



Teaching
Regulation
Agency

Teacher X: Professional conduct panel outcome

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

November 2021

Contents

Introduction	3
Allegations	4
Preliminary applications	5
Summary of evidence	12
Documents	12
Witnesses	13
Decision and reasons	13
Findings of fact	13
Findings as to unacceptable professional conduct and/or conduct that may bring the profession into disrepute	18
Panel's recommendation to the Secretary of State	20
Decision and reasons on behalf of the Secretary of State	23

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

Teacher: Teacher X

TRA reference: 18179

Date of determination: 26 November 2021

Former employer: [Redacted] (the “School”)

Introduction

A professional conduct panel (“the panel”) of the Teaching Regulation Agency (“the TRA”) convened on 24 to 26 November 2021 at Cheylesmore House, 5 Quinton Road, Coventry, CV1 2WT, to consider the case of Teacher X.

The panel members were Mr Roger Woods (former teacher panellist – in the chair), Ms Hilary Jones (lay panellist), and Mr Steve Woodhouse (teacher panellist).

The legal adviser to the panel was Mr Phil Taylor of Eversheds Sutherland (International) LLP solicitors.

The presenting officer was Ms Holly Quirk of Browne Jacobson LLP solicitors.

Teacher X was not present and was not represented at the hearing.

The hearing took place in private, and was recorded.

Allegations

The panel considered the allegations set out in the notice of proceedings dated 7 September 2021.

It was alleged that Teacher X was guilty of unacceptable professional conduct and/or conduct that may bring the profession into disrepute, in that,

1. In or around May - 29 June 2012 he engaged and/or developed an inappropriate relationship with Child A, when she was a pupil at the School in that he on one or more occasion(s):
 - a. Texted Child A;
 - b. Hugged Child A;
 - c. Kissed Child A;
 - d. Asked Child A if she would ever sleep in bed next to him and/or suggested touching her in a more intimate way.
2. Between July 2012 – December 2013, he continued the relationship at allegation 1 above and/or engaged in an inappropriate relationship with Child A, when she was no longer a pupil at the School in that he:
 - a. Engaged in sexual activity with Child A within the School's premises and/or during school events;
 - b. Engaged in sexual activity with Child A outside of the School setting;
 - c. Engaged in sexual intercourse with Child A;
 - d. Exchanging one or more images of his genitalia and/or Child A's genitalia on one or more occasion(s).
3. His behaviour as may be found proven at 1 and/or 2 above was conduct of a sexual nature and/or was sexually motivated.

By way of a statement of agreed and disputed facts, signed by Teacher X on 14 April 2021, Teacher X denied allegation 1 in its entirety, in that he denied that any inappropriate relationship occurred whilst Child A was a pupil at the School or that his behaviour was sexually motivated. However, as set out further below, Teacher X accepted certain facts relating to the allegation.

Teacher X admitted allegation 2, acknowledging that the conduct admitted amounted to an inappropriate relationship with Child A. However, as set out further below, Teacher X accepted certain facts including that he entered into a sexual relationship with Child A, but that this began after Child A left the School roll. Teacher X denied that the sexual activity referred to in allegation 2 was a continuation of any inappropriate relationship started while Child A was a pupil at the School, as alleged at allegation 1.

Teacher X admitted allegation 3, in respect of the conduct admitted in allegation 2 only, but neither the alleged conduct in allegation 1 nor the ‘continuing’ element in allegation 2.

In respect of the allegations that were admitted, Teacher X admitted that the conduct amounts to unacceptable professional conduct and conduct that may bring the profession into disrepute.

Preliminary applications

The panel considered an application made on behalf of Teacher X on 15 November 2021, with further submissions made on 23 November 2021 (the “Preliminary Application”), that:

1. The panel should consider the case on the admitted allegations only;
2. The proceedings should be stayed indefinitely relating to the disputed allegations;
3. Any further hearings should be held in private; and
4. The panel’s decision should not be published in any form that enables Teacher X to be identified.

The panel first heard submissions from the presenting officer, and took advice from the legal adviser, in relation to whether it should proceed in the teacher’s absence, and also on point 3 of the Preliminary Application. It withdrew to consider these points.

Proceeding in absence

Given Teacher X was not in attendance at the hearing, the panel first considered as a preliminary point whether the hearing should be held in his absence, noting that this decision would be subject to the panel’s decision on the remaining elements of the Preliminary Application, which were yet to be considered. The application was considered in private, due to the health matters being discussed and because the substantive decision had not yet been made in terms of excluding the public.

The panel was satisfied that the TRA had complied with the service requirements of paragraph 19 a to c of the Teachers’ Disciplinary (England) Regulations 2012 (the “Regulations”). The panel was also satisfied that the notice of proceedings complied with paragraphs 4.11 and 4.12 of the 2018 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, at this stage, with the hearing in the absence of the teacher.

The panel took as its starting point the principle from *R v Jones [2003] 1 AC 1* that its discretion to commence a hearing in the absence of the teacher has to be exercised with the utmost care and caution, and that its discretion is a severely constrained one. In considering the question of fairness, the panel has recognised that fairness to the

professional is of prime importance but that it also encompasses the fair, economic, expeditious and efficient disposal of allegations against the professional, as was explained in *GMC v Adeogba & Visvardis [2016] EWCA Civ 162*.

