.

In her oral evidence, Pupil A stated that most teachers at the School behaved in a formal manner with pupils. However other teachers were more friendly. In her witness statement, included in the bundle, Pupil A stated that Mr Fenwick was not her form tutor, but he did teach her lessons at some point during her time at the School. In Pupil A's words Mr Fenwick was, "very friendly" and acted in a familiar way with pupils and other teachers. Pupil A further stated in oral evidence that she regarded him as, "less professional" than most teachers in the School and he frequently breached the boundaries of the usual pupil teacher relationship. Pupil A said most teachers have a, "line" but this was not the case with Mr Fenwick, he had, "no line". Pupil A's account of Mr Fenwick was corroborated by Pupil B and Pupil D's oral evidence. In her oral evidence, Pupil B stated that she knew Mr Fenwick well as he was her form tutor and history teacher, and also because his partner, at the time, was a good friend of her family. She further stated that pupils found him to be "fun", and would act in a "silly" manner around pupils. Pupil D stated, in her oral evidence, that Mr Fenwick would make lots of jokes with pupils and would make inappropriate remarks, some of which contained sexual innuendo.

When questioned by the presenting officer, Pupil A stated, in oral evidence, that Mr Fenwick tried to "come on" to her at the School prom in June 2013. She further stated that at the end of the prom, when not many pupils were left, just before Pupil A and her friends were leaving, Mr Fenwick leaned into Pupil A and gave her a kiss on the lips, which shocked her at the time. Pupil B confirmed, in her oral evidence, that Pupil A had told her that Mr Fenwick had kissed her at the prom.

Witness A's oral evidence was that Pupil A had told her on 7 October 2015, that Mr Fenwick tried to kiss her at the prom in 2013. When questioned by the panel, Witness A stated that she believed Pupil A's account and had no reason to believe that she would fabricate this event.

The panel noted from his record of interview with the School, on 17 November 2015, that when asked if he had attempted to kiss Pupil A he stated, "Not that I am aware of". However, Mr Fenwick now admits this allegation. Therefore, taking all the above evidence into account, this allegation is found proven.

## **ii. Allowed Pupil A to nibble your ear for a photograph;**

Mr Fenwick admits the factual particulars of this allegation, as confirmed in the emails from his union representative dated 15 October and 9 November 2017.

When questioned by the presenting officer, Pupil A was asked to comment on a copy of a photograph in the bundle. The panel also had regard to this photograph, which Pupil A stated, in oral evidence, was a picture taken by Pupil B, which showed Mr Fenwick with his lips on the cheek of Pupil B.

The panel noted that in the same photograph it seems as if Pupil A is kissing Mr Fenwick's ear or cheek. However, Pupil A clearly stated, in her oral evidence, that her lips were not in contact with Mr Fenwick's body and she was simply posing with her lips near his face for the photograph.

Despite the email from Mr Fenwick's union representative dated 9 November 2017 indicating that Mr Fenwick accepts allegation 1.a.ii, the panel considered there was insufficient oral or documentary evidence to prove that Mr Fenwick permitted Pupil A to nibble his ear. Therefore, the panel found allegation 1.a.ii not proven.

### **iii. Kissed Pupil B on the cheek for a photograph;**

The panel noted from the emails from his union representative dated 15 October and 9 November 2017 that Mr Fenwick admits the factual particulars of this allegation.

In her oral evidence, Pupil B confirmed she took the photograph, referred to above under allegation 1.a.ii, of herself, Mr Fenwick and Pupil A on her phone. Mr Fenwick kissed her cheek whilst she took it.

The panel determined that this photograph clearly displayed Mr Fenwick's lips upon Pupil B's cheek and taking this into account, together with Pupil A and Pupil B's oral evidence, found this allegation proven.

### **iv. Pointed at Pupil A's breasts and/or made inappropriate comments about Pupil A's breasts;**

Mr Fenwick admits the factual particulars of this allegation, as confirmed in the emails from his union representative dated 15 October and 9 November 2017.

