



Teaching
Regulation
Agency

Mr David Spencer Professional conduct panel outcome

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

August 2019

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

Teacher: David Spencer (the “teacher”)

Teacher ref number: 7661188

Teacher date of birth: 4 December 1954

TRA reference: 17589

Date of determination: 15 August 2019

Former employer: Hillview School for Girls, Tonbridge, Kent (the “School”)

A. Introduction

A professional conduct panel (“the panel”) of the Teaching Regulation Agency (“the TRA”) convened on 12 August 2019 to 14 August 2019 at Cheylesmore House, 5 Quinton Road, Coventry, CV1 2WT, to consider the case of Mr David Spencer.

The panel members were Mrs Caroline Tilley (lay panellist – in the chair), Ms Jean Carter (lay panellist) and Mr Peter Cooper (teacher panellist).

The legal adviser to the panel was Ms Kara O’Neill of Eversheds Sutherland (International) LLP.

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

Mr David Spencer was present and represented himself.

The hearing took place in public and was recorded.

B. Allegations

The panel considered the allegations set out in the notice of proceedings dated 31 May 2019.

It was alleged that Mr David Spencer was guilty of unacceptable professional conduct in that whilst employed as a Teacher at the Hillview School for Girls between September 2013 and June 2018;

1. You engaged in inappropriate contact with and/or behaviour towards one or more pupils on one or more occasions including by:
 - a. Touching pupils' legs;
 - b. placing your hand on pupils' arms and/or shoulders;
 - c. placing your hand on pupils' hands whilst they were using a computer mouse;
 - d. sitting on the same chair as pupils;
 - e. Asking Pupil A to remove her top.

2. Your behaviour as may be found proven at 1 above;
 - a. Was sexually motivated;

 - b. Demonstrated a lack of insight into previous advice you had been given and/or warnings issued by the School on or around 16 December 2014 and/or 7 November 2016 and/or 12 March 2018.

The allegations were not admitted by the teacher.

C. Preliminary applications

An application was made by the presenting officer to amend the notice of proceedings by amending allegation 1e to say "Pupil A" rather than "Pupil D". The panel had the power to in the interests of justice, amend an allegation or the particulars of an allegation, at any stage before making its decision about whether the facts of the case have been proved.

Before making an amendment, the panel was required to consider any representations by the presenting officer and by the teacher, and the parties were afforded that opportunity. The teacher consented to the application on the grounds that it was a typographical error.

The panel considered that the amendment proposed, being a correction of a typographical error did not change the nature, scope or seriousness of the allegation. There was no prospect of the teacher's case being presented differently had the amendment been made at an earlier stage, and therefore no unfairness or prejudice caused to the teacher. The panel therefore decided to amend the allegation as proposed.

The presenting officer applied to admit 2 documents. The teacher also applied to admit 1 document. Those documents were not served in accordance with the requirements of paragraph 4.20 of the Procedures, and as such the panel was required to decide whether those documents should be admitted under paragraph 4.25 of the Procedures at the discretion of the panel. The panel took into account the representations from the teacher and presenting officer and no objections were raised to any of the documents being put forward.

Under paragraph 4.18 of the Procedures, the panel may admit any evidence, where it was fair to do so, which may reasonably be considered to be relevant to the case.

The panel was satisfied that all the documents before it were relevant to the case. The presenting officer's documents related to a missing page that should have been included at section 2 of the hearing bundle which contained meeting notes. She also applied for a further document to be added to the bundle which was an updated pupil list. This was to correct a typographical error in regard to the pupil's surnames in the original document. Additionally, the teacher's document was a witness statement made by Mr Spencer which contained evidence as to the facts of the case before the panel.

By reason of the above, the panel decided to admit the following documents, and these to be paginated as follows: page 3a- updated pupil list, page 82A – meeting notes and pages 121-123- witness statement of the teacher.

Additionally, during the proceedings, the presenting officer made a further application to amend the notice of proceedings by adding the wording, 'you were guilty of unacceptable professional conduct in that'.

The panel considered representations by the presenting officer and by the teacher. The teacher consented to the application on the grounds that adding the wording clarified the allegations and did not make any difference to his case.

The panel considered that the amendments proposed, being a correction of the allegations, did not change the nature, scope or seriousness of them having concluded the wording should have been included at the outset and were effectively to amend an administrative error.