In making its decision, the panel noted that a teacher may waive his/her right to participate in the hearing. The panel first took account of the various factors drawn to its attention from the case of *R v Jones*, as follows:

The nature and circumstances of the teacher's behaviour in absenting himself from the hearing were as follows: an application had been received a few days before the hearing was to begin, submitting that the teacher could not participate in a hearing unrepresented, on the grounds of [redacted], and that the teacher was not able to fund representation at the hearing. The application was supported by a [redacted].

The application stated that, "To determine the disputed allegations would require our client to attend the hearing and give evidence, which our client's [redacted] cannot do." Among other things, and as highlighted by the teacher's legal representatives in the application, [redacted].

The panel noted that in this case, the teacher had not asked for an adjournment. [Redacted].

The panel therefore considered that the teacher had waived his right to be present at the hearing in the knowledge of when and where the hearing is taking place. The panel noted that, although the teacher could not afford legal representation at a hearing, the recent applications had been made on the teacher's behalf by a firm of solicitors, and the teacher had clearly taken legal advice up until this point. However, the panel acknowledged that should the hearing proceed in the teacher's absence, it would also proceed in the absence of any legal representative for the teacher.

The panel considered the extent of the disadvantage to the teacher in not being able to give his account of events, having regard to the nature of the evidence against him. Child A would be giving live evidence (via video link), and the teacher would not have the opportunity to test this evidence through cross-examination. However, this is an experienced panel, with the benefit of extensive and detailed representations made on the teacher's behalf, as well as a statement of agreed and disputed facts, and the panel was confident that it was able to ascertain the lines of defence. The panel also had the teacher's evidence addressing mitigation and would be able to take this into account at the relevant stage.

The panel noted that it could test Child A's evidence in questioning, considering such points as are favourable to the teacher, as are reasonably available on the evidence. The panel had not identified any significant gaps in the documentary evidence provided to it. Should such gaps arise during the course of the hearing, the panel may take such gaps into consideration in determining whether the hearing should be adjourned for such

documents to become available and in considering whether the presenting officer had discharged the burden of proof. The panel was confident that it would be 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 the teacher's account.

The panel recognised that the allegations against the teacher are serious and that there was a real risk that if proven, the panel would be required to consider whether to recommend that the teacher ought to be prohibited from teaching. However, the panel was mindful of the [redacted] should proceedings be delayed.

The panel recognised that the efficient disposal of allegations against teachers is required to ensure the protection of pupils and to maintain confidence in the profession. The allegations include reference to Child A with whom it is alleged the teacher entered into an inappropriate sexual relationship, while a pupil at the School. Child A would have an interest in having the allegations determined within a reasonable time. The conduct alleged is said to have taken place whilst the teacher was employed at the School. The alleged events date back to around 2012, and the panel was aware that the School would also have an interest in this hearing taking place.

The panel noted that, as a result of preceding Case Management Hearings, Child A had been classed as a vulnerable witness and had been awarded various special measures. She was prepared to give evidence. The panel noted that it would be inconvenient and distressing for her to have to delay such evidence and return again. Delaying the case again may further impact upon the memory of that witness.

The panel therefore decided to proceed with the hearing in the absence of the teacher, subject to its decision on the remaining elements of the preliminary application. The panel balanced the serious allegations with the teacher's waiver of his right to appear. Taking such measures as referred to above to address any possible unfairness, and taking account of the inconvenience an adjournment would cause to the witness, the panel determined that the public interest would best be served by proceeding with the hearing.

Hearing in private

The panel then turned to consider 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 panel determined to exercise its discretion under paragraph 11(3)(b) of the Regulations and the second bullet point of paragraph 4.57 of the Procedures that the public should be excluded from the hearing.

The panel took into account the general rule that hearings should be held in public and that this is generally desirable to maintain public confidence in the administration of these proceedings and also to maintain confidence in the teaching profession. On this

occasion, however, the panel considered that the request for the hearing to be heard in private was a reasonable one given concerns about confidential matters relating to [redacted] being placed in the public domain, [redacted].

The panel considered whether there could be any steps short of excluding the public that would serve the purpose of protecting the confidentiality of matters relating to [redacted]. However, it concluded that [redacted] matters were so intertwined with the facts of this case that it would not be practicable to exclude the public from parts of the hearing only. There was in fact an increased risk that confidential information could be inadvertently made public if the hearings were to frequently switch between private and public modes.

The panel took account of a letter received from [redacted] involved in the care of the teacher which gave very compelling reasons as to why he considered the public should be excluded from the hearing.

The panel noted that it had already been agreed that the evidence of Child A (the only witness) would be given in private and that there would be no oral submissions made by the teacher or his representative as they were absent. Therefore directing that the remainder of the hearing should be conducted in private would have very little practical effect on the proceedings.

The panel had regard to whether the teacher's request runs contrary to the public interest. The panel is required to announce its decisions in public as to whether the facts have been proven and whether those facts amount to unacceptable professional conduct and/or conduct that may bring the profession into disrepute. In the event that the case continues any decision of the Secretary of State will also by default be in public (although the panel would consider this point further in due course). The panel considered that, in the circumstances of this case where the facts are so intertwined with private matters [redacted] and where the impact of public proceedings [redacted], the public interest would be satisfied by these public announcements. Those public announcements would ensure that public confidence in these proceedings and in the standards of the profession are maintained.