The panel had regard to another photograph in the bundle which appears to display Mr Fenwick standing next to Pupil B and then pointing with his finger towards Pupil A's breasts. In her witness statement, Pupil B stated that Mr Fenwick was often, "flirty" with Pupil A and in her oral evidence she recalled thinking that this behaviour was wrong, especially as he would often say "silly things". Pupil B further recalled, in her oral evidence, that at the School prom Mr Fenwick pointed at Pupil A's breasts and said something she considered inappropriate, however she could not recall the actual words he said. Pupil A's oral evidence was that Mr Fenwick pointed at her breasts when she was at the prom but she could not recall if he made any comments when he did so.

Taking all of the available evidence into account, the panel considered that there was evidence that Mr Fenwick pointed at Pupil A's breasts. In addition, based on the oral evidence of Pupil B, the panel considered it was more likely than not that Mr Fenwick also made inappropriate comments about Pupil A's breasts. The panel therefore found this allegation proven.

### **Stem of allegation 1**

The panel noted that all the conduct found proven at allegations 1.a.i, 1.a.iii and 1.a.iv, took place on 21 June 2013 at the School prom. In the panel's experience, if not removed

for other reasons, pupils continue to be on the admission roll of a school until the end of the academic year i.e. 31 August.

Although Pupil A and Pupil B may not have formally attended the School after the prom in June 2013, in the panel's experience, they would have continued as pupils on the School's admission roll until 31 August 2013.

The panel considered that each of factual particulars found proven at allegations 1.a.i, 1.a.iii and 1.a.iv are evidence of Mr Fenwick's failure to maintain appropriate professional boundaries and inappropriate behaviour and contact with both Pupil A and Pupil B, who were both current pupils of the School at the time. Therefore the stem to allegation 1 is proven.

**b. You had an inappropriate relationship with Pupil A after she had left school, in particular you:**

**i. Watched Pupil A perform at the [redacted] in or around 2013;**

The panel noted from the emails from his union representative dated 15 October and 9 November 2017 that Mr Fenwick admits the factual particulars of this allegation.

Pupil A's oral evidence was that Mr Fenwick watched her sing in a show in the [redacted] area. The panel noted records of interviews conducted by the School in the course of their investigation, included in the bundle, reflect Mr Fenwick having been seen by other members of staff watching Pupil A's show. However, the panel noted that other members of staff also attended the same show.

The presenting officer submitted that at the time he attended Pupil A's show Mr Fenwick had formed an inappropriate relationship with Pupil A.

The panel considered that even though Mr Fenwick does not challenge this allegation, it was not inappropriate for a member of teaching staff to attend a public performance by a pupil which took place outside of the school environment. As a result, the panel did not consider that this conduct was evidence of an inappropriate relationship between Pupil A and Mr Fenwick and therefore allegation 1.b.i was found not proven.

**ii. Drove Pupil A in your car on one or more occasion(s);**

Mr Fenwick admits the factual particulars of this allegation, as confirmed in the emails from his union representative dated 15 October and 9 November 2017.

The panel noted from Pupil B's oral evidence that shortly after the prom took place, from July 2013 onwards, Mr Fenwick would take both Pupil A and Pupil B out in his car. This was corroborated by Pupil A's oral and witness evidence.

Both Pupil A and Pupil B further stated to the panel that Mr Fenwick would often take Pupil A out without Pupil B. Pupil B confirmed in her oral evidence, that she was aware of this because Pupil A would send her Snapchat images which had been taken whilst they were on trips in the car. Pupil A stated that she would go out with Mr Fenwick up to four times a week in the period from July to December 2013.

When considering this allegation, the panel also had regard to photographic evidence in the bundle. This evidence displayed Mr Fenwick in the driving seat of a car, with Pupil A sitting in the passenger seat, and a third person in the back of the car. Taking all this evidence into account, the panel considered there was evidence that Mr Fenwick drove Pupil A in his car on one or more occasion, after she had left the School. The panel therefore found this allegation proven.