The presenting officer, in conjunction with the application to amend the allegations, also applied to admit a further 3 documents being the investigation letter dated 5 November 2018, the notice of referral dated 24 January 2019 and the teacher's response to the notice of referral dated 4 February 2019. There were no objections raised by the teacher to the admission of the documents and the amendment of the allegations.

The panel was satisfied that the documents were relevant to the case. The documents contained information which made it clear that the teacher had been aware that the allegation of unacceptable professional conduct had formed part of the allegations.

By reason of the above, the panel decided to admit the documents. The documents were paginated as follows; Notice of referral - pages 124-126, Teachers response to notice of referral- pages 127-128, Investigation letter – pages 129-130.

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 3

Section 2: Notice of proceedings and Response – pages 4 to 15

Section 3: TRA witness statements – pages 16 to 21

Section 4: TRA documents – pages 22 to 117

Section 5: Teacher documents – pages 118 to 120

The panel also agreed to add the following documents:

Updated pupil list - page 3a

Meeting notes - page 82a

Witness statement of the teacher - pages 121-123

Notice of referral – pages 124-126

Teachers response to notice of referral – pages 127-128

Investigation letter – pages 129-130

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

Witnesses

The panel heard oral evidence from Pupil A who was a current pupil of the School and Pupil D who was a former pupil of the School, both called by the presenting officer.

The teacher himself also gave evidence.

E. Decision and reasons

The panel announced its decision and reasons as follows:

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

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

Mr Spencer was employed at the School from September 2013 as a curriculum deputy in mathematics. In 2014 his job role became the curriculum leader for ICT/computer studies. In December 2014, following complaints regarding the teacher's interaction with pupils, the deputy head of the School gave Mr Spencer a letter advising him of how his behaviour needed to improve. In November 2016, a further letter was sent from the HR manager to Mr Spencer, which again outlined expectations of his behaviour as set out in the professional teaching standards.

On 7 May 2018, the School received a complaint email from the sister of Pupil A in which she disclosed that Mr Spencer had made inappropriate physical contact with Pupil A. She alleged that there were other instances of inappropriate behaviour with other pupils, that she had been made aware of. On 24 May 2018, the School conducted a disciplinary hearing and as a result, Mr Spencer was dismissed for gross misconduct and ceased working at the School on 3 June 2018.

Findings of fact

The findings of fact are as follows:

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

You are guilty of unacceptable professional conduct in that whilst employed as a Teacher at the Hillview School for Girls between September 2013 and June 2018;

1. You engaged in inappropriate contact with and/or behaviour towards one or more pupils on one or more occasions including by:

a. touching pupils' legs;

The panel at the outset was mindful that there were varying accounts given by Mr Spencer in regard to this allegation. The panel noted that in his oral evidence, Mr Spencer denied the specific allegation made by Pupil A, that he had placed his hand on her thigh. Additionally, during the School's investigation, when asked whether he placed his hand on a pupil's thigh, he stated that this was, 'Unimaginable'.

The panel then examined the written statements given by Pupil A in which she gave an account that, 'Mr Spencer leaned forwards and placed his hand on my upper thigh range. Mr Spencer's thumb was on my skirt and the rest of his hand was on my thigh over my tights'. During her oral evidence, Pupil A demonstrated to the Panel the action of Mr Spencer in touching her thigh. The panel found Pupil A a credible witness in her account of this event.

The panel noted that elsewhere in written evidence, Mr Spencer admitted that it was not uncommon to touch legs with students and explained that he could, 'knock knees- a daily occurrence'.

The panel found that Mr Spencer's version of events was vague and inconsistent. The panel therefore preferred the evidence of Pupil A and decided that it was more likely than not that this incident occurred. The panel concluded that instances of him touching pupils' legs inappropriately were likely to have occurred.

The panel found allegation 1a proved.

b. placing your hand on pupils' arms and/or shoulders;

From the outset, it was admitted by Mr Spencer that he attracted pupil's attention by, 'tapping them on the back of the chair or tap their shoulder'. Further he described himself as 'touchy feely' and as a 'tactile' person during the School's investigation.

Pupil A described in her written evidence an incident in which, 'he started putting both hands on my shoulders and crouched down before leaning over so his face was next to mine resting on my shoulders'. She added, 'he put his hands on my shoulder every time I called him over when I had a question. I would estimate that this happened to me around 3 times each lesson'. Pupil A demonstrated his actions to the panel in oral evidence, and the panel found this version of events to be reliable.

In her oral evidence, Pupil D demonstrated to the panel how Mr Spencer would place his hands on her shoulders.