The remainder of the Preliminary Application

Having announced its decision on the preceding points, the panel then heard submissions from the presenting officer, and took advice from the legal adviser, in relation to points 1, 2 and 4 of the preliminary application. It withdrew to consider these points.

In the panel's view, the teacher's arguments were that if the panel were to continue with a hearing on the disputed facts, then due to the teacher's absence [redacted], he could not receive a fair hearing. The teacher had therefore asked for the proceedings in relation to the disputed facts only to be permanently stayed. The application appeared to amount

to an application to stop or discontinue those proceedings on the basis of an abuse of process, namely that it was not possible for the teacher to receive a fair hearing.

The panel noted that the teacher had not alleged oppressive conduct on the part of the TRA, but accepted the advice of the legal adviser that there were relevant principles to bear in mind in this case. The panel acknowledged that there are two categories of cases where abuse of process could be found to apply – the first is where a defendant cannot receive a fair hearing; and the second is where it would be unfair for a defendant to be tried – such that in accordance with paragraph 4.54 of the Procedures, it would be fair and appropriate to discontinue the proceedings against the teacher.

In considering the first limb, the panel noted that teachers are entitled to a fair trial in accordance with their rights under Article 6 of the European Convention of Human Rights and also at common law. The panel noted that it had already considered at some length various points which were also relevant here. The panel had already decided that the teacher would be able to receive a fair trial in his absence, for the reasons it had already set out, and the panel considered this still to be the case.

In relation to the second limb, and bearing in mind the case law which had been drawn to its attention, the panel did not consider that it would offend its sense of justice and propriety to continue to hear the proceedings against the teacher in the particular circumstances of the case.

The panel noted that a number of options were now open to it, as had been helpfully set out in the presenting officer's submissions:

- to consider the matter on the basis of a meeting;
- to consider only the admitted allegations and to hear from Child A;
- to consider only the admitted allegations but not to hear from Child A;
- to deal with the admitted and disputed allegations via a full hearing, including hearing from Child A; or
- to deal with the admitted and disputed allegations via a full hearing, but not to hear from Child A.

The panel was also aware that, under paragraph 4.56 of the Procedures, at any stage before making its decision about whether the facts of the case have been proved, it could in the interests of justice, amend an allegation or the particulars of an allegation.

The panel took into account the decision it had made at a Case Management Hearing on 26 July 2021 that this matter should be considered by way of hearing and not a meeting, and saw no reason to depart from that decision now.

The panel considered that it had the relevant experience and ability to question the witness, Child A, as needed, and to ensure that the teacher's interests were put forward and therefore that the teacher could receive a fair hearing.

The panel agreed that it would in fact be in the teacher's interest to deal with the disputed as well as admitted elements of the case. Those parts were highly relevant, and to an extent intertwined with the admitted elements. The panel considered that the case had to be dealt with as a whole. A decision made only on the admitted elements would have a material impact of the seriousness of the findings, and thereby any consideration of sanctions. It was therefore also in the public interest to consider the case as a whole.

The panel had no doubt that the teacher's reasons for not appearing were genuine and significant. However, the panel felt that should the disputed elements of the case be discontinued, this could set a very unhelpful precedent. It would allow a teacher simply to dispute elements of the case, decline to appear at a hearing and claim that no hearing could go ahead on the disputed elements.

The panel saw no reason why its analysis of the disputed allegations would be any different from its analysis of the agreed ones. The teacher had the opportunity to present evidence on the disputed points, and this was available to the panel.

The panel also noted here:

- the clear requirement under Regulation 7 of the Regulations that a professional conduct panel must consider cases referred to it by the Secretary of State;
- that even where the facts are admitted, the panel is still required to "decide whether the facts that have been agreed by the parties have been proven, and if so whether they amount to unacceptable professional conduct, conduct that may bring the profession into disrepute and/or a conviction, at any time, of a relevant offence; this is regardless of whether an admission to that effect is made by the teacher", pursuant to paragraph 4.52 of the Procedures; and
- that the Procedures are clear under paragraph 4.53 as to what should happen where not all facts are admitted.

The panel therefore determined that it would proceed with a full hearing on all elements of the case as particularised, and would hear from Child A as part of the proceedings.

The panel was keen to make clear that it, with support from the legal adviser, would consider very carefully any questions which should be put to Child A in order to ensure the teacher's case was put forward.

The panel then turned to consider the application from Teacher X that his name should not be disclosed during the hearing, and that the panel's decision should not be published in any form that enables Teacher X to be identified.

The panel noted that the TRA, having received the information from the [redacted] and accepted that in making this decision the TRA had carried out a balancing exercise of his Article rights against the public interest. The panel agreed with this approach and saw this as striking the correct balance.

The panel therefore decided that during the entire course of the oral hearing, albeit private, it would refer to the teacher as Teacher X. The panel decided that it would instruct Child A that she should do the same when giving her evidence.

The panel also considered the relevant parts of the Procedures (in particular paragraph 4.59), and concluded that, even where proceedings were private, there was a requirement to announce in public its findings of fact and, if relevant, whether proven facts amounted to unacceptable professional conduct and/or conduct which may bring the profession into disrepute. Given the panel would be using "Teacher X" throughout (and that the name of the witness and the school would also be anonymised), it did not consider that making these announcements in public would prejudice the teacher's interests.