**iii. Suggested to Pupil A you should run away together;**

The panel noted from the emails from his union representative dated 15 October and 9 November 2017 that Mr Fenwick denies the factual particulars of this allegation.

In her oral evidence Pupil A recalled that Mr Fenwick said to her a “few times” in person and in text messages that he wished to run away with her. The panel queried how this made Pupil A feel at the time, and she stated that she felt “scared” but she believed Mr Fenwick meant it. Pupil A further stated that she had told Pupil B about these messages. This was corroborated by Pupil B’s oral evidence, as Pupil B confirmed she had seen messages on Pupil A’s phone from Mr Fenwick in which he stated that if it was not for his family circumstances, he would be, “with Pupil A” and he wanted to run away with Pupil A.

The panel found the oral evidence of Pupil A and Pupil B credible and therefore the panel found this allegation proven.

**iv. Messaged Pupil A;**

The panel noted from the emails from his union representative dated 15 October and 9 November 2017 that Mr Fenwick admits the factual particulars of this allegation.

Included in the bundle are photocopies of images, which Pupil A confirmed during her oral evidence, were sent by Mr Fenwick to her from July 2013 onwards. These images were sent as either text messages or via Snapchat. When questioned by the panel, Pupil B stated in oral evidence that she had seen a number of these images at the time they were sent.

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

**v. Sent one or more video(s) to Pupil A;**

During the hearing, the panel viewed a short video which appeared to show Mr Fenwick miming the words to a song entitled “I will always love you”. In her oral evidence, Pupil A stated that she received this video message from Mr Fenwick. This was corroborated by Pupil B’s oral evidence. Pupil A further stated that she also received other videos from Mr Fenwick in which he appeared to be singing to love songs whilst driving.

The panel noted from the emails from his union representative dated 15 October and 9 November 2017 that Mr Fenwick admits the factual particulars of this allegation.

This allegation is therefore found proven.

**vi. Sent one or more indecent image(s) to Pupil A;**

Pupil A confirmed in oral evidence that the images sent by Mr Fenwick, included in the bundle, were received by her from July 2013 onwards.

The panel noted that one image appears to show a phallus, another appears to display a bottle label which has the word “pussy” on it. The panel was particularly concerned that this image was accompanied by wording to Pupil A which stated “I want yours!!! XXX”. The panel also had regard to another image sent to Pupil A, which appears to be a drawing of a recumbent stick man, with a thought bubble which contained Pupil A’s name. This stick man has an erect phallus, and the words “Good night. Thinking about you xxx” are included in the message.

When giving oral evidence both Pupil A and Pupil B were asked by the panel about their impression of these photographs and images. Pupil B thought that many of the messages from Mr Fenwick to Pupil A were, “immature for a grown man” and Pupil A stated she, “knew it was not right” and “he should have known better”.

The panel noted from the emails from his union representative dated 15 October and 9 November 2017 that Mr Fenwick admits the factual particulars of this allegation.

In the panel’s view the images referred to above were indecent and inappropriate to be sent to Pupil A who was aged 16 at the time. The panel therefore found this allegation proven.

**vii. Allowed Pupil A to perform oral sex;**

The panel noted from the emails from his union representative dated 15 October and 9 November 2017 that Mr Fenwick denies the factual particulars of this allegation.

In her oral evidence, Pupil A stated that sometimes when they went out in Mr Fenwick’s car, from July onwards until December 2013, Pupil A and Mr Fenwick would perform oral sex on each other. Pupil B’s oral evidence was that Pupil A had told her at the time that she and Mr Fenwick were having sexual contact. The panel considered both Pupil A and Pupil B to be credible witnesses and therefore the panel found this allegation proven.

**viii. Had sexual contact with Pupil A;**

This allegation is denied by Mr Fenwick, as confirmed by the content of the emails from his union representative dated 15 October and 9 November 2017.