The panel also considered the hearsay evidence of Pupil B, Pupil E, Pupil F and Pupil G which all corroborated accounts that Mr Spencer made contact with their shoulders in the classroom. The panel noted that there was some discrepancy regarding amount of time that Mr Spencer may have made contact with the Pupils, but considered their evidence about him touching them to be consistent and therefore accepted it.

On the balance of probabilities, the panel found allegation 1b proved.

c. placing your hand on pupils' hands whilst they were using a computer mouse;

The panel noted at the outset, that there were some inconsistencies in Mr Spencer's account of events in regard to this allegation. In oral evidence, he stated that he, 'did not remember this incident as it did not occur'. However, the panel had regard to the meeting notes made during the School's investigation where he stated there were, 'occasions where either/both go for the mouse or I have gone for the mouse and student has not been aware of the agenda and we have made contact. Those are very much 'ouch' moments.... The implication here is a dwelling and matching of one hand over another. It does not happen. That situation is not reached because there is a natural 'oops' and

recoil'. In cross examination, the panel was of the view that Mr Spencer's answers to this allegation were vague.

The panel reviewed evidence from Pupil D. In her witness statement she stated, 'he then slid his right hand down my right arm and put his hand on top of my hand whilst it was on the computer mouse. I was unable to move my hand from the computer mouse. I felt really uncomfortable and managed to pull my hand away'. The panel was shown a physical demonstration of her account of the incident in which she described Mr Spencer's action in moving his hand from her shoulder and down her arm like, 'stroking a dog'. The panel found Pupil D's evidence to be both clear and credible.

The panel preferred the evidence of Pupil D, and therefore on the balance of probabilities, found allegation 1c proved.

e. Asking Pupil A to remove her top.

Mr Spencer and Pupil A's evidence accepted this event occurred. Pupil A in her witness statement explained, 'when I wore my fleece in Mr Spencer's class, the first time he asked me to remove my top'. Mr Spencer agreed that he had asked her to remove her top.

Pupil A in her oral evidence made it clear that she understood that Mr Spencer was asking her to remove her non uniform fleece and not any other item of clothing. The panel heard evidence from Pupil A who said, 'Mr Spencer referred to my fleece as a top a few more times before I told him that I didn't like him calling my fleece a top and that it sounded dodgy, but he continued to ask me to remove my top'.

When this allegation was put to Mr Spencer, he told the panel that he found her behaviour to be 'pedantic' and, 'as an overreaction to an otherwise normal request'.

The panel found that Mr Spencer, in continuing to refer to her fleece as a top, despite being asked not to, was inappropriate.

The panel, therefore found allegation 1e proved.

The panel then turned its mind as to whether the facts found proved at allegation 1 were demonstrative of inappropriate contact and/or behaviour.

The panel reviewed the School's code of conduct which stated that, 'staff must avoid unnecessary contact with children' and, 'staff should be mindful of the need to maintain professional boundaries appropriate to their position and must always consider whether [teachers] actions are warranted, proportionate, safe and applied equitably'. When asked about whether Mr Spencer was familiar with the code, he said he had read it and had also received safeguarding training.

The panel found that there were inconsistencies in Mr Spencer's explanation of his behaviours/actions. On the one hand, he explained that that his conduct, in making physical contact with students, was the way he 'functioned'. On the other hand, he stated in his oral evidence that this behaviour did not take place as it was not in his 'behavioural vocabulary'. The panel was of the view that these two statements were contradictory and found his evidence to be inconsistent and therefore, not a credible explanation of his alleged physical contact with pupils.

The panel considered the witness statements given by the teaching assistants' ("TA") who had been in some of Mr Spencer's lessons. Their evidence was that they had not noticed Mr Spencer being tactile with pupils. The panel was unable to test this evidence and was unable to ascertain how frequently the teaching support staff attended Mr Spencer's lessons. The panel was mindful that some of the instances occurred in Year 9 and above and yet the evidence of the TAs was in relation to earlier year groups.

The panel also reviewed the evidence of Pupil A and Pupil D in which they both stated that Mr Spencer's behaviours and physical contact made them feel 'uncomfortable'. Pupil D in her witness statement also stated, 'it was incredibly rare I would ask questions in fear of [physical contact] happening'. Pupil A also said that other teachers in the school, 'didn't initiate contact'. Pupil D said that other teachers, when delivering ICT lessons at the School, would not initiate physical contact with pupils. The panel concluded Mr Spencer's methods of contact were inappropriate and breached the School's code of conduct.