Finally, the panel considered the teacher's application that, "the Panel's decision should not be published in any form that enables Teacher X to be identified".

The panel noted at the outset that it is not the body that would publish any decision. It was clear under paragraph 4.74 of the Procedures that the panel's role was to "decide in private whether to recommend to a senior official from the TRA, who acts as decision-maker on behalf of the Secretary of State under delegated powers, that a prohibition order should be imposed ..."

Paragraph 4.78 states, "The decision, along with a summary of the evidence and the reasons for the decision, will be made available on the GOV.UK website within 2 weeks of the decision being made."

The 'decision' referenced in paragraph 4.78 is of course the decision of the Secretary of State, and not the recommendation made by the panel.

The panel was aware that it is a routine practice for a panel to mark its recommendation document in such a way as to indicate to the decision maker that certain points should be redacted before publication, for example where there are references to third parties or sensitive health information. The panel would be doing so in this case.

Given the very serious [redacted] matters evidenced in what amounted to a report from an expert witness [redacted], and the effect that publication of the teacher's name could have [redacted], the panel was minded to draft its recommendation document such that the teacher would be referred to as "Teacher X". The panel would review this decision once it had heard the entire case and made its findings. However, the panel noted that it would be the decision maker who would make the final decision on this point – the panel could only make recommendations and not direct the Secretary of State.

Similarly, the panel decided, after careful consideration of the written submissions from the teacher's representative and the presenting officer's submissions, that it would be for the Secretary of State to decide whether to disapply the relevant subordinate legislation relating to publication of the details of any prohibition order, and not the panel. The panel recognised the strength of the teacher's submissions in relation to his Article 2 and Article 8 rights, although it did not consider that any effect on the teacher's family would be more relevant here than in many other cases.

The panel recognised that this was an exceptional situation in relation to publication and anonymity. At this stage, the panel indicated again that it was minded to refer to the teacher as "Teacher X" in its formal written recommendation document but reserved the right to make a final decision on this approach after it had considered the evidence and made its findings of fact.

In the panel's view, it would then be for the decision maker to review the recommendation, carry out a balancing exercise, and decide on the nature of the publication of the decision and/or details of any prohibition order made.

Summary of evidence

Documents

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

Section 1: Chronology – page 2

Section 2: Notice of proceedings and statement of agreed and disputed facts – pages 4 to 11

Section 3: Teaching Regulation Agency witness statements – pages 13 to 18

Section 4: Teaching Regulation Agency documents – pages 20 to 37

Section 5: Teacher documents – pages 39 to 61

In addition, the panel agreed to accept the following:

- Copies of the panel's decision made at Case Management Hearings on 18 September 2020, 26 July 2021 and 5 November 2021
- An application made on Teacher X's behalf on 15 November 2021, [redacted] dated 3 November 2021
- The TRA's response to the teacher's application, dated 18 November 2021
- Further submissions made on behalf of Teacher X, dated 23 November 2021

The panel members confirmed that they had read all of the documents within the bundle, in advance of the hearing and the additional documents that the panel decided to admit.

Witnesses

The panel heard oral evidence from Child A, [redacted], who was called by the presenting officer. Child A gave evidence via MS Teams video link, pursuant to the Case Management Hearing decision dated 5 November 2021.

Teacher X was not present and did not give oral evidence.

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 teacher was employed as a Teacher of Music at the School from 1 September [redacted] to 14 April [redacted]. He was also Head of the Creative Department from 1 September [redacted] until 14 April [redacted].

[Redacted]. During her time at the School, Teacher X taught her music once or twice a week.

Sometime between the end of 2013 and early February 2014, Child A [redacted] reported to the police that she had been in a relationship with her teacher when she was [redacted]. The police began an investigation into the allegations raised by Child A, which included interviewing her and Teacher X in February 2014.

Teacher X was charged with an offence under the Sexual Offences Act 2003, but at court the CPS offered no evidence and the case was dismissed. [Redacted].

Findings of fact

Before setting out the findings of fact, the panel wish to note that it had been reminded by the legal adviser of the need for 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 the teacher's account. The panel bore in mind that the teacher had not had the opportunity to test the evidence, and understood that it was obliged to consider such points as are favourable to the teacher, as are reasonably available on the evidence.

Child A's evidence was given by video link, and in determining the weight it attributed to Child A's evidence, the panel was careful to bear in mind that there may be subtleties of tone or body language that may have been lost via this medium.

The panel found as follows in relation to particulars of the allegations against you:

1. In or around May - 29 June 2012 you engaged and/or developed an inappropriate relationship with Child A, when she was a pupil at the School in that you on one or more occasion(s):

(a) Texted Child A;

This allegation was supported by evidence provided to the panel, notably the statement of agreed and disputed facts, signed by Teacher X on 14 April 2021, in which Teacher X admitted texting Child A on at least one occasion between May and June 2012. In a police interview with Child A conducted in February 2014 and in her TRA witness statement given in July 2020, Child A stated that Teacher X had texted her on 18 June 2012, or the week before. Child A's oral evidence to the panel was also consistent.

The panel was presented with no evidence to suggest that this event did not occur, and therefore this allegation was found proved.