In addition to the oral sex referred to above at allegation 1.b.vii., Pupil A told the panel, in oral evidence that she and Mr Fenwick would touch each other intimately under their clothes from July until December 2013. Pupil A confirmed that this sexual contact took place on more than one occasion and about twice a week. Pupil B’s oral evidence corroborated that sexual contact had taken place between Mr Fenwick and Pupil A, as Pupil A had told her this was happening at the time. In light of Pupil A and Pupil B’s oral evidence, the panel found this allegation proven.

**ix. Went to City A with Pupil A;**



This allegation is denied by Mr Fenwick, as confirmed by the content of the emails from his union representative dated 15 October and 9 November 2017.

In her witness statement, Pupil A states that Mr Fenwick drove them to City A in or around October 2013. She stated, during her oral evidence, that Mr Fenwick drove with her in the car for about an hour and he did not tell her where they were going. However, when he stopped the car in front of a hotel in City A and asked her whether she wanted to stay there overnight, she refused as she believed it was wrong and she was concerned that they may be seen by people who knew them.

The panel had regard to the record of Mr Fenwick's interview with the School included in the bundle dated 17 November 2015 which reflects Mr Fenwick denying that he was ever alone in the car with Pupil A. However, the panel preferred the oral evidence of Pupil A which was corroborated by Pupil B. Pupil B's oral evidence was that Mr Fenwick drove Pupil A to a location and asked if she wanted to stay overnight in a hotel.

Therefore, the panel found allegation 1.b.ix proven.

### **Stem of allegation 1**

The panel considered that each of the factual particulars found proven at allegations 1.b.ii-1.b.ix are evidence of Mr Fenwick having an inappropriate relationship with Pupil A after she had left the School. The panel also considered that these same factual particulars are further evidence of his failure to maintain appropriate professional boundaries and inappropriate behaviour and contact with Pupil A who at that time was a former pupil of the School. Therefore the stem of allegation 1. is proven.

### **2. Your actions toward Pupil A, as may be found proven, at allegation 1 was sexually motivated.**

This allegation is denied by Mr Fenwick, as confirmed by the content of the email from his union representative dated 15 October 2017.

The presenting officer submitted that Pupil B's oral evidence corroborated Pupil A's account of Mr Fenwick's inappropriate conduct towards Pupil A during the School prom, driving around in Mr Fenwick's car and Pupil A forming a sexual relationship with him. The panel agreed.

The presenting officer further submitted, in her closing submissions, that many of the pictures and messages that Mr Fenwick sent to Pupil A had sexual connotation. She further submitted that it was after sending these messages, that their relationship became sexual. She also reminded the panel that Pupil A received videos from Mr Fenwick in which he mimed the words to love songs, and Pupil A considered that Mr Fenwick was expressing love for her. It is the National College's case that Mr Fenwick's behaviour towards Pupil A was sexually motivated.

Pupil A's account of the events that took place between July to December 2013 was, in the panel's view, credible.

The panel considered that the proven conduct referred to at allegations 1.a.i, 1.a.iv and 1.b.ii-1.b.ix provided compelling evidence that would cause a reasonable person to consider that Mr Fenwick's actions towards Pupil A were sexual. The panel also considered that in all the circumstances, it is more likely than not that the purpose of Mr Fenwick's words/actions were sexually motivated. It was clear to the panel, that Mr Fenwick's kissing Pupil A at the prom, touching Pupil A intimately under her clothes or performing oral sex with her, was sexually motivated behaviour. Therefore, the panel found this allegation proven.

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

Having found allegations 1.a.i, 1.a.iii,-1.a.iv, 1.b.ii-1.b.ix and 2 to have been proven, the panel has gone on to consider whether the facts of those proven allegations amount to unacceptable professional conduct and/or conduct that may bring the profession into disrepute.

In doing so, the panel has had regard to the document Teacher misconduct: The prohibition of teachers, which the panel refers to as "the Advice".