The panel concluded that it was not necessary for Mr Spencer to make physical contact with pupils in the circumstances and therefore his actions demonstrated inappropriate contact and/or behaviour.

Overall, the panel found allegation 1 a, b, c and e proved.

2. Your behaviour as may be found proven at 1 above;

b. Demonstrated a lack of insight into previous advice you had been given and/or warnings issued by the School on or around 16 December 2014 and/or 7 November 2016 and/or 12 March 2018.

The panel reviewed the advice given by the School and noted that the written advice given to Mr Spencer did not refer directly to the allegations before the panel at allegation 1. However, the panel considered that the advice did clearly remind Mr Spencer of his professional duties as a teacher and the applicable professional boundaries.

The letter of 16 December 2014 stated that Mr Spencer needed to improve by, 'always consider your professional standing'. Further in a letter of 7 November 2016, Mr Spencer was reminded to maintain at all times the professional teaching standards. On 7 March 2018, Mr Spencer was warned about, 'leaning over students... tell students what you are doing' and to, 'use remote mouse to show students'.

The panel was of the view that Mr Spencer had been made fully aware of the shortcomings in his behaviour over a series of meetings and letters. By failing to maintain proper boundaries between himself and his pupils, Mr Spencer demonstrated a lack of insight into his behaviour

On the balance of probability, the panel found allegation 2b proved.

The panel found the following allegations against you *not* proved for the following reasons:

1. You engaged in inappropriate contact with and/or behaviour towards one or more pupils on one or more occasions including by:

d. sitting on the same chair as pupils;

The panel received some evidence regarding this allegation. However, the panel was of the view that the evidence received was not robust enough and was inconclusive. Therefore, the panel was unable to find this allegation proved.

On the balance of probabilities, the panel found allegation 1d not proved.

2. Your behaviour as may be found proven at 1 above;

a. Was sexually motivated;

The panel had regard to the legal advice received and formed their own view. It noted at the outset, that it may be reasonable to assume that some of Mr Spencer's actions that the panel has found proved, such as touching pupil's legs, arms, shoulders and/or making references to pupils clothing, could be perceived by reasonable persons to be seen as sexual.

Mr Spencer described himself in his evidence as 'tactile' and 'touchy feely'. He had also been described by pupils in this way. Mr Spencer explained to the panel that his behaviour, in tapping the students on the shoulder, was used as a way to gain their attention. He also said, 'it is something that the majority of students do not find problematical and some do. I then try to respond'. The panel was aware that none of these incidents occurred outside the classroom.

Mr Spencer denied that his motive was sexual as he denied the allegations. He acknowledged in his oral evidence that some of the allegations could be perceived as sexual but in denying the allegations, in his mind there was no sexual motivation.

The panel found the contact made with the pupils was significant and inappropriate but concluded it was not made for the purpose of sexual motivation. The panel preferred the evidence of Mr Spencer that he was attempting to gain their attention, or to comfort them

in some instances. The panel considered that whilst his behaviour demonstrated a lack of insight into his actions, and was inappropriate, there was not an overriding sexual connotation to Mr Spencer's actions.

The panel examined all of the evidence and, having conducted a balancing act, concluded that it was more likely than not, on the balance of probabilities that reasonable person would not find that the actions of Mr Spencer could be sexual in all the circumstances.

Therefore, the panel concluded that allegation 2a could not be proved.

Findings as to unacceptable professional conduct

Having found a number of the allegations to have been proved, the panel went on to consider whether the facts of those proved allegations amounted to unacceptable professional conduct.

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

The panel was satisfied that the conduct of Mr Spencer in relation to the facts found proved, involved breaches of the Teachers' Standards. The panel considered that by reference to Part Two, Mr Spencer was in breach of the following standards:

Teachers uphold public trust in the profession and maintain high standards of ethics and behaviour by,

Treating pupils with dignity, building relationships rooted in mutual respect, and at all times observing proper boundaries appropriate to a teachers professional position,

having regard to 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.

The panel was satisfied that the conduct of the teacher fell significantly short of the standards expected of the profession in regard to the allegations found proved. In making inappropriate physical contact and displaying inappropriate conduct with pupils, as well as failing to take on board previous advice given in regard to his conduct, Mr Spencer showed a disregard for the well-being and safeguarding of pupils which amounted to significant unprofessional conduct.