(b) Hugged Child A;

This allegation was supported by evidence provided to the panel. In the statement of agreed and disputed facts, Teacher X admitted 'putting an arm around' Child A on at least one occasion between May and June 2012. Child A's evidence was that Teacher X would offer 'comfort in the form of a hug'. The panel questioned Child A further during the hearing, and Child A was clear that Teacher X gave her a 'two-armed hug'.

In the panel's view Child A was a credible witness who gave consistent evidence via video link. Despite the passage of time, and the clear emotional impact that the proceedings were having on her, her evidence was clear in relation to key points such as this.

The panel therefore found this allegation proved.

(c) Kissed Child A;

This allegation was supported by evidence provided to the panel.

In the statement of agreed and disputed facts, Teacher X denied kissing Child A during this period of time, i.e. when Child A was on the School roll. However, Child A's evidence was consistent on this point. She stated in her written statement to the TRA that she and Teacher X had kissed on one occasion in the School classroom.

The panel questioned Child A further on this point during the hearing, and Child A was clear that Teacher X had kissed her 'on the lips'. In her oral evidence she also stated that she was 'shocked by what happened'.

Again bearing in mind the points noted above in relation to evidence via video link, the panel accepted Child A's evidence on this point, regarding her a credible and consistent

witness who gave clear evidence on relevant points, including in response to the panel's direct questioning.

The panel therefore found this allegation proved.

(d) Asked Child A if she would ever sleep in bed next to you and/or suggested touching her in a more intimate way.

The panel noted that Teacher X denied any such communications while Child A was on the School roll. Child A's written evidence was that a 'question and answer' session had taken place, during which Teacher X had asked the question and made the suggestion as particularised in 1d. In her statement to the TRA, she stated this happened 'at the end of June/beginning of July'. In her police statement (given several years before), she also stated this time period.

The panel questioned Child A directly on this point at some length. Child A recalled that the 'question and answer' session had taken place via text message, and that Teacher X had been asking her questions.

While the panel was in no doubt that these communications had taken place, the timing remained unclear. The panel therefore could not find this allegation proven in the timeframe stated above.

Having found sub-allegations 1a to 1c to be proved, the panel considered whether any or all of these sub-allegations amounted to Teacher X's entering into and/or developing an inappropriate relationship with Child A while she was a pupil at the School. The panel noted that Teacher X denied this.

However, in the panel's view, no reasonable person would consider that any teacher should be texting, hugging or kissing a pupil. In addition, the panel heard evidence relating to the gift of a necklace from Teacher X to Child A.

The panel considered any such behaviour was incompatible with the role of a teacher and therefore found the inappropriate relationship element of allegation 1 to be proved.

2. Between July 2012 – December 2013, you continued the relationship at allegation 1 above and/or engaged in an inappropriate relationship with Child A, when she was no longer a pupil at the School in that you:

(a) Engaged in sexual activity with Child A within the School's premises and/or during school events;

The panel noted that both Child A and Teacher X agreed that their relationship became sexual in July 2012, but that Teacher X denied any sexual activity on the School's premises and/or during School events.

However, in the panel's view the allegation was supported by evidence provided to it. This included Child A's consistent written evidence which was very clear and detailed in terms of when and where sexual activity had taken place. Child A stated this was in a School classroom before a show, during a definite three-day window of time. She gave other intimate details of the activity, and the layout of the room. Child A gave a detailed account of the circumstances of their sexual activity during a School trip.

The panel tested Child A's evidence through direct questioning during the hearing. It was put to Child A that her account was disputed by Teacher X, but she clearly confirmed her account, under oath. The panel again found Child A's evidence to be credible and consistent, and found no reason to doubt the veracity of it.

The panel therefore found this allegation proved.

(b) Engaged in sexual activity with Child A outside of the School setting;

(c) Engaged in sexual intercourse with Child A;

These allegations were supported by evidence provided to the panel, notably the statement of agreed and disputed facts, in which Teacher X admitted entering into a sexual relationship with Child A for the first time in July 2012, after she had left the School roll, and having sexual intercourse with Child A on one or more occasion at his home and at Child A's mother's home.

Child A gave detailed and consistent written evidence in relation to sexual activity, including sexual intercourse, outside of the School setting, including at Teacher X's home.

The panel was presented with no evidence to suggest that the events as alleged did not occur. The panel therefore found these allegation proved.

(d) Exchanging one or more images of your genitalia and/or Child A's genitalia on one or more occasion(s).

This allegation was supported by evidence provided to the panel, notably the statement of agreed and disputed facts, in which Teacher X admitted exchanging text messages with Child A which included images of their genitalia, and Teacher X's police interview. Child A gave consistent written evidence on this point.

Although direct evidence of those text messages was not available, the panel was presented with no evidence to suggest that the events as alleged did not occur.

The panel therefore found this allegation proved.

Having found sub-allegations 2a to 2d to be proved, the panel considered whether any or all of these sub-allegations amounted to a continuation of, or engagement in, an inappropriate relationship with Child A after she ceased to be a pupil at the School. The

panel noted that Teacher X agreed that the sub-allegations amount to an inappropriate relationship, but that he denied this was a continuation of an inappropriate relationship started when Child A was a pupil.