The panel is satisfied that the conduct of Mr Fenwick in relation to the facts found proven, involved breaches of the Teachers' Standards. The panel considers that by reference to Part Two, Mr Fenwick 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 Fenwick amounts to misconduct of a serious nature which fell significantly short of the standards expected of the profession. It was clear to the panel that Mr Fenwick abused his position of trust as a teacher, he targeted a vulnerable pupil who was aged 16 at the time. His inappropriate conduct towards Pupil A started whilst she was still a pupil of the School and culminated in his kissing her at the prom. This misconduct continued as Mr Fenwick sent a high level of images and messages, to Pupil A from July 2013 onwards, and immediately after Pupil A had left the

School. Many of these images were indecent. He encouraged Pupil A to engage in an inappropriate relationship by persuading her that he had romantic feelings for her and led Pupil A to believe that he would leave his partner for her. In the panel's view, Mr Fenwick demonstrated a blatant disregard for his duty of safeguarding and protecting Pupil A's well-being.

Both Pupil A and Pupil B stated in oral evidence that when Mr Fenwick ended the relationship in December 2013, Pupil A experienced significant distress as Mr Fenwick had deliberately led Pupil A to believe that he "loved" her. Pupil B further stated in oral evidence, that after witnessing Pupil A's distress, she told Mr Fenwick that he should not send messages to Pupil A and that he should not have let the relationship, "go this far".

The panel has also considered whether Mr Fenwick's conduct displayed behaviours associated with any of the offences listed on pages 8 and 9 of the Advice. The panel has found that the offence of sexual activity is relevant as Mr Fenwick had sexual contact with Pupil A. The Advice indicates that where behaviours associated with such an offence exist, a panel is likely to conclude that an individual's conduct would amount to unacceptable professional conduct.

The panel notes that the factual particulars found proven at allegations 1.b.ii-1.b.ix took place outside of the education setting, albeit that the panel found that Mr Fenwick's inappropriate behaviour towards Pupil A started whilst she was a pupil of the School and continued after she left the School. The panel considered that Mr Fenwick's behaviour affects the way he fulfils his teaching role or may lead to pupils being exposed to or influenced by his behaviour in a harmful way. The panel found that Mr Fenwick targeted Pupil A whilst she was a pupil, during which he had a position of trust and control, and this allowed him to influence her behaviour even after she left the School and therefore he was able to cultivate and pursue an inappropriate relationship with Pupil A during the period July to December 2013.

Accordingly, the panel is satisfied that Mr Fenwick 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.

The findings of misconduct against Mr Fenwick are, in the panel's view, serious and the conduct displayed would likely have a negative impact on Mr Fenwick's status as a teacher, potentially damaging the public perception.

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

Having found the factual particulars of allegations 1.a.i, 1.a.iii–1.a.iv and 1.b.ii-1.b.ix and 2. proved, the panel further finds that Mr Fenwick’s conduct amounts to both unacceptable professional conduct and conduct that may bring the profession into disrepute.

## **Panel’s recommendation to the Secretary of State**

Given the panel’s findings in respect of unacceptable professional conduct and conduct that may bring the profession into disrepute, it 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 a 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 this case, there is a strong public interest consideration in respect of the protection of pupils given the serious findings of an inappropriate sexual relationship with Pupil A whilst she was 16 years of age.

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

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

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

The panel noted from the documents, included in the bundle, from the School's disciplinary process that Mr Fenwick's previous conduct at the School has raised concerns about his ability to maintain appropriate professional boundaries with pupils. This led to Mr Fenwick receiving advice from his head of department and headteacher on separate occasions and this culminated in him being provided with additional safeguarding training. However, despite this Mr Fenwick still went on to develop an inappropriate relationship with Pupil A which commenced whilst she was still a pupil of the School. The panel was concerned that Mr Fenwick had a deep seated attitude which impacted on his behaviour towards pupils.

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 the appropriateness and proportionality of the imposition of a prohibition order, particularly taking into account the nature and severity of the behaviour in this case.