The panel also considered whether the teacher's conduct displayed behaviours associated with any of the offences listed on pages 8 and 9 of the Advice. The panel found that none of these offences was relevant.

Panel's recommendation to the Secretary of State

Given the panel's findings in respect of unacceptable professional conduct, it is necessary for the panel to go on to consider whether it would be appropriate to recommend the imposition of a prohibition order by the Secretary of State.

In considering whether to recommend to the Secretary of State that a prohibition order should be made, the panel has to consider whether it is an appropriate and proportionate measure, and whether it is in the public interest to do so. Prohibition orders should not be given in order to be punitive, or to show that blame has been apportioned, although they are likely to have punitive effect.

The panel has considered the particular public interest considerations set out in the Advice and having done so has found a number of them to be relevant in this case, namely the protection of pupils, the maintenance of public confidence in the profession/declaring and upholding proper standards of conduct. In particular the panel noted the primary importance of safeguarding in schools. The panel concluded that in failing to adhere to previous advice given by the School, Mr Spencer disregarded and did not display any insight into the importance of complying with the teachers' standards or safeguarding procedures.

In light of the panel's findings against Mr Spencer which involved inappropriate physical contact and inappropriate conduct with Pupils in the classroom, public interest considerations are engaged. The panel considered that public confidence in the profession could be seriously undermined if misconduct, such as that found against Mr Spencer, was not treated with the utmost seriousness.

The panel also considered that there is a strong public interest in declaring proper standards of conduct in the profession. The conduct found against Mr Spencer was outside that which could be tolerated because teachers should not touch pupil's legs, place hands on students' arms, hands or shoulders that is unsolicited or unnecessary. He was in breach of the School's code of conduct in that, 'staff must avoid unnecessary physical contact with children'. The panel was of the view that he demonstrated a cavalier approach to both the School's code of conduct and the teachers professional standards.

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 teacher.

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 Spencer. 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:

a 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

abuse of position or trust or violation of the rights of pupils.

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

Mr Spencer is an experienced teacher having been in the teaching profession since 1977 and had a previous good history. The panel viewed that he made contributions to the School's he taught in, and Mr Spencer put forward that due to his teaching, many students went on to take further study of ICT. Additionally, the panel noted that both Pupil A and Pupil D described Mr Spencer as a 'good teacher'. The panel reviewed hearsay evidence from a parent of a pupil at the school which stated that the pupil was doing, 'extremely well; which is clearly due to Mr Spencer's teaching'.

However, the panel was concerned that Mr Spencer's inappropriate behaviour and conduct with some students had a negative impact on their education. This was demonstrated by Pupil A and Pupil D not wanting to raise their hands in class to ask questions in fear of being touched. The panel concluded that Mr Spencer's actions were deliberate: he continued to touch pupils inappropriately and stated that was his, 'way of functioning' despite being alerted.

There was no evidence to suggest that Mr Spencer was acting under duress.

Considering the militating factors, the panel remains 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 the teacher of prohibition.

The panel is of the view that prohibition is both proportionate and appropriate. The panel has concluded that the public interest considerations outweigh the interests of Mr Spencer. The panel noted in oral evidence that Mr Spencer displayed no insight or any remorse. 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 recommend that a review period of the order should be considered. The panel was mindful that the Advice 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 2 years.

The Advice indicates that there are behaviours that, if proved, would militate against a review period being recommended. The panel determined that none of these findings were relevant and therefore it would be appropriate in the circumstances to have a review period. The panel noted that whilst this was serious misconduct, no pupils were physically harmed but the panel was aware of the emotional impact of his behaviour on pupils and the affects it had on their learning. The panel considered that Mr Spencer showed a lack of empathy and understanding in relation to his pupil's emotional well-being and the impact of his actions on them. He showed a repeated disregard for the advice and instruction that the School had given him in regard to his behaviours.

The panel considered that Mr Spencer should be given time for reflection in order to develop may insight into his lack of judgement and the inappropriateness of his behaviour and the impact on pupil's well-being and learning.

The panel felt the findings indicated a situation in which it would be appropriate and proportionate in all the circumstances for a prohibition order to be recommended with provisions for a review period after 4 years.

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 both sanction and review period.

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

In this case, the panel has found some of the allegations proven and found that those proven facts amount to unacceptable professional conduct. In this case, the panel has found some of the allegations not proven. I have therefore put those matters entirely from my mind.

The panel has made a recommendation to the Secretary of State that Mr Spencer should be the subject of a prohibition order, with a review period of four years.