The panel agreed that the sub-allegations as found proven amounted to an inappropriate relationship between a teacher and a child, who although no longer on the School roll, had been a pupil only a few weeks beforehand and was still involved with School activities, and attending the premises. Having already found (at allegation 1) that Teacher X had entered into an inappropriate relationship while Child A was a pupil, the panel found that this relationship had continued beyond her leaving the School's roll. Clearly, the teacher-pupil relationship had existed for several years, and without this the inappropriate relationship would have never developed. The panel again considered that the behaviour found proven was incompatible with the role of a teacher and therefore found the inappropriate relationship element of allegation 2 (and thereby all of allegation 2) to be proved.

3. Your behaviour as may be found proven at 1 and/or 2 above was conduct of a sexual nature and/or was sexually motivated.

This allegation was supported by evidence provided to the panel, including (in part) the statement of agreed and disputed facts in which Teacher X admitted that the conduct admitted at allegation 2 was conduct of a sexual nature.

The panel took into account the written and oral evidence of Child A, including her responses to questioning in this area. The panel noted that Child A was clear that the text messages exchanged from June 2012 initially included no sexual content, but began as "normal, saying 'Hi' and general chitchat."

During its deliberations, the panel referred to the definition of 'sexual' found at section 78(1)(b) of the Sexual Offences Act 2003, that "touching or any other activity is sexual if a reasonable person would consider that (a) whatever its circumstances of any person's purpose in relation to it, it is because of its nature sexual, or (b) because of its nature it may be sexual and because of its circumstances or the purpose of any person in relation to it (or both) it is sexual."

The panel accepted the advice of the legal adviser that in the latter case the panel should ask itself whether on the balance of probabilities reasonable persons would think the words/actions found proven could be sexual, and if so, they should go on to ask whether, in all the circumstances of the conduct in the case, it is more likely than not that the teacher's purpose of such words/actions was sexual.

The panel also considered whether, even in the absence of any direct evidence, sexual motivation should be inferred from all the circumstances of the case, taking the approach of the court in *Basson v GMC [2018] EWHC 505 (Admin)* (endorsed in *GMC v Haris [2020] EWHC 2518 (Admin)*) that, "the state of a person's mind is not something that can

be proved by direct observation. It can only be proved by inference or deduction from the surrounding evidence”.

The panel was in no doubt that the behaviour found proven in allegation 2 was both conduct of a sexual nature and sexually motivated. The actions were unequivocally sexual, and this was accepted by Teacher X.

Considering all the circumstances of the case, the panel also found that the behaviour found proven in allegation 1 was sexually motivated. The panel accepted the TRA’s submission that Teacher X’s conduct as set out in allegation 1 sought to develop an inappropriate and sexual relationship with Child A. The panel regarded this as part of a continuum of behaviour, which was inextricably connected to the behaviour found proven in allegation 2.

This allegation was therefore found proved.

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

Having found allegations 1a, 1b, 1c, 2 and 3 proved, the panel went on to consider whether the facts of those proved allegations amounted to unacceptable professional conduct and/or conduct that may bring the profession into disrepute.

In doing so, the panel had regard to the document Teacher misconduct: the prohibition of teachers, which is referred to as “the Advice”.

The panel was satisfied that the conduct of Teacher X, in relation to the facts found proved, involved breaches of the Teachers’ Standards. The panel considered that, by reference to Part 2, Teacher X was 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
 - showing tolerance of and respect for the rights of others
- Teachers must have an understanding of, and always act within, the statutory frameworks which set out their professional duties and responsibilities.

The panel was satisfied that the conduct of Teacher X amounted to misconduct of a serious nature which fell significantly short of the standards expected of the profession.

The panel also considered whether Teacher X's conduct displayed behaviours associated with any of the offences listed on pages 10 and 11 of the Advice. The Advice indicates at page 9 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 found that the offences of sexual activity and activity involving viewing, taking, making and/or possessing any indecent photograph of a child (with respect to the allegation found proven at 2d), were relevant, and that Teacher X's conduct displayed behaviours associated with these offences, while noting that Teacher X had not been convicted of any such offences.

The panel noted that allegations 2 and 3 involved activities which took place outside the education setting. However, the panel considered that these activities were closely connected to the School setting, involving Child A who was, in relation to certain activities, a pupil of the School, and in relation to the others, a very recent former pupil who had left the School [redacted]. Teacher X's relationship with Child A had begun in the education setting, and but for his role as her teacher, it is unlikely they would have met and that the relationship would have developed as it did. The panel therefore considered that Teacher X's behaviour outside of the education setting was relevant to its consideration of unacceptable professional conduct as it affected the way in which Teacher X fulfilled his teaching role. It could have led to pupils (in particular Child A, but also others who may have been present nearby, including when Child A and Teacher X were in the music classroom and when they were on the school trip) being exposed to, or influenced by, the behaviour in a harmful way.

In addition, Teacher X was an experienced teacher and worker with children, who should have been well aware of the conduct expected of him, but nevertheless engaged in behaviour which fell significantly short of expectations.

Furthermore, Teacher X accepted, in relation to the admitted allegations (as set out above), that his conduct amounts to unacceptable professional conduct, and the panel took this into account also.

Accordingly, the panel was satisfied that Teacher X is guilty of unacceptable professional conduct.

The panel took into account the way 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 also took account of the uniquely influential role that teachers can hold in pupils' lives and the fact that pupils must be able to view teachers as role models in the way that they behave.