There was no evidence to suggest that Mr Fenwick was acting under duress, and in fact the panel found Mr Fenwick's actions towards Pupil A were both targeted and sexually motivated. These actions were sustained over a period of more than six months. The panel noted that there were no teacher documents on behalf of Mr Fenwick included in the bundle. However, the panel noted from the minutes of the personnel committee meeting held by the School on 23 February 2016 that in his 14 years at the School, Mr Fenwick had "been spoken to informally on four occasions" whilst employed at the School.

It appeared from the documents relating to an earlier meeting with the headteacher on 16 July 2013, included in the bundle, that it is noted that Mr Fenwick previously had difficulty maintaining appropriate professional boundaries with pupils. In this meeting the headteacher remarked that he had previously asked Mr Fenwick to refresh his thinking and approach, particularly with regard to his, "over familiarity" with pupils and classroom management. The panel therefore considered that the allegations relating to Pupil A and Pupil B are not the first time that the School has investigated concerns relating to Mr

Fenwick's inappropriate behaviour towards pupils. The January 2016 investigation report included in the bundle indicated that the School had to address a number of safeguarding concerns, relating to Mr Fenwick, over a four year period. The panel noted that this same document stated that Mr Fenwick resigned from his previous teaching position, prior to commencing employment at the School, as a result of a safeguarding allegation raised by a former pupil.

In the panel's view, there is no positive character evidence included in the bundle as no character statements have been supplied by Mr Fenwick. Pupil A, Pupil B and Pupil D all stated in oral evidence that Mr Fenwick was regarded as a joker, he was overly familiar with pupils, lacked professional boundaries and on occasions, acted as the "class clown". The panel considered that there was no evidence before it, either in the bundle or in the oral evidence heard, that suggested that Mr Fenwick was regarded by either staff or pupils as a good teacher who promoted learning amongst pupils.

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

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

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 Fenwick. Mr Fenwick's previous history of concerns considered by the School, his failure to maintain appropriate professional boundaries with Pupil A and Pupil B, the fact that he targeted a 16 year old pupil, such as Pupil A, who was vulnerable, and exercised a continuous abuse of trust placed in him as a teacher, 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 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 two years.

The Advice 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 Fenwick exercised a sustained pattern of behaviour towards Pupil A that was sexually motivated and it is highly likely, in the panel's view, that this resulted in harm to Pupil A. The panel considered Mr Fenwick clearly used his professional position as a teacher to influence or exploit Pupil A to encourage her to enter an inappropriate relationship with him.

The panel considered that the documents relating to the School's disciplinary process do not demonstrate that Mr Fenwick had any remorse or concern over the inappropriateness of his behaviour towards Pupil A. In addition, given the limited submissions provided by Mr Fenwick or his union representative in the context of these proceedings, the panel has no evidence that Mr Fenwick has any insight over how to ensure similar behaviour would not be repeated in the future.

The panel felt the findings it has made in this case, namely that Mr Fenwick has committed serious sexual misconduct, is a situation in which a review period would not be appropriate. As such, the panel decided that it would be proportionate in all the circumstances of this case, for the prohibition order to be recommended without provision 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 recommendation of the panel in respect of sanction and no review period.

In considering this case, I have also given very careful attention to the advice that is published by the Secretary of State concerning the prohibition of teachers.

In this case, the panel has found allegations 1.a.i, 1.a.iii-1.a.iv, 1.b.ii-1.b.ix and 2. to have been proven and found that those proven facts amount to unacceptable professional conduct and conduct that may bring the profession into disrepute. Where the panel has found facts not proven I have put these allegations from my mind. The panel has made a recommendation to the Secretary of State that Mr Fenwick should be the subject of a prohibition order, with no review period.

In particular the panel has found that Mr Fenwick 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 finds that the conduct of Mr Fenwick fell significantly short of the standards expected of the profession.

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

I have to determine whether the imposition of a prohibition order is proportionate and in the public interest. In considering that for this case I have considered the overall aim of a prohibition order which is to protect pupils and to maintain public confidence in the profession. I have considered the extent to which a prohibition order in this case would achieve that aim taking into account the impact that it will have on the individual teacher. I have also asked myself whether or not a less intrusive measure, such as the published finding of unacceptable professional conduct and conduct that may bring the profession into disrepute, would itself be sufficient to achieve the overall aim. I have to consider whether the consequences of such a publication are themselves sufficient. I have considered therefore whether or not prohibiting Mr Fenwick, and the impact that will have on him, is proportionate.