In particular, the panel has found that Mr Spencer is in breach of the following standards:

Teachers uphold public trust in the profession and maintain high standards of ethics and behaviour by,

Treating pupils with dignity, building relationships rooted in mutual respect, and at all times observing proper boundaries appropriate to a teachers professional position,

having regard to 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.

The panel was also satisfied that the conduct of the teacher "fell significantly short of the standards expected of the profession in regard to the allegations found proved".

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 a less intrusive measure, such as the published finding of unacceptable professional conduct, 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 Spencer, and the impact that will have on him, is proportionate and in the public interest.

In this case, I have considered the extent to which a prohibition order would protect children. The panel has observed, "In making inappropriate physical contact and displaying inappropriate conduct with pupils, as well as failing to take on board previous advice given in regard to his conduct, Mr Spencer showed a disregard for the well-being and safeguarding of pupils which amounted to significant unprofessional conduct."

A prohibition order would therefore prevent such a risk from being present in the future. I have also taken into account the panel's comments on insight and remorse, which the panel sets out as follows, "The panel noted in oral evidence that Mr Spencer displayed no insight or any remorse." In my judgement, the lack of insight means that there is some risk of the repetition of this behaviour and this puts at risk the future well-being of pupils. 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, "The panel considered that public confidence in the profession could be seriously undermined if misconduct, such as that found against Mr Spencer, was not treated with the utmost seriousness."

I have had to consider that the public has a high expectation of professional standards of all teachers and that the public might regard a failure to impose a prohibition order 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 Spencer himself. The panel observe, “Mr Spencer is an experienced teacher having been in the teaching profession since 1977 and had a previous good history. The panel viewed that he made contributions to the School’s he taught in, and Mr Spencer put forward that due to his teaching, many students went on to take further study of ICT. Additionally, the panel noted that both Pupil A and Pupil D described Mr Spencer as a ‘good teacher’. The panel reviewed hearsay evidence from a parent of a pupil at the school which stated that the pupil was doing, ‘extremely well; which is clearly due to Mr Spencer’s teaching’.”

A prohibition order would prevent Mr Spencer from teaching and 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 also said that it, “was aware of the emotional impact of his behaviour on pupils and the affects it had on their learning. The panel considered that Mr Spencer showed a lack of empathy and understanding in relation to his pupil’s emotional well-being and the impact of his actions on them. He showed a repeated disregard for the advice and instruction that the School had given him in regard to his behaviours.”

I have given less weight in my consideration of sanction therefore, to the contribution that Mr Spencer 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, in light of the circumstances in this case, 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 intended aims of a prohibition order.

I have gone on to consider the matter of a review period. In this case, the panel has recommended a 4 year review period.

I have considered the panel’s comments “However, the panel was concerned that Mr Spencer’s inappropriate behaviour and conduct with some students had a negative impact on their education. This was demonstrated by Pupil A and Pupil D not wanting to raise their hands in class to ask questions in fear of being touched. The panel concluded that Mr Spencer’s actions were deliberate: he continued to touch pupils inappropriately and stated that was his, ‘way of functioning’ despite being alerted.”

The panel has also said that Mr Spencer, “should be given time for reflection in order to develop insight into his lack of judgement and the inappropriateness of his behaviour and the impact on pupil’s well-being and learning.”

I have considered whether a 4 year review period reflects the seriousness of the findings and is a proportionate period to achieve the aim of maintaining public confidence in the profession. In this case, three factors mean that a two-year review period is not sufficient to achieve the aim of maintaining public confidence in the profession. These elements are the lack of insight or remorse, the lack of empathy and the fact that Mr Spencer, “showed a repeated disregard for the advice and instruction that the School had given him in regard to his behaviours.”

I consider therefore that a four year review period is required to satisfy the maintenance of public confidence in the profession.

This means that Mr David Spencer is prohibited from teaching indefinitely and cannot teach in any school, sixth form college, relevant youth accommodation or children’s home in England. He may apply for the prohibition order to be set aside, but not until 2023, 4 years from the date of this order at the earliest. This is not an automatic right to have the prohibition order removed. If he does apply, a panel will meet to consider whether the prohibition order should be set aside. Without a successful application, Mr David Spencer remains prohibited from teaching indefinitely.

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

Mr David Spencer has a right of appeal to the Queen’s Bench Division of the High Court within 28 days from the date he is given notice of this order.



Decision maker: Alan Meyrick

Date: 16 August 2019

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