The panel referred again to page 9 of the Advice which states that where behaviours associated with one of the offences listed on pages 10 and 11 of the Advice have been displayed, a panel is likely to conclude that an individual's conduct would amount to conduct which may bring the profession into disrepute.

The panel again considered its findings in relation to all of the allegations to be relevant although some parts of them related to incidents that took place outside the education setting. The panel considered the findings of misconduct in this case to be very serious, and that the conduct displayed would be likely to have a negative impact on the individual's status as a teacher, potentially damaging the public perception.

Again, Teacher X accepted, in relation to the admitted allegations (as set out above), that his conduct amounts to conduct that may bring the profession into disrepute, and the panel took this into account also.

The panel therefore found that Teacher X's actions as found proven constituted conduct that may bring the profession into disrepute.

In summary, having found the facts of allegations 1a, 1b, 1c, 2 and 3 proved, the panel further found that Teacher X's conduct amounted 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 was 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 had to consider whether it would be an appropriate and proportionate measure, and whether it would be 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 had regard to the particular public interest considerations set out at page 12 of the Advice and, having done so, found a number of them to be relevant in this case, namely: the protection of pupils, the protection of other members of the public, the maintenance of public confidence in the profession, and declaring and upholding proper standards of conduct.

In the light of the panel's findings against Teacher X, which involved engaging in an inappropriate and sexually-motivated relationship with a pupil, and continuing this relationship both within and outside of the education setting, there was a strong public interest consideration in respect of the protection of pupils, and other members of the public. The panel noted here the evidence given that Teacher X had other pupils' numbers saved in his mobile phone, and that Teacher X had engaged in sexual activity in circumstances where other children could have been nearby. In addition, it appeared to the panel that Teacher X had attempted to conceal his relationship with Child A from his family.

Similarly, the panel considered that public confidence in the profession could be seriously weakened if Teacher X's conduct was not treated with the utmost seriousness when regulating the conduct of the profession.

The panel was of the view that there was also a strong public interest consideration in declaring proper standards of conduct in the profession as the conduct found against Teacher X was clearly well outside that which could reasonably be tolerated.

The panel considered that the adverse public interest considerations set out above would outweigh any interest in retaining Teacher X in the profession. The panel bore in mind the test from *Wallace v Secretary of State for Education [2017] EWHC 109*. The panel had not seen any evidence which cast doubt on his professional abilities, and recognised that Teacher X had been a teacher for a lengthy period and has skills which are valuable to the profession. However, there was no evidence presented by, for example, representatives of the School or other colleagues which would indicate that he had made an exceptional contribution to education to the extent that there was a public interest in him being able to continue to teach. Ultimately, Teacher X had fundamentally breached the trust placed in him by entering into an inappropriate relationship with a pupil.

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 Teacher X.

In carrying out the balancing exercise, the panel had regard to the public interest considerations both in favour of, and against, prohibition as well as the interests of Teacher X. 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 proved. In the list of such behaviours, those that were relevant in this case were:

- serious departure from the personal and professional conduct elements of the Teachers' Standards;
- misconduct seriously affecting the education and/or well-being of pupils;
- abuse of position or trust or violation of the rights of pupils;
- sexual misconduct; and
- any activity involving viewing, taking, making or possessing any indecent photograph of a child, including one-off incidents.

Even though some of the behaviour found proved in this case indicated that a prohibition order would be appropriate, the panel went on to consider the mitigating factors. Mitigating factors may indicate that a prohibition order would not be appropriate or proportionate.

The panel had no reason to doubt that Teacher X had a previous good history of teaching, and this was an isolated incident. The panel considered three written

statements submitted in support of Teacher X which had been included in the hearing bundle. These included comments on his professional musical direction, the closeness of his family unit, and the seriousness with which he took his teaching responsibilities. The panel noted that it was not clear in all cases what the writer knew about the allegations against Teacher X, that one reference was undated, and that all appeared to relate to the police investigation rather than these proceedings. The references did not address any aspects such as Teacher X's remorse or steps he may have been taken to address his actions. The panel therefore gave these statements little weight.

[Redacted]. While the panel accepted that Teacher X was likely to have been under significant stress around the relevant time, and [redacted] the panel did not accept that this in any way excused Teacher X's behaviour.

There was no evidence that Teacher X's actions were anything but deliberate, and there was no evidence to suggest that Teacher X was acting under duress. The panel found Teacher X's actions to be calculated and motivated, and noted that it was only because of Child A's report to the police after she had turned 18 that these incidents had come to light. In addition, although it appeared to be an isolated incident, it took place over a significant period of time.

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 would be sufficient.

The panel was of the view that, applying the standard of the ordinary intelligent citizen, it would not be a proportionate and appropriate response to recommend no prohibition order. Recommending that the publication of adverse findings would be sufficient would unacceptably compromise the public interest considerations present in this case, despite the severity of the consequences for Teacher X of prohibition.

The panel was of the view that prohibition was both proportionate and appropriate. The panel decided that the public interest considerations outweighed the interests of Teacher X. The significant factors in forming that opinion were: Teacher X had engaged in an inappropriate, sexually-motivated relationship with a pupil; he had engaged in sexual activity with a pupil on School premises and in relation to School events, including when other pupils could have been nearby; and he had continued this relationship with Child A while she was still closely connected with the school at which he worked.