In this case I have considered the extent to which a prohibition order would protect children. The panel has observed “there is a strong public interest consideration in respect of the protection of pupils...” A prohibition order would therefore prevent such a risk from being present. I have also taken into account the panel’s comments on insight and remorse which the panel sets out as follows, “documents relating to the School’s disciplinary process do not demonstrate that Mr Fenwick had any remorse or concern over the inappropriateness of his behaviour towards Pupil A”. The panel has also commented that Mr Fenwick’s evidence failed to show, “any insight over how to ensure similar behaviour would not be repeated in the future”. In my judgement the lack of insight means that there is some risk of the repetition of this behaviour and this risks future pupils’ safety. I have therefore given this element considerable weight in reaching my decision.

I have gone on to consider the extent to which a prohibition order would maintain public confidence in the profession. The panel observe, “that public confidence in the profession would be seriously weakened if conduct such as that found against Mr Fenwick were not treated with the utmost seriousness when regulating the conduct of the profession.” I am particularly mindful of the finding of sexual misconduct in this case and the impact that such a finding has on the reputation of the profession.



I have had to consider that the public has a high expectation of professional standards of all teachers and that failure to impose a prohibition order might be regarded by the public as a failure to uphold those high standards. In weighing these considerations I have had to consider the matter from the point of view of an “ordinary intelligent and well-informed citizen.”

I have considered whether the publication of a finding of unacceptable professional conduct, in the absence of a prohibition order, can itself be regarded by such a person as being a proportionate response to the misconduct that has been found proven in this case.

I have also considered the impact of a prohibition order on Mr Fenwick himself. A prohibition order would prevent Mr Fenwick from working in the teaching profession. A prohibition order would also clearly deprive the public of his contribution to the profession for the period that it is in force.

In this case I have placed considerable weight on the panel’s comments concerning the lack of insight or remorse. The panel has said it, “noted from the minutes of the personnel committee meeting held by the School on 23 February 2016 that in his 14 years at the School, Mr Fenwick had “been spoken to informally on four occasions” whilst employed at the School.” The panel went on to say it considered, “Mr Fenwick clearly used his professional position as a teacher to influence or exploit Pupil A to encourage her to enter an inappropriate relationship with him.”

I have given less weight in my consideration of sanction therefore, to the contribution that Mr Fenwick has made to the profession. In my view it is necessary to impose a prohibition order in order to maintain public confidence in the profession. A published decision that is not backed up by remorse or insight does not in my view satisfy the public interest requirement concerning public confidence in the profession.

For these reasons I have concluded that a prohibition order is proportionate and in the public interest in order to achieve the aims which a prohibition order is intended to achieve.

I have gone on to consider the matter of a review period. In this case the panel has recommended no review period.

I have considered the panel’s comments “The panel has found that Mr Fenwick exercised a sustained pattern of behaviour towards Pupil A that was sexually motivated and it is highly likely, in the panel’s view, that this resulted in harm to Pupil A.”

The panel has also said that, “the findings it has made in this case, namely that Mr Fenwick has committed serious sexual misconduct, is a situation in which a review period would not be appropriate.”

I have considered whether a no review period reflects the seriousness of the findings and is a proportionate to achieve the aim of maintaining public confidence in the profession. In this case, I agree with the panel and in light of the serious nature of the misconduct and lack of insight and remorse I consider no review period is appropriate and proportionate to satisfy the maintenance of public confidence in the profession.

**This means that Mr David Fenwick 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 David Fenwick 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 David Fenwick has a right of appeal to the Queen's Bench Division of the High Court within 28 days from the date he is given notice of this order.

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

**Decision maker: Dawn Dandy**

**Date: 30 November 2017**

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