Accordingly, the panel made 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 it to decide to recommend a review period of the order. The panel was mindful that the Advice states that a prohibition order applies for life, but there may be circumstances, in any given

case, that may make it appropriate to allow a teacher to apply to have the prohibition order reviewed after a specified period of time that may not be less than 2 years.

The Advice indicates that there are behaviours that, if proved, would militate against the recommendation of a review period. These behaviours include serious sexual misconduct, such as 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 his professional position to influence or exploit a person or persons. The panel had found that Teacher X, while in a position of trust, was responsible for engaging in and developing an inappropriate sexual relationship with a pupil at his school.

The panel considered written representations made by or on behalf of Teacher X. In the panel's view, Teacher X had shown very little insight into his actions. Although it was said that he 'greatly regrets' the relationship, [redacted]. Teacher X did not recognise the potential impact on Child A or show any remorse in this regard.

In addition, although Teacher X had admitted certain allegations, he did not appear to appreciate that, even after Child A had left the School, [redacted], at the early stages of learning about relationships, and thereby relatively vulnerable.

The panel decided that the findings indicated a situation in which a review period would not be appropriate and, as such, decided that it would be proportionate, in all the circumstances, for the prohibition order to be recommended without provisions for a review period.

Decision and reasons on behalf of the Secretary of State

I have given very careful consideration to this case and to the 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 and conduct that may bring the profession into disrepute. In this case, the panel has found one 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 Teacher X should be the subject of a prohibition order, with no provision for a review period.

In particular, the panel has found that Teacher X 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
- showing tolerance of and respect for the rights of others
- Teachers must have an understanding of, and always act within, the statutory frameworks which set out their professional duties and responsibilities.

The panel was also satisfied that “the conduct of Teacher X amounted to misconduct of a serious nature which fell significantly short of the standards expected of the profession.”

The findings of misconduct are particularly serious as they include what the panel set out as, “the offences of sexual activity and activity involving viewing, taking, making and/or possessing any indecent photograph of a child (with respect to the allegation found proven at 2d), were relevant, and that Teacher X's conduct displayed behaviours associated with these offences, while noting that Teacher X had not been convicted of any such offences.”

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 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 Teacher X, 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, “The panel had found that Teacher X, while in a position of trust, was responsible for engaging in and developing an inappropriate sexual relationship with a pupil at his school.”

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, “In the panel's view, Teacher X had shown very little insight into his actions. Although it was said that he ‘greatly regrets’ the relationship,[redacted]. Teacher X did not recognise the potential impact on Child A or show any remorse in this regard.”

In addition the panel state, “although Teacher X had admitted certain allegations, he did not appear to appreciate that, even after Child A had left the School, [redacted], at the early stages of learning about relationships, and thereby relatively vulnerable.”

In my judgement, the lack of insight and remorse 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 the findings of misconduct in this case to be very serious, and that the conduct displayed would be likely to have a negative impact on the individual’s status as a teacher, potentially damaging the public perception.”

I am particularly mindful of the finding of, “engaging in and developing an inappropriate sexual relationship with a pupil at his school.” 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 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 Teacher X himself. The panel comment “The panel had not seen any evidence which cast doubt on his professional abilities, and recognised that Teacher X had been a teacher for a lengthy period and has skills which are valuable to the profession. However, there was no evidence presented by, for example, representatives of the School or other colleagues which would indicate that he had made an exceptional contribution to education to the extent that there was a public interest in him being able to continue to teach. Ultimately, Teacher X had fundamentally breached the trust placed in him by entering into an inappropriate relationship with a pupil.”

A prohibition order would prevent Teacher X 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, “Teacher X had engaged in an inappropriate, sexually-motivated relationship with a pupil; he had engaged in sexual activity with a pupil on School premises and in relation to School events, including when other pupils could have been nearby; and he had continued this

relationship with Child A while she was still closely connected with the school at which he worked.”

The panel has also set out that it, [redacted]. While the panel accepted that Teacher X was likely to have been under significant stress around the relevant time, and [redacted], the panel did not accept that this in any way excused Teacher X’s behaviour.”

I have given less weight in my consideration of sanction therefore, to the contribution that Teacher X 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 that no provision should be made for a review period.

I have considered the panel’s comments “In the panel’s view, Teacher X had shown very little insight into his actions. Although it was said that he ‘greatly regrets’ the relationship,[redacted]. Teacher X did not recognise the potential impact on Child A or show any remorse in this regard.”

In addition, although Teacher X had admitted certain allegations, he did not appear to appreciate that, even after Child A had left the School, [redacted], at the early stages of learning about relationships, and thereby relatively vulnerable.”


I have considered whether allowing for a no review period reflects the seriousness of the findings and is proportionate and necessary to achieve the aim of maintaining public confidence in the profession. In this case, there are factors which mean that a no review is necessary and proportionate. Those factors are the seriousness nature of the misconduct and the lack of insight or remorse. As the panel state, “Teacher X, while in a position of trust, was responsible for engaging in and developing an inappropriate sexual relationship with a pupil at his school.”

I consider therefore that allowing for a no review period is necessary to maintain public confidence and is proportionate and in the public interest.

This means that Teacher X 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 Teacher X 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.

Teacher X 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 grey ink, appearing to read 'Alan Meyrick', followed by a vertical line.

Decision maker: Alan Meyrick

Date: 3 December 2021